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Federal Register

Monday
December 2, 1996

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

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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 10, 1996 at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

AUSTIN, TX

WHEN: December 10, 1996
9:00 a.m. to 12:00 p.m.
WHERE: Atrium
Lyndon Baines Johnson Library
2313 Red River Street
Austin, TX
RESERVATIONS: 1–800–688–9889 x 0
(Federal Information Center)

Contents

Federal Register

Vol. 61, No. 232

Monday, December 2, 1996

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 61, No. 232
Monday, December 2, 1996

Presidential Documents

Title 3—

The President

Proclamation 6959 of November 26, 1996

World AIDS Day, 1996

By the President of the United States of America

A Proclamation

We dedicate World AIDS Day to the memory of those we have lost to HIV and AIDS and to our quest to help those who are living with this disease. The theme of this ninth observance of World AIDS Day, ''One World, One Hope,'' reminds us that AIDS is a global pandemic and that HIV recognizes no geographic boundaries. Today, an estimated 21.8 million adults and children worldwide are living with HIV/AIDS, and we anticipate that as many as 3 million more will become infected with HIV in this year alone.

Of the almost 6 million men, women, and children around the world who have died of AIDS, more than 330,000 have been Americans. Each day, 100 of our fellow citizens lose their lives to this disease, and nearly 200 more are diagnosed with AIDS. The threat that HIV and AIDS pose to our Nation and the world has demanded a national response involving government, industry, communities, families, and individuals. We have put our best scientific minds to work on research, and our most talented public health professionals have strived to prevent the spread of this epidemic. Parents, teachers, clergy, and other civic leaders have worked together to educate and protect young people and other groups who are so vulnerable to—and devastated by—the scourge of HIV and AIDS.

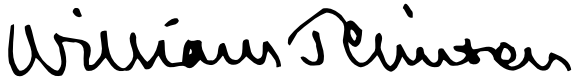
At long last, this investment of our time, attention, and resources in science and public health has begun to pay dividends. The past 12 months have offered us reasons for real hope and optimism after so many years of sadness and despair. New treatments, approved in record time, are showing remarkable results in arresting the development of HIV disease and are beginning to improve the health of those who are living with the virus. We have worked hard to provide access to these promising treatments for as many people as possible. We have tripled funding for AIDS drug assistance programs, and we have increased support for the Ryan White Comprehensive AIDS Resources Emergency Act by 30 percent during the past 12 months. We have also preserved the Medicaid program, which provides care to more than half of Americans living with AIDS, including more than 90 percent of the children with AIDS.

We are heartened by our success in reducing the risk of perinatal transmission of HIV from mother to child. For the first time since this epidemic began in 1981, we have seen an actual reduction in the number of infants born with HIV. It is within our grasp to virtually eradicate pediatric HIV disease by the end of this century. Our efforts to prevent other types of HIV transmission are also showing signs of progress. But we must remain vigilant to the continuing need for prevention, reducing the number of new infections year by year until the day when we can eliminate this disease.

As we move forward in this battle, we do so with renewed hope for the future. Let us observe World AIDS Day by intensifying our search for an end to the epidemic, for a cure for those who are living with HIV and AIDS, and for a vaccine to protect all citizens of the world from this relentless killer. And let us reaffirm our commitment to protecting the rights of all those who are living with HIV.

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 December 1, 1996, as World AIDS Day, and I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating HIV and AIDS and to reach out to those living with this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, 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.



[FR Doc. 96–30780
Filed 11–29–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

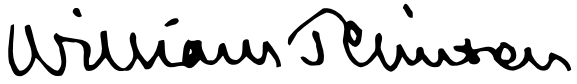
Presidential Determination No. 97–6 of November 26, 1996

Findings With Respect to the Trade Agreement With Uzbekistan

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by Uzbekistan. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Republic of Uzbekistan.

You are authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, November 26, 1996.

[FR Doc. 96–30728
Filed 11–29–96; 8:45 am]
Billing code 3190–01–M

Presidential Documents

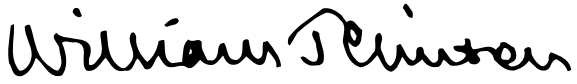
Presidential Determination No. 97–7 of November 26, 1996

Findings With Respect to the Trade Agreement With Tajikistan

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by Tajikistan. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Republic of Tajikistan.

You are authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, November 26, 1996.

[FR Doc. 96–30729
Filed 11–29–96; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

Federal Register
Vol. 61, No. 232
Monday, December 2, 1996

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AE46

1996 Marketing Quotas and Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44 and 53–55), and Cigar-Filler (Type 46) Tobaccos

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify the national marketing quotas and price support levels for the 1996 crops for several kinds of tobacco announced by press release on March 5, 1996.

In accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the Secretary determined the 1996 marketing quotas to be as follows: fire-cured (type 21), 1.97 million pounds; fire-cured (types 22–23), 40.6 million pounds; dark air-cured (types 35–36), 9.2 million pounds; Virginia sun-cured (type 37), 148,000 pounds; cigar-filler and binder (types 42–44 and 53–55), 8.9 million pounds; and cigar-filler (type 46), zero pounds.

Quotas are necessary to adjust the production levels of certain tobaccos to more fully reflect supply and demand conditions, as provided by statute.

In addition, in accordance with the Agricultural Act of 1949 as amended (the 1949 Act), the Secretary determined the 1996 levels of support to be as follows (in cents per pound): fire-cured (type 21), 145.5; fire-cured (types 22–23), 155.7; dark air-cured (types 35–36), 133.9; Virginia sun-cured (type 37), 128.8; cigar-filler and binder (types 42–44 and 53–55), 112.0; and cigar-filler (type 46), 88.1. Price supports are generally necessary to maintain grower income. However, with respect to cigar-filler (type 46) there will be no quotas or price support for the 1996 and subsequent marketing years, unless conditions change, as a result of the recent quota referendum on that type of tobacco.

EFFECTIVE DATE: March 5, 1996.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), room 5750, South Building, STOP 0514, P.O. Box 2415, Washington, DC 20013–2415, 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain information collections that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Background

This final rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act.

On March 5, 1996, the Secretary determined and announced the national marketing quotas and price support levels for the 1996 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos. A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that referenda would be conducted by mail with respect to cigar-filler and binder (types 42–44; 53–55) and (at polling places for) cigar filler (type 46) tobaccos.

During March 25–28, 1996, eligible producers of cigar-filler and binder (types 42–44; 53–55) and cigar-binder (type 46) tobacco voted in separate referenda to determine whether such producers disapprove marketing quotas for the 1996, 1997, and 1998 marketing years (MYs) for these tobaccos. Of the producers voting, 78.7 percent favored marketing quotas for cigar-filler and binder tobacco while no one voted in the cigar-filler (type 46) referendum. Accordingly, quotas and price supports for cigar-filler and binder tobacco are in effect for the 1996 MY. As it appears that there is no interest in growing cigar-filler (type 46) tobacco and that there are no current producers of this type of tobacco, it has been determined that quotas and price support shall not be in effect for the 1996 and subsequent MYs. For the same reasons, it has been determined that there shall not be any further referenda held for this type unless production resumes and a petition for a reinstatement of quotas is submitted by one-fourth of the then-current producers or by such other number of producers as appears to make the holding of a referenda worthwhile and appropriate.

In accordance with section 312(a) of the 1938 Act, the Secretary of Agriculture was required to proclaim not later than March 1 of any MY with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 MYs if such MY is the last year of 3 consecutive years for which marketing

quotas previously proclaimed will be in effect. With respect to cigar-filler and binder (types 42–44; 53–55) and cigar-filler (type 46) tobaccos, the 1995 MY is the last year of 3 such consecutive years. Accordingly, subject to producer approval, marketing quotas for these tobaccos have been proclaimed for each of the 3 MYs beginning October 1, 1996; October 1, 1997; and October 1, 1998. As indicated, however, only types 42–44; 53–55 producers approved the quotas.

Because of producer approval of quotas, sections 312 and 313 of the 1938 Act required that the Secretary also announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46), tobaccos for the MY beginning October 1, 1996, and for these tobaccos, the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments. However, these determinations were subject to those referenda which were required to be held this year.

Also, under the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1996 crop of the six kinds of tobacco that are the subject of this notice of final rulemaking, the respective maximum level of support for six of those kinds is determined in accordance with section 106 of the 1949 Act. Announcement of the price support levels for these six kinds of tobacco are normally made before the planting seasons. For the 1996 crops, the announcements were made on March 5, 1996, at the same time as the quota announcements, and subject to producer approval for those types which were subject to a 1996 referendum.

Quotas and Related Determinations

Statutory Provisions

Section 312(b) of the 1938 Act provides, in part, that the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco that may be marketed such that a supply of such tobacco equal to its reserve supply level is made available during the MY.

Section 313(g) of the 1938 Act provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms.

Since producers of these kinds of tobacco generally produce considerably less than their respective national acreage allotments allow, a larger quota is necessary to make available production equal to the reserve supply level. Further, the amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the 1938 Act defines ''reserve supply level'' as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. ''Normal supply'' is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

Normal year's domestic consumption is defined in section 301(b)(11)(B) of the 1938 Act as the average quantity produced and consumed in the United States during the 10 MYs immediately preceding the MY in which such consumption is determined, adjusted for current trends in such consumption. Normal year's exports is defined in section 301(b)(12) of the 1938 Act as the average quantity produced in and exported from the United States during the 10 MYs immediately preceding the MY in which such exports are determined, adjusted for current trends in such exports.

In accordance with section 313(g) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1996 crop of each of these kinds of tobacco is adequate for these purposes.

The Proposed Rule

On February 12, 1996, a proposed rule was published (61 FR 5316) in which interested persons were requested to comment with respect to setting quotas for the tobacco kinds addressed in the notice.

Discussion of Comments

Twenty-six written responses were received during the comment period which ended February 16, 1996. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Five comments were received. They all recommended no change from the 1995 quota.

(2) *Fire-cured (types 22–23) tobacco.* Eight comments were received. Five recommended no change from the 1995 marketing quota, while the three others recommended a small increase in quota.

(3) *Dark air-cured (types 35–36) tobacco.* Seven comments were received. Five recommended no change and the others recommended a slight decrease in the quota.

(4) *Virginia sun-cured (type 37) tobacco.* Five comments were received. All recommended a 10-percent increase in quota.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* One comment was received, recommending no change in quota.

(6) *Cigar filler (type 46) tobacco.* No comments were received.

Quota and Related Determinations

Based on a review of these comments and the latest available statistics of the Federal Government, which appear to be the most reliable data available, the following determinations were made for the six subject tobacco kinds:

(1) Fire-Cured (type 21) Tobacco

The average annual quantity of fire-cured (type 21) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1995 MY was approximately 1.1 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1995 MY was 2.5 million pounds (farm sales weight basis). Both domestic use and exports have trended sharply downward. Because of these considerations, a normal year's domestic consumption has been determined to be 0.7 million pounds, and a normal year's exports have been determined to be 1.59 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 4.78 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1995, of 3.5 million pounds. The 1995 crop is

estimated to be 1.5 million pounds. Therefore, total supply for the 1995 MY is 5.0 million pounds. During the 1995 MY, it is estimated that disappearance will total approximately 1.8 million pounds. Deducting this disappearance from total supply results in a 1996 MY beginning stock estimate of 3.2 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1996, is 1.58 million pounds. This represents the quantity that may be marketed that will make available during the 1996 MY a supply equal to the reserve supply level. About 80 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1996 national marketing quota of 1.97 million pounds is necessary to make available production of 1.58 million pounds. Thus, the national marketing quota for the 1996 MY is 1.97 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1996 national marketing quota of 1.97 million pounds by the 1991–95, 5-year national average yield of 1,496 pounds per acre results in a 1996 national acreage allotment of 1,316.84 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1996 MY, less a national reserve of 9.15 acres, by the total of the 1996 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms. (Those with access to an ''old'' allotment.)

(2) Fire-Cured (types 22–23) Tobacco

The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 years preceding the 1995 MY was approximately 18.3 million pounds. The average annual quantity produced in the United States and exported during the 10 MYs preceding the 1995 MY was 16.4 million pounds (farm sales weight basis). Both domestic use and exports have trended upward recently. Because of these considerations, a normal year's domestic consumption has been determined to be 28.0 million pounds, and a normal year's exports have been determined to be 19.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 115.0 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1995, of 80.5 million pounds. The 1995 crop is estimated to be 38.3 million pounds. Therefore, total supply for the 1995 MY is 118.8 million pounds. During the 1995 MY, it is estimated that disappearance will total approximately 36.0 million pounds. Deducting this disappearance from total supply results in a 1996 MY beginning stock estimate of 82.8 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1996, is 32.2 million pounds. This represents the quantity that may be marketed that will make available during the 1996 MY a supply equal to the reserve supply level. About 95 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a 1996 national marketing quota of 33.8 million pounds is necessary to make available production of 32.2 million pounds.

In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1996 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. Thus, the national marketing quota for the 1996 MY is 40.6 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1996 national marketing quota of 40.6 million pounds by the 1991–95, 5-year average yield of 2,462 pounds per acre results in a 1996 national acreage allotment of 16,490.66 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment for the 1996 MY, less a national reserve of 1.37 acres, by the total of the 1996 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (types 35–36) Tobacco

The average annual quantity of dark air-cured (types 35–36) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1995 MY was approximately 9.8 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1995 MY was 1.8 million pounds (farm sales weight basis). Domestic use has been erratic while exports have trended downward. Because of these considerations, a normal year's domestic consumption has been determined to be 10.5 million pounds, and a normal year's exports have been determined to be 1.6 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 33.2 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1995, of 27.3 million pounds. The 1995 crop is estimated to be 8.9 million pounds. Therefore, total supply for the 1995 MY is 36.2 million pounds. During the 1995 MY, it is estimated that disappearance will total approximately 10.0 million pounds. Deducting this disappearance from total supply results in a 1996 MY beginning stock estimate of 26.2 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1996, is 7.0 million pounds. This represents the quantity that may be marketed that will make available during the 1996 MY a supply equal to the reserve supply level. About 90 percent of the announced national marketing quota is expected to be produced. Accordingly, it has been determined that a national marketing quota of 7.7 million pounds is necessary to make available production of 7.0 million pounds. In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1996 national marketing quota should be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1996 MY of 9.2 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1996 national marketing quota of 9.2 million pounds by the 1991–95, 5-year average yield of 2,274 pounds per acre results in a 1996 national acreage allotment of 4,045.73 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.95 is determined by dividing the national acreage allotment for the 1996 MY, less a national reserve of 0.26 acre, by the total of the 1996 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (type 37) Tobacco

The average annual quantity of Virginia sun-cured (type 37) tobacco

produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1995 MY was approximately 150,000 pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1995 MY was approximately 110,000 pounds (farm sales weight basis). Both domestic use and exports have shown a sharp downward trend. Because of the considerations, a normal year's domestic consumption has been determined to be 55,000 pounds, and a normal year's exports have been determined to be 13,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 193,000 pounds.

Manufacturers and dealers reported stocks held on October 1, 1995, of 100,000 pounds. The 1995 crop is estimated to be 80,000 pounds. Therefore, total supply for the 1995 MY is 180,000 pounds. During the 1995 MY, it is estimated that disappearance will total approximately 110,000 pounds. Deducting this disappearance from total supply results in a 1996 MY beginning stock estimate of 70,000 pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 123,000 pounds. This represents the quantity that may be marketed that will make available during the 1996 MY a supply equal to the reserve supply level. Over 80 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1996 national marketing quota of 148,000 pounds is necessary to make available production of 123,000 pounds. Thus, the national marketing quota for the 1996 MY is 148,000 pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1996 national marketing quota of 148,000 pounds by the 1991–95, 5-year average yield of 1,342 pounds per acre results in a 1996 national acreage allotment of 110.28 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 1.10 is determined by dividing the national acreage allotment for the 1996 MY, less a national reserve of 0.69 acre, by the total of the 1996 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (types 42–44 and 53–55) Tobacco

The average annual quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States that is estimated to have been consumed in the United States during the 10 MYs preceding the 1995 MY was approximately 15.2 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1995 MY was less than 100,000 pounds (farm sales weight). Domestic use has trended downward and exports are very small. Thus, a normal year's domestic consumption has been determined to be 9.2 million pounds, and a normal year's exports has been determined to be 100,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 26.8 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1995, of 24.6 million pounds. The 1995 crop is estimated to be 6.2 million pounds. Therefore, total supply for the 1995 MY is 30.8 million pounds. During the 1995 MY, it is estimated that disappearance will total about 9.0 million pounds. Deducting this disappearance from total supply results in a 1996 MY beginning stock estimate of 21.8 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1996, is 5.0 million pounds. This represents the quantity that may be marketed that will make available during the 1996 MY a supply equal to the reserve supply level. Slightly less than 70 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1996 national marketing quota of 7.4 million pounds is necessary to make available production of 5.0 million pounds. In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1996 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a 1996 national marketing quota of 8.9 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1996 national marketing quota of 8.9 million pounds by the 1991–95, 5-year average yield of 1,894 pounds per acre results in a 1996 national acreage allotment of 4,699.05 acres.

Pursuant to the provisions of section 313(g), of the 1938 Act, a national factor of 1.0 is determined by dividing the national acreage allotment for the 1996 MY, less a national reserve of 9.99 acres, by the total of the 1996 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Cigar-Filler (type 46) Tobacco

There is no demand for cigar-filler (type 46) tobacco. Accordingly, the reserve supply level is zero. The estimated carryover at the start of MY 1996 is less than 0.1 million pounds. However, because of the referendum result, there will be no marketing quota, or price support, for this type for 1996 and subsequent MYs, unless a petition for reinstatement of quota is filed.

Because the estimated carryover exceeds the reserve supply level, the quantity of tobacco that may be marketed during MY 1996 and the 1996 acreage allotment are both zero.

(7) Referendum Results for Cigar-Filler and Binder (types 42–44; 53–55) and Cigar-Filler (type 46) Tobaccos

Because of the results of producer referenda, marketing quotas shall be in effect for the 1996 MY for cigar-filler and binder (types 42–44; 53–55) tobacco, but not for cigar-filler (type 46) tobacco. In a referendum held March 25–28, 1996, 78.7 percent of producers of cigar-filler and binder (types 42–44; 53–55) tobacco, voted in favor of marketing quotas. However, no votes were cast in the March 26, 1996, referendum held for producers of cigar binder (type 46) tobacco. As indicated, it was determined for that reason that no quota would be set until a petition for quotas is filed. The regulations adopted in this notice have been drafted accordingly.

Kind of tobacco	Total votes	Yes votes	No votes	Percent yes votes
Cigar-filler and binder (types 42–44; 53–55)	1084	853	231	78.7
Cigar-filler (type 46)	0	0	0	0

Price Support

Statutory Provisions

Section 106(f)(6)(A) of the 1949 Act provides that the level of support for the 1996 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1995 crop of such kind of tobacco was supported, plus or minus, as appropriate, the amount by which (i) the basic support level for the 1996 crop, as determined under section 106(b) of the 1949 Act, is greater or less than (ii) the support level for the 1995 crop, as determined under section 106(b). To the extent that the price support level would be increased as a result of that comparison, section 106(f) provides that the increase may be modified using the provisions of 106(d). Under 106(d), the Secretary may reduce the level of support for grades the Secretary determines will likely be in excess supply so long as the weighted level of support for all grades maintains at least 65 percent of the increase in the price support (from the previous year). The Secretary must consult with the appropriate tobacco associations and take into consideration the supply and anticipated demand for the tobacco, including the effect of the action on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary is required to consider the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

Section 106(b) of the 1949 Act provides that the ''basic support level'' for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest, and taxes (referred to as the ''parity index'') for the 3 previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year.

In addition, section 106(f)(6)(B) of the 1949 Act provides that to the extent requested by the board of directors of an association, through which price support is made available to producers (producer association), the Secretary may reduce the support level determined under section 106(f)(6)(A) of the 1949 Act for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Price Support Determinations

The following levels of price support for the 1995 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	143.0
KY–TN fire-cured (types 22–23)	151.8
Dark air-cured (types 35–36)	130.4
Virginia sun-cured (type 37)	126.5
Cigar-filler and binder (types 42–44 and 53–55)	110.1
Cigar-filler (type 46)	86.1

For the 1996 crop year:

(1) Average parity indexes for calendar year periods 1992–1994 and 1993–1995 are as follows:

Year	Index	Year	Index
1992	1,329	1993	1,355
1993	1,355	1994	1,394
1994	1,394	1995	1,420
Average	1,359	Average	1,390

(2) Average parity index, calendar year 1959=298.

(3) 1995 ratio of 1,359 to 298=4.56; 1995 ratio of 1,359 to 298=4.66.

(4) Ratios times 1959 support levels and 1996 increase in basic support levels are as follows:

Kind and type	1959 support level	Basic support level [1]		Increase from 1995 to 1996	
	(¢/lb.)	1995 (¢/lb.)	1996 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
VA 21	38.8	176.9	180.8	3.9	2.5
KY–TN 22–23	38.8	176.9	180.8	3.9	2.5
KY–TN 35–36	34.5	157.3	160.8	3.5	2.3
VA 37	34.5	157.3	160.8	3.5	2.3
Cigar-filler and binder 42–44, 54–55	28.6	130.4	133.3	2.9	1.9
Cigar-filler 46	29.7	135.4	138.4	3.0	2.0

[1] 1995 ratio is 4.56, 1996 ratio is 4.66.

With respect to 106(d) adjustments, for MY 1996, the flue-cured support level was increased by 65 percent of the formula increase to within about 12 percent of 1995's average market price. For the kinds of tobacco subject of this rule, MY 1995 market prices were further above the support level, and overall loan receipts remained low. Only Virginia Fire-Cured (type 21) and Virginia sun-cured (type 37) have significant loan stocks relative to use for MY 1995.

In addition, the loan associations for cigar filler and binder (types 42–44; 53–55) have accepted lower price support levels so their tobacco may remain competitive with imports and tobaccos not under support. Therefore, for fire-cured tobacco (type 21), Virginia sun-cured tobacco (type 37), and cigar-filler and binder tobacco (types 42–44 and 53–55), the MY 1996 support levels consist of the 1995 support levels which were increased by 65 percent of the difference between the 1996 ''basic support level'' and the 1995 ''basic support level.'' The supply-use ratios for Kentucky-Tennessee fire-cured (types 22–23) and dark air-cured (types 35–36)

suggest adequate supplies. Accordingly, for these tobaccos, the MY 1996 support level consists of the MY 1995 level of support increased by the difference between the MY 1996 ''basic support level'' and the MY 1995 ''basic support level.'' Also, chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these six kinds of tobacco in their blends.

Accordingly, the following price support determinations were announced on March 5, 1996:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	145.5
Kentucky-Tennessee fire-cured (types 22–23)	155.7
Dark air-cured (types 35–36)	133.9
Virginia sun-cured (type 37)	128.8
Cigar-filler and binder (types 42–44 and 53–55)	112.0
Cigar-filler (type 46)	88.1

However, as indicated, price support will not be made available for type 46 until such time as quotas may be established for this type.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Price supports, Tobacco.

Accordingly, 7 CFR parts 723 and 1464 are amended to read as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (d) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 1.97 million pounds.

3. Section 723.114 is amended by adding paragraph (d) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 40.6 million pounds.

4. Section 723.115 is amended by adding paragraph (d) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 9.2 million pounds.

5. Section 723.116 is amended by adding paragraph (d) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 148,000 pounds.

6. Section 723.117 is amended by adding paragraph (d) to read as follows:

§ 723.117 Cigar-filler and cigar binder (types 42–44: 53–55) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 8.9 million pounds.

7. Section 723.118 is amended by adding paragraph (d) to read as follows:

§ 723.118 Cigar filler (type 46) tobacco.

* * * * *

(d) There shall be no national or individual marketing quotas for the 1996 and subsequent marketing years for this type (46).

PART 1464—TOBACCO

8. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1; 15 U.S.C. 714b and 714c.

9. Section 1464.13 is amended by adding paragraph (d) to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

* * * * *

(d) The 1996-crop national price support level is 145.5 cents per pound.

10. Section 1464.14 is amended by adding paragraph (d) to read as follows:

§ 1464.14 Fire-cured (types 22–23) tobacco.

* * * * *

(d) The 1996-crop national price support level is 155.7 cents per pound.

11. Section 1464.15 is amended by adding paragraph (d) to read as follows:

§ 1464.15 Dark air-cured (types 35–36) tobacco.

* * * * *

(d) The 1996-crop national price support level is 133.9 cents per pound.

12. Section 1464.16 is amended by adding paragraph (d) to read as follows:

§ 1464.16 Virginia sun-cured (type 37) tobacco.

* * * * *

(d) The 1996-crop national price support is 128.8 cents per pound.

13. Section 1464.17 is amended by adding paragraph (d) to read as follows:

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(d) The 1996-crop national price support level is 112.0 cents per pound.

14. Section 1464.18 is amended by adding paragraph (d) to read as follows:

§ 1464.18 Cigar-filler (type 46) tobacco.

* * * * *

(d) Price support shall not be made available for the 1996 and subsequent crops of this type (46).

* * * * *

Signed at Washington, DC, on November 12, 1996.

Bruce R. Weber,

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

[FR Doc. 96–30551 Filed 11–29–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–173–AD; Amendment 39–9835; AD 96–24–11]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all IAI, Ltd., Model 1123, 1124, and 1124A series airplanes, that requires repetitive inspections of the aileron push-pull tubes for excessive wear and the guide rollers for smooth rotation; and repair or replacement of worn parts with serviceable parts. This amendment is prompted by reports of excessive wear on the aileron push-pull tube in the area of the guide rollers. The actions specified by this AD are intended to prevent such wear, which could result in uneven movement of the control wheel, perforation of the aileron push-pull tube, and consequent reduced roll control of the airplane.

DATES: Effective January 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all IAI, Ltd., Model 1123, 1124, and 1124A series airplanes was published in the Federal Register on September 4, 1996 (61 FR 46576). That action proposed to require repetitive inspections of the left and right aileron push-pull tubes for excessive wear and the guide rollers for smooth rotation; replacement of the push-pull tubes with serviceable parts, if necessary; and repair or replacement of the guide rollers with serviceable parts, if necessary.

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

Conclusion

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

Cost Impact

The FAA estimates that 213 IAI, Ltd., Model 1123, 1124, and 1124A series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,780, or $60 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–24–11 Israel Aircraft Industries (IAI), LTD.: Amendment 39–9835. Docket 96–NM–173–AD.

Applicability: All IAI, Ltd., Model 1123, 1124, and 1124A series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 excessive wear of the aileron push-pull tube, which could result in uneven movement of the control wheel, perforation of the aileron push-pull tube, and consequent reduced roll control of the airplane; accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, inspect the left and right aileron push-pull tubes for wear and the guide rollers for smoothness of rotation, in accordance with Westwind Service Bulletin SB 1123–27–043, dated June 12, 1995 (for Model 1123 series airplanes); or Service Bulletin SB 1124–27–129, dated June 12, 1995 (for Model 1124 and 1124A series airplanes); as applicable.

(1) If no wear is detected or if wear is within the limits specified in the applicable service bulletin, repeat the inspections thereafter at intervals not to exceed 600 hours time-in-service.

(2) If any wear is detected and that wear is outside the limits specified in the applicable service bulletin, prior to further flight, replace the tube with serviceable parts in accordance with the applicable service bulletin. Thereafter, repeat the inspections at intervals not to exceed 600 hours time-in-service.

(3) If the guide rollers do not rotate smoothly, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD. Thereafter, repeat the inspections at intervals not to exceed 600 hours time-in-service.

(i) Prior to further flight, repair the guide roller in accordance with the applicable service bulletin. Or

(ii) Prior to further flight, replace the guide roller with serviceable parts in accordance with the applicable service bulletin.

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

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

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

(d) The actions shall be done in accordance with Westwind Service Bulletin SB 1123–27–043, dated June 12, 1995; or Westwind Service Bulletin SB 1124–27–129, dated June

12, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 6, 1996.

Issued in Renton, Washington, on November 18, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–29988 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–31; Amendment 39–9826; AD 96–23–03]

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, Request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 96–23–03 that was sent previously to all known U.S. owners and operators of Textron Lycoming IO–320, LIO–320, AEIO–320, IO- 360, LIO–360, AEIO–360, HIO–360, TO–360, IO–540, O–540–L, LIO–540, and AEIO–540 series reciprocating engines by individual letters. This AD requires a maintenance records check to determine if suspect high pressure fuel pumps are installed, and inspection to determine if the high pressure fuel pump has one of the suspect date codes. If the high pressure fuel pump has a suspect date code, this AD requires disassembly and inspection of the high pressure fuel pump, and, if necessary, removal from service and replacement with a serviceable part. In addition, this AD requires reporting findings of unserviceable high pressure fuel pumps. This amendment is prompted by reports of inflight failures of high pressure fuel pumps. The actions specified by this AD are intended to prevent an inflight engine failure due to fuel starvation, which could result in a forced landing.

DATES: Effective December 17, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–23–03, issued on October 28, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7278, fax (717) 327–7022. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ray O'Neill, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256–7505, fax (516) 568- 2716.

SUPPLEMENTARY INFORMATION: On October 28, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96–23–03, applicable to Textron Lycoming IO–320, LIO–320, AEIO–320, IO–360, LIO–360, AEIO–360, HIO–360, TO–360, IO–540, O–540–L, LIO–540, and AEIO–540 series reciprocating engines, which requires within 5 hours time in service (TIS) after the effective date of the priority letter AD, a maintenance records check to determine if suspect high pressure fuel pumps are installed, and if the records check indicates a suspect high pressure fuel pump may be installed, inspection, which can be performed by the owner/operator holding at least a private pilot's certificate, to determine if the high pressure fuel pump has one of the suspect date codes. If the high pressure fuel pump has one of the suspect date codes, the priority letter AD requires disassembly and inspection of the high pressure fuel pump, and, if necessary, removal from service and replacement with a serviceable part. In addition, the priority letter AD requires reporting findings of unserviceable high pressure fuel pumps. That action was prompted by reports of inflight failures of high pressure fuel pumps. Investigations into those incidents revealed that the fuel pump gasket, Part Number (P/N) 5621005, became lodged in the pump outlet port after separating from the pump diaphragm assembly on high pressure fuel pumps, P/N LW–15473. Further investigation revealed that the high pressure fuel pumps developed defects during manufacturing. The engines involved in those incidents had high pressure fuel pumps with manufacturing date codes: 154739506, 154739507, or 154739510. The first five digits of the manufacturing date codes refer to the Textron Lycoming P/N and the last four digits refer to the year and month of pump manufacture. This condition, if not corrected, could result in an inflight engine failure due to fuel starvation, which could result in a forced landing.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin (SB) No. 525A, dated October 7, 1996, that describes procedures for identifying the manufacturing date code. This SB also includes procedures for inspection of internal parts of high pressure fuel pumps, replacement of specific parts or the complete high pressure fuel pump, if necessary, and reassembly of the high pressure fuel pump.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 96–23–03 to prevent inflight engine failure due to fuel starvation, which could result in a forced landing. The AD requires within 5 hours TIS after the effective date of this AD, a maintenance records check to determine if suspect high pressure fuel pumps are installed, and if the records check indicates a suspect high pressure fuel pump may be installed, inspection, which can be performed by the owner/operator holding at least a private pilot's certificate, to determine if the high pressure fuel pump has one of the suspect date codes. If the high pressure fuel pump has one of the suspect date codes, this AD requires disassembly and inspection of the high pressure fuel pump, and, if necessary, removal from service and replacement with a serviceable part. In addition, this AD requires reporting findings of unserviceable high pressure fuel pumps. The actions are required to be accomplished in accordance with the SB described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual letters issued on October 28, 1996, to all known U.S. owners and operators of Textron Lycoming IO–320, LIO–320, AEIO–320, IO–360, LIO–360, AEIO–360, HIO–360, TO–360, IO–540, O–540–L, LIO–540, and AEIO–540 series reciprocating engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–31.'' 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 is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–23–03 Textron Lycoming: Amendment 39–9826. Docket 96–ANE–31.

Applicability: Textron Lycoming IO–320, LIO–320, AEIO–320, IO–360, LIO–360, AEIO–360, HIO–360, TO–360, IO–540, O–540–L, LIO–540, and AEIO–540 series reciprocating engines, with high pressure fuel pumps, Part Number (P/N) LW–15473 that have manufacturing date codes: 154739506, 154739507, or 154739510; and that were either installed on engines shipped from Textron Lycoming between July 18, 1995, and August 14, 1996, inclusive; or were purchased as replacement high pressure fuel pumps on or after July 18, 1995. These engines are installed on but not limited to reciprocating engine powered aircraft manufactured by Aerospatiale, American Champion, Bellanca, Cessna, The New Piper Company, Beech, Maule, Mooney, and Schweizer 269 series helicopters.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an inflight engine failure due to fuel starvation, which could result in a forced landing, accomplish the following:

(a) Within 5 hours time in service (TIS) after the effective date of this AD, accomplish the following:

(1) Perform a maintenance records check to determine if the engine was shipped from Textron Lycoming between July 18, 1995, and August 14, 1996, inclusive, or had a high pressure fuel pump, P/N LW–15473, installed as a replacement high pressure fuel pump on or after July 18, 1995. This records check may be performed by the owner/operator holding at least a private pilot's certificate issued under Part 61 of the Federal Aviation Regulations (14 CFR part 61). If the engine does not meet that criteria, the owner/operator may sign the maintenance record to indicate that the AD is not applicable, and no further action is required.

(2) If the engine does meet the criteria stated in paragraph (a)(1) of this AD, or if the shipping date of the engine or the installation date of the high pressure fuel pump is unknown, visually inspect the flange of the high pressure fuel pump to determine the manufacturing date code in accordance with Textron Lycoming Mandatory Service Bulletin (SB) No. 525A, dated October 7, 1996. This inspection may be performed by the owner/operator holding at least a private pilot's certificate. However, any disassembly of the engine other than opening the cowling must be accomplished by a certificated mechanic. If the manufacturing date code is not one of the following three codes: 154739506, 154739507, or 154739510, no further action is required, and the owner/operator may sign the maintenance record to indicate that the AD is not applicable.

(3) For engines with high pressure fuel pumps that have one of the following manufacturing date codes: 154739506, 154739507, or 154739510, disassemble the high pressure fuel pump, inspect, and, if necessary, repair or replace with a serviceable high pressure fuel pump, in accordance with Textron Lycoming Mandatory SB No. 525A, dated October 7, 1996. Only certificated mechanics may perform these requirements.

(b) Within 48 hours after inspection, report the finding of unserviceable high pressure fuel pumps, the TIS on the pump, and a contact telephone number to the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St.,

Valley Stream, NY 11581; telephone (516) 256–7505, fax (516) 568–2716. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

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

(e) The requirements of this AD shall be accomplished in accordance with the following Textron Lycoming Mandatory SB:

Document No.	Pages	Date
525A	1–4	October 7, 1996.

Total pages: 4.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone (717) 327–7278, fax (717) 327–7022. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective December 17, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–23–03, issued October 28, 1996, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 14, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–30095 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–02; Amendment 39–9821; AD 96–23–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. This amendment adds a requirement to install improved design fan blades as terminating action for the inspections. This amendment is prompted by the introduction into service of improved design fan blades. The actions specified by this AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Effective January 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 95–12–19, Amendment 39–9270 (60 FR 31388, June 15, 1995), applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the Federal Register on May 6, 1996 (61 FR 20194). That action proposed to add a requirement to install improved design fan blades as terminating action for the periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. The action would be required to be accomplished in accordance with PW Alert Service Bulletin (ASB) No. A6241, dated January 25, 1996.

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

One commenter supports the rule as proposed.

One commenter concurs with the inspection and maintenance provisions of the proposed AD. However, the commenter questions the proposed compliance schedule for the terminating action to incorporate the new fan blades. The compliance schedule is based on fan blade cycles in service (CIS). The commenter states that since (1) the fan blade fractures are due to a high cycle fatigue (HCF) failure mode that is not linked to total part CIS on the fan blade, and (2) that individual fan blade CIS are currently not tracked, an alternative compliance requirement based on completing a specific yearly percentage rate of the operator's engine sets would be less burdensome to the operators. The FAA concurs in part. When the FAA assessed the risk, the FAA based the compliance schedule on total part CIS. It has been the FAA's practice to define intervals for corrective action in an AD by means of part CIS. Monitoring this program on a fleet-wide basis using the suggested percentage rate would not provide the FAA with an adequate means to ensure that blades were removed before becoming a safety problem. Individual operators, however, may request such a percentage-based program that includes those assurances as an alternative method of compliance to the AD. The FAA, therefore, does not concur that the proposed AD should be revised.

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

The FAA estimates that 1,100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 19 work hours per engine to accomplish the required actions, and

that the average labor rate is $60 per work hour. The FAA also estimates that the parts modification will cost $1,020 per engine, which includes a manufacturer's discount of $1,700 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,376,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. § 39.13 is amended by removing Amendment 39–9270 (60 FR 31388, June 15, 1995) and by adding a new airworthiness directive, Amendment 39–9821, to read as follows:

96–23–15 Pratt & Whitney: Amendment 39–9821. Docket 96–ANE–02. Supersedes AD 95–12–19, Amendment 39–9270.

Applicability: Pratt & Whitney (PW) Models JT8D–209,–217, –217A, –217C, and –219 turbofan engines that have not incorporated PW Service Bulletin (SB) No. 6193, dated October 31, 1994, or with fan blade, Part Numbers (P/N's) 798821, 798821–001, 808121, 808121–001, 809221, 811821, 851121, 851121–001, 5000021–02, 5000021–022, and 5000021–032 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, lubricate fan blade shrouds, restore leading edge dimensions, and modify or install improved design fan blades in accordance with the schedule and procedures described in Parts 1, 2, and 3 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6241, dated January 25, 1996.

(b) Modification of fan blades to the improved design configuration or installation of improved design fan blades in accordance with Part 3 of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996, constitutes terminating action to the inspections and maintenance actions described in Parts 1 and 2 of that ASB.

(c) For the purpose of this AD, the accomplishment effective date to be used for determination of compliance intervals, as required by Section 2 of PW ASB No. A6241, dated January 25, 1996, is defined as the effective date of this AD.

(d) For the purpose of this AD, ''repair'' as specified in Part 3, Paragraph A.(1)(b) of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996, is defined as the refurbishment of fan blades in accordance with Part 3, Paragraph C of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996.

(e) Alternative methods of compliance that have been approved for AD 95–12–19 are applicable for this AD and additional approval is not required.

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

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

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

(h) The actions required by this AD shall be done in accordance with the following Pratt & Whitney ASB:

Document No.	Pages	Revision	Date
A6241	1–14	Original.	January 25, 1996.

Total pages: 14.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565– 4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 2, 1997.

Issued in Burlington, Massachusetts, on November 7, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–30096 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–79; Amendment 39–9820; AD 96–23–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (ADs), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that currently require repetitive eddy current, fluorescent penetrant, fluorescent magnetic penetrant, or visual inspections for cracks in the rear flange, and ultrasonic, fluorescent penetrant, or fluorescent magnetic penetrant inspections for cracks in the PS4 boss, and drain bosses of the

combustion chamber outer case (CCOC); and an additional inspection of the CCOC rear flange for intergranular cracking. This amendment requires reducing the rear flange inspection interval for CCOCs when only the aft face of the rear flange has been inspected, and introducing an improved ultrasonic probe assembly. In addition, this amendment introduces a rotating eddy current probe for shop inspections in which the case is removed from the engine. Also, this amendment eliminates fluorescent penetrant inspection (FPI), fluorescent magnetic particle inspection (FMPI), and visual inspections from hot section disassembly level inspection procedures. This amendment is prompted by reports of crack origins in the forward face of the rear flange that could not be detected by the inspection methods for installed CCOC's that were mandated in the current ADs. The actions specified by this AD are intended to prevent uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

DATES: Effective January 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Manager, Engine Certification Branch, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7142, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 87–11–07 R1, Amendment 39–6360 (54 FR 46045, November 1, 1989), which is applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published in the Federal Register on March 15, 1994 (59 FR 11942). That action proposed to require to reduce the inspection interval in AD 87–11–07 R1 for combustion chamber outer cases (CCOCs) that have had only the aft face of the rear flange inspected and introduced an improved ultrasonic probe assembly.

On May 22, 1996 (61 FR 28114, June 4, 1996), the Federal Aviation Administration (FAA) issued a Supplementary NPRM, that revised the earlier NPRM by proposing to simplify the compliance instructions and incorporate a new PW Alert Service Bulletin (ASB). That Supplemental NPRM also revised the earlier NPRM by introducing new non-destructive inspection procedures (NDIPs), and introducing a rotating eddy current probe for shop inspections in which the case is removed from the engine. In addition, the Supplemental NPRM eliminated fluorescent penetrant inspection (FPI), fluorescent magnetic particle inspection (FMPI), and visual inspections from hot section disassembly level inspection procedures. The Supplemental NPRM also revised the earlier NPRM by consolidating the inspection requirements of an additional current AD, 95–08–15, into the proposed AD.

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

One commenter states that the effective date for the borescope inspection required by paragraph (a) of this AD should be the same as the effective date of AD 95–08–15. The proposed AD would supersede AD 95–08–15, therefore the borescope inspection intervals have already been initiated to comply with AD 95–08–15. The FAA concurs. The FAA has revised the accomplishment effective date in this final rule from the effective date of this AD to May 9, 1995, which is the effective date of AD 95–08–15.

One commenter states that the PW JT8D–7B engine model was omitted from the applicability section of the proposed rule, but was included in the ADs to be superseded. The FAA concurs and has revised this final rule accordingly.

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

The FAA estimates that 6,815 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 4.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,840,050.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6360 (54 FR 46045, November 1, 1989) and amendment 39–9204 (60 FR 20019, April 24, 1995), and by adding a new

airworthiness directive, Amendment 39–9820, to read as follows:

96–23–14 Pratt & Whitney: Amendment 39–9820. Docket 93–ANE–79. Supersedes AD 87–11–07 R1, Amendment 39–6360, AD 87–11–07, Amendment 39–5619, and AD 95–08–15, Amendment 39–9204.

Applicability: Pratt & Whitney (PW) Models JT8D–1,–1A,–1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC) part numbers (P/Ns) 490547, 542155, 616315, 728829, 728829–001, 730413, 730413–001, 730414, 730414–001, 767197, 767279, 767279–001 installed. These engines are installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent CCOC flange cracks that could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage, accomplish the following:

(a) Inspect, disposition, and report CCOC distress, in accordance with the intervals and procedures described in Paragraphs 2.A and 2.C of PW Alert Service Bulletin (ASB) No. A6202, Revision 1, dated January 4, 1996. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(1) For the purposes of this AD, the accomplishment effective date to be used for determination of inspection intervals, as required by Section 2.A of PW ASB A6202, Revision 1, dated January 4, 1996, is defined as May 9, 1995, which is the effective date of AD 95–08–15.

(b) Inspect, disposition ,and report CCOC distress in accordance with the intervals and procedures described in Paragraphs 2.A. (Part I), 2.B. (Part II), and 2.D of PW ASB No. A6228, dated November 7, 1995. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

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

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with §§ 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.

(e) The actions required by this AD shall be done in accordance with the following Pratt & Whitney ASBs and NDIP documents:

Document No.	Pages	Revision	Date
A6202	1–10	1	Jan. 4, 1996.
	11	Original	Feb. 20, 1995.
NDIP–835	1–17	A	Oct. 7, 1995.
Total pages: 28.			
A6228	1–31	Original	Nov. 7, 1995.
NDIP–620	1–15	A	Oct. 7 1995.
NDIP–691	1–20	B	Oct. 7, 1995.
NDIP–781	1–21	Original	Oct. 7, 1995.
NDIP–795	1–20	Original	Oct. 7, 1995.
NDIP–829	1–14	Original	Oct. 7, 1995.
NDIP–834	1–19	A	Oct. 7, 1995.
NDIP–856	1–42	Original	Oct. 7, 1993.
Total pages: 182.			

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

(f) This amendment becomes effective on January 2, 1997.

Issued in Burlington, Massachusetts, on November 7, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–30127 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37972; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule; Revised Compliance Dates.

SUMMARY: The Securities and Exchange Commission is revising, for certain over-the-counter (''OTC'') securities, the compliance dates required by the recent adoption of Rule 11Ac1–4, the ''Display Rule,'' which generally requires OTC market makers and exchange specialists to display customer limit orders.

DATES: The effective date for Rule 11Ac1–4 adopted by the Securities and Exchange Commission, and published on September 12, 1996 (61 FR 48290) remains January 10, 1997. Effective December 2, 1996, the compliance date to require the display of customer limit orders in only 50 of the 1,000 most actively traded OTC securities is January 10, 1997. The new compliance date for an additional 100 of these 1,000 securities is January 31, 1997, and the compliance date for the remaining 850 most actively traded securities is February 21, 1997. The remainder of the compliance dates are unchanged.

FOR FURTHER INFORMATION CONTACT: David Oestreicher, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On August 28, 1996, the Securities and Exchange Commission (''Commission'') adopted

Rule 11Ac1–4,[1] the ''Display Rule,'' to require OTC market makers and exchange specialists to display certain customer limit orders for covered securities if no stated exception applies.[2]

As discussed in the Adopting Release, the Display Rule will become effective on January 10, 1997. Implementation of the Display Rule will be accomplished in phases, with the first phase of implementation scheduled to begin on January 10, 1997. As originally envisioned by the Commission, as of this date, the Display Rule would apply to all exchange-traded securities and the 1,000 Nasdaq securities with the highest average daily trading volume in the previous quarter. The Commission initially provided a phase-in period for Nasdaq securities because the display of limit orders in the OTC market represents a significant change in OTC market practice. To ensure an orderly market transition, the Commission believes that market professionals should be provided a period of time in which to become accustomed, in a small number of stocks, to the quote volume and array of prices that will be reflected by the display of customer limit orders. The Commission has determined, therefore, to require as of January 10, 1997, compliance with the Display Rule with respect to only 50 of the 1,000 Nasdaq securities with the highest average daily trading volume in the previous quarter. These 50 securities will be identified by Nasdaq. On January 31, 1997, compliance with the Display Rule will be required with respect to an additional 100 securities identified by Nasdaq. Compliance with the Display Rule for the remaining 850 of the 1000 Nasdaq securities with the highest daily trading volume in the previous quarter, as determined by Nasdaq, will be required on February 21, 1997. For exchange-traded securities, the Commission believes that it continues to be appropriate to require compliance with the Display Rule as of January 10, 1997, except in cases where the security is a Nasdaq security and is traded on an exchange pursuant to unlisted trading privileges. In such cases, the security will be considered to be a Nasdaq security, not an exchange-traded security, for the purpose of determining the compliance date with the Display Rule.

All subsequent phase-in dates for compliance with the Display Rule will continue to apply as described in the Adopting Release. Specifically, the second phase-in date will be on March 28, 1997. From this date forward, the Display Rule will apply to the next 1,500 Nasdaq securities with the highest average daily trading volume over the previous quarter. The third phase-in date will be on June 30, 1997. From that date forward, the Display Rule will apply to the next 2,000 Nasdaq securities with the highest average daily trading volume over the previous quarter. The final phase-in date will be on August 28, 1997. From that date forward, the Display Rule will apply to all remaining Nasdaq securities.

Dated: November 22, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30527 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.11Ac1–4.

[2] Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release'').

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Hoechst-Roussel Agri-Vet Co. to Hoechst Roussel Vet.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, has informed FDA of a change of sponsor name to Hoechst Roussel Vet. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the sponsor name for ''Hoechst-Roussel Agri-Vet Co.,'' and adding in its place ''Hoechst Roussel Vet,'' and in the table in paragraph (c)(2) in the entry for ''012799'' by removing the sponsor name ''Hoechst-Roussel Agri-Vet Co.,'' and adding in its place ''Hoechst Roussel Vet,''.

Dated: November 21, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–30652 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor name from Fort Dodge Laboratories, Division of American Home Products Corp. to Fort Dodge Animal Health, Division of American Home Products Corp.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Division of American Home Products Corp., 800 Fifth St. NW., Fort Dodge, IA 50501, has informed FDA of a change of sponsor name to Fort Dodge Animal Health, Division of American Home Products Corp. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the sponsor name for ''Fort Dodge Laboratories, Division of American Home Products Corp.'' and by adding in its place a new entry for ''Fort Dodge Animal Health, Division of American Home Products Corp.''; and in the table in paragraph (c)(2) in the entry for ''000856'' by removing the sponsor name ''Fort Dodge Laboratories, Division of American Home Products'' and adding in its place ''Fort Dodge Animal Health, Division of American Home Products Corp.''

Dated: November 21, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–30588 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfaquinoxaline Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by I. D. Russell Co. Laboratories. The supplement provides for a revised formulation of sulfaquinoxaline liquid used in animal drinking water.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: I. D. Russell Co. Laboratories, 1301 Iowa Ave., Longmont, CO 80501, filed supplemental NADA 6–891 that provides for reformulation of the 34-percent sulfaquinoxaline solution to a 31.92-percent sulfaquinoxaline solution (as sodium and potassium salts) used in animal drinking water. The supplement is approved as of October 22, 1996, and the regulations are amended in § 520.2325a(a) (21 CFR 520.2325a(a)) to reflect the approval.

In addition, § 520.2325a(a) is revised to specify the base and salt content of several other approved sulfaquinoxaline drinking water products.

The supplemental approval is for a revised formulation of an approved product and does not affect the basis of approval or conditions of use in the currently approved application. No additional safety or effectiveness data were required. Therefore, a freedom of information summary is not required for this approval.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval of this supplemental NADA does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.2325a is amended by revising paragraph (a) to read as follows:

§ 520.2325a Sulfaquinoxaline drinking water.

(a) *Sponsor.* See § 510.600(c) of this chapter for identification of the sponsors.

(1) To No. 050749 for use of a 25-percent sulfaquinoxaline soluble powder and a 20-percent sulfaquinoxaline sodium solution as provided for in paragraph (c) of this section.

(2) To No. 060594 for use of 3.44- and 12.85-percent sulfaquinoxaline sodium solutions as provided for in paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(i), and (c)(4)(ii) of this section.

(3) To No. 017144 for use of a 31.92-percent sulfaquinoxaline solution (sodium and potassium salts) as provided for in paragraphs (c)(1), (c)(2), (c)(3), (c)(4)(i), and (c)(4)(ii) of this section.

* * * * *

Dated: November 18, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–30651 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Happy Jack, Inc. The ANADA provides for oral use of pyrantel pamoate suspension for removal of large roundworms and hookworms in puppies and dogs and to prevent reinfections of *Toxocara canis* in puppies and adult dogs and in lactating bitches after whelping.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Happy Jack, Inc., P.O. Box 475, Highway 258 South, Snow Hill, NC 28580, filed ANADA 200–007, which provides for oral use of Liqui-Vict 2X™ (pyrantel pamoate) oral suspension for removal of large roundworms (*T. canis and Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria*

stenocephala) in puppies and dogs and to prevent reinfections of *T. canis* in puppies and adult dogs and in lactating bitches after whelping. The product contains pyrantel pamoate equivalent to 4.54 milligrams of pyrantel base.

Approval of ANADA 200–007 for Happy Jack, Inc.'s, pyrantel pamoate suspension is as a generic copy of Pfizer's NADA 100–237 Nemex-2™ (pyrantel pamoate). The ANADA is approved as of October 30, 1996, and the regulations are amended in 21 CFR 520.2043(b)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.2043 is amended by adding a new sentence at the end of paragraph (b)(2) to read as follows:

§ 520.2043 Pyrantel pamoate suspension.

* * * * *

(b) * * *

(2) * * * See No. 023851 for use of 4.54 milligrams per milliliter product.

* * * * *

Dated: November 22, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–30653 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for an approved new animal drug application (NADA) for Biocraft Laboratories, Inc., and A. H. Robins Co.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., P.O. Box 518, Fort Dodge, IA 50501–0518, and Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407, are no longer cosponsors of NADA 140–889. This arrangement was terminated sometime ago, but the agency failed to reflect the change in the regulations. Biocraft Laboratories, Inc., now exclusively owns NADA 140–889 and A. H. Robins Co. is the sponsor of new NADA 141–003. A. H. Robins Co. filed a supplement to NADA 140–889 to provide for the establishment of a new NADA. Therefore, the agency is amending 21 CFR 524.1600a to reflect the change of sponsorship.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1600a [Amended]

2. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing ''See Nos. 000031/000332 (cosponsors), 000069, 025463, 051259, and 053501 in § 510.600(c) of this chapter'' and by adding in its place ''See Nos. 000031, 000069, 000332, 025463, 051259, and 053501 in § 510.600(c) of this chapter''.

Dated: November 21, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–30589 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 318

[DSWA Instruction 5400.11B]

Privacy Program

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Special Weapons Agency (DSWA) is revising its procedural and exemptions rules for the DSWA Privacy Program.

EFFECTIVE DATE: November 9, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on September 9, 1996 at 61 FR 47467. No comments were received, therefore, DSWA is adopting the rule as final.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, 32 CFR part 318 is revised as follows:

PART 318–DEFENSE SPECIAL WEAPONS AGENCY PRIVACY PROGRAM

Sec.

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 318.1 Purpose and scope.

(a) This rule implements the provisions of the Privacy Act of 1974, as amended, and adopts the policies and procedures as set forth by the Department of Defense Privacy Program, 32 CFR part 310.

(b) This rule establishes procedures whereby individuals can:

(1) Request notification of whether Defense Special Weapons Agency (DSWA) maintains or has disclosed a record pertaining to them in any nonexempt system of records;

(2) Request a copy or other access to such a record or to an accounting of its disclosure;

(3) Request that the record be amended; and

(4) Appeal any initial adverse determination of any such request.

(c) Specifies those system of records which the Director, Headquarters, Defense Special Weapons Agency has determined to be exempt from the procedures established by this rule and by certain provisions of the Privacy Act.

(d) DSWA policy encompasses the safeguarding of individual privacy from any misuse of DSWA records and the provides the fullest access practicable by individuals to DSWA records concerning them.

§ 318.2 Applicability.

The provisions of this rule apply to Headquarters, Defense Special Weapons Agency (HQ DSWA), and Field Command, Defense Special Weapons Agency (FC DSWA).

§ 318.3 Designations and responsibilities.

(a) The General Counsel, Headquarters, Defense Special Weapons Agency, is designated as the Agency Privacy Act Officer.

(1) The Privacy Act Officer is the principal point of contact for privacy matters and is the Agency Initial Denial Authority.

(2) The Privacy Act Officer is responsible for monitoring and ensuring Agency compliance with the DoD Privacy Program in accordance with 32 CFR part 310.

(b) The Director, DSWA, is the Agency Appellate Authority.

(c) The Director, DSWA is responsible for implementing the Agency Privacy Act Program in accordance with the specific requirements of 32 CFR part 310.

(d) Agency component and element responsibilities are set forth in DSWA Instruction 5400.11B,[1] January 12, 1995.

§ 318.4 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records, maintained by the Defense Special Weapons Agency, contains a record pertaining to himself/herself and who desires to review, have copies made of such records, or to be provided an accounting of disclosures from such records, shall submit his or her request in writing. Requesters are encourage to review the systems of records notices published by the Agency so as to specifically identify the particular record system(s) of interest to be accessed.

(b) In addition to meeting the requirements set forth in section 318.4 of this part, the individual seeking notification, review or copies, and an accounting of disclosures will provide in writing his or her full name, address, Social Security Number, and a telephone number where the requester can be contacted should questions arise concerning the request. This information will be used only for the purpose of identifying relevant records in response to an individual's inquiry. It is further recommended that individuals indicate any present or past relationship or affiliations, if any, with the Agency and the appropriate dates in order to facilitate a more thorough search. A notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746 may also be required.

(c) An individual who wishes to be accompanied by another individual when reviewing his or her records, must provide the Agency with written consent authorizing the Agency to disclose or discuss such records in the presence of the accompanying individual.

(d) Individuals should mail their written request to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398 or to the office designated in the system notice and indicate clearly on the outer envelope 'Privacy Act Request'.

§ 318.5 Disclosure of requested information to individuals.

(a) The Defense Special Weapons Agency, upon receiving a request for notification of the existence of a record or for access to a record, shall acknowledge receipt of the request within 10 working days.

(b) Determine whether or not such record exists.

(c) Determine whether or not such request for access is available under the Privacy Act.

(d) Notify requester of determinations within 30 working days after receipt of such request.

(e) Provide access to information pertaining to that person which has been determined to be available within 30 working days.

(f) Notify the individual if fees will be assessed for reproducing copies of the records. Fee schedule and rules for assessing fees are contained in section 318.11 of this part.

§ 318.6 Request for correction or amendment to a record.

(a) An individual may request that the Defense Special Weapons Agency correct, amend, or expunge any record, or portions thereof, pertaining to the requester that he/she believe to be inaccurate, irrelevant, untimely, or incomplete.

(b) Such requests shall specify the particular portions of the records in question, be in writing and should be mailed to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The requester shall provide sufficient information to identify the record and furnish material to substantiate the reasons for requesting corrections, amendments, or expurgation.

§ 318.7 Agency review of request for correction or amendment of record.

(a) The Agency will acknowledge a request for correction or amendment within 10 working days of receipt. The acknowledgment will be in writing and will indicate the date by which the Agency expects to make its initial determination.

[1] Copies may be obtained from Office of General Counsel, Headquarters, Defense Special Weapons Agency, Washington, DC 20305–1000.

(b) The Agency shall complete its consideration of requests to correct or amend records within 30 working days, and inform the requester of its initial determination.

(c) If it is determined that records should be corrected or amended in whole or in part, the Agency shall advise the requester in writing of its determination; and correct or amend the records accordingly. The Agency shall then advise prior recipients of the records of the fact that a correction or amendment was made and provide the substance of the change.

(d) If the Agency determines that a record should not be corrected or amended, in whole or in part, as requested by the individual, the Agency shall advise the requester in writing of its refusal to correct or amend the records and the reasons therefor. The notification will inform the requester that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 318.8 Appeal of initial adverse Agency determination for access, correction or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining the himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests shall be made in writing and mailed to the Office of the General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The requester shall provide a brief written statement setting for the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify the appeal.

(d) Within 30 working days of receipt of the request for review, the Agency shall advise the individual of the final disposition of the request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropriate action.

(f) In those cases where the initial determination is sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record:

(i) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision in the record,

(ii) Of the procedures for filing a statement of the disagreement, and

(iii) Of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

§ 318.9 Exemption rules.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Special Weapons Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name:* HDSWA 007, Security Operations.

(1) *Exemption:* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(2) *Authority:* 5 U.S.C. 552a(k)(5).

(3) *Reasons:* (i) From subsection (c)(3) because it will enable DSWA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(d) *System identifier and name:* HDSWA 011, Inspector General Investigation Files.

(1) *Exemption:* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) *Authority:* 5 U.S.C. 552a (k)(2).

(3) *Reasons:* (i) From subsection (c)(3) because it will enable DSWA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of

investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

Dated: November 25, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–30535 Filed 11–29–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–96–017

RIN 2115–AA98

Anchorage Areas; Ashley River, Charleston, SC; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations [FR Doc. 96–20018], which were published Wednesday, August 7, 1996, (61 FR 40993). The regulations related to the establishment of anchorage areas on the Ashley River, Charleston, South Carolina.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: CWO4 R.M. Webber, Project Officer, Marine Safety Office Charleston, Tel: (803) 724–7690.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulations contain an error which requires correction for the proper establishment of the anchorage areas.

Correction of Publication

Accordingly, the publication on August 7, 1996, (61 FR 40993) of the final regulations [FR Doc. 96–20018], is corrected as follows:

§ 110.72d [Corrected]

On page 40994, in the second column, in § 110.72d, in paragraph (a), in the seventh line, ''32°46′43.7″N'' is corrected to read ''32°46′42.7″N''.

Dated: October 25, 1996.

J.W. Lockwood,

U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 96–30067 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 257, and 259

[Docket No. RM 94–1A]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Technical amendments.

SUMMARY: On December 7, 1994, the Copyright Office of the Library of Congress published final regulations governing the administration of royalty fee distribution proceedings and royalty rate adjustment proceedings for the statutory licenses. Over the past eighteen months, the Office tested these rules and identified areas which required minor adjustments or clarification. This notice makes non-substantive technical amendments to correct the identified problems.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya M. Sandros, CARP Specialist, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office (''Office'') of the Library of Congress issued the current regulations, *see* 37 CFR chapter II, subchapter B, governing the Copyright Arbitration Royalty Panels (''CARP'') after an extensive rulemaking which began with a notice of proposed rulemaking, 59 FR 2550 (January 18, 1994), and concluded with the publication of the final regulations on December 7, 1994. 59 FR 63025 (December 7, 1994). During 1995 and 1996, these rules were used to conduct a CARP proceeding to determine the distribution of the 1990, 1991, and 1992 cable royalties; to initiate a second CARP proceeding to determine the distribution of the 1992, 1993, and 1994 digital audio recording technology (DART) royalties in the Musical Works Funds; and to set the schedule for four rate setting proceedings.

In using the CARP rules to administer these proceedings, the Office identified some minor problems with the application of the current rules, which these non-substantive technical amendments correct. The amendments clarify ambiguous sections, harmonize discordant rules, and streamline the process, when possible, based on the experience gleaned over the past eighteen months.

Official Address

During the course of a CARP proceeding, interested parties file pleadings with the Copyright Office and the CARP. Although many of these pleadings are filed with the Copyright Office prior to the initiation of the CARP, the regulations do not instruct the parties where to file the pleading at the Copyright Office, if hand delivered. Therefore, § 251.1 is amended to address this omission by adding the official address of the Office of the Copyright General Counsel.

List of Arbitrators

The Librarian of Congress selects arbitrators for a CARP from a list of names generated from the nominations submitted to him by at least three professional arbitration associations. Section 251.3(a) allows the arbitration associations to submit new names each year and § 251.3(b) requires the Librarian to publish a list of qualified nominees after January 1 of each year.

The annual solicitation of new names from at least three arbitration associations and the review of the financial disclosure forms from the nominees, however, requires substantial time and effort on the part of the Librarian of Congress, the Copyright Office, and the nominating organizations. Likewise, the parties to a proceeding expend considerable time and expense in examining the background material for each potential arbitrator in preparing their objections under § 251.4 to listed arbitrators. But in spite of all the preliminary work, very few individuals on the list actually will have an opportunity to serve on a panel. In 1995, three individuals from a list of 77 names were chosen to serve on a single panel; and this year, no more than six individuals from a list of 36 nominees will be chosen to serve as a CARP arbitrator.

In consideration of the relatively small probability of using more than a handful of names from the list in any given year, the Office cannot justify the disproportionate amount of time and expense expended by the nominating

associations, the parties, or itself in generating and reviewing an annual list. Therefore, the rule is amended to reflect a two year cycle for generating a new list.

Qualifications of the Arbitrators

Section 251.5(c), which quotes the statutory requirements for an arbitrator under consideration for service on a CARP, mistakenly uses an ''or'' in place of ''and.'' This amendment corrects the typographical error.

Financial Disclosure Forms

Section 251.32(a), which allows a nominated arbitrator to file a financial disclosure form with the Librarian of Congress up to one month after the publication of the list of nominees in the Federal Register, is amended and now requires a nominated arbitrator to file the financial disclosure form no later than 45 days after the arbitration association submits the candidate's name to the Librarian of Congress. This amendment will allow the Librarian of Congress to compile a list for publication in the Federal Register that includes only those names of nominees who show a clear interest in serving on the panels through their submission of a completed financial disclosure form.

Currently, § 251.32(b)(2)(ii) requires the Librarian to publish in the order establishing the precontroversy discovery schedule a list of potential financial conflicts which the listed arbitrators have agreed to disclose. This list of conflicts, however, need not be published in the Federal Register or even simultaneously with the order setting the precontroversy discovery schedule. Therefore, § 251.32(b)(2)(ii) is amended by removing the specific reference to publication in the order establishing the period for precontroversy motions.

A typographical error exists in § 251.32(d). In the third clause of the first sentence, the word ''any'' is a mistake; the clause should read ''if there are no changes in the arbitrator's financial interests,''.

Written Cases

Section 251.43(a) requires participants to file direct cases with the Copyright Arbitration Royalty Panel when, in fact, a panel may not have been selected at the moment in the proceeding when direct cases are due. Therefore, the amended rule requires the participants to file their direct cases with the Copyright Office.

Filing and Service of Written Cases and Pleadings

The bifurcation of the responsibilities for a CARP proceeding between the Library and the arbitration panel generated considerable confusion concerning the number of copies to be filed with the panel and with the Copyright Office. Therefore, the current filing requirements articulated in §§ 251.44(a) and 251.44(b) are combined into a single regulation which addresses all the filing requirements related to a CARP proceeding. The new regulation instructs participants to deliver an original and five copies to the Copyright Office for further distribution to the CARP, unless otherwise instructed by the Librarian of Congress or the CARP. This change eliminates the confusion engendered by the two filing requirements described in the current §§ 251.44(a) and 251.44(b).

Additionally, a new § 251.44(b) contains the information pertaining to the filing of exhibits which had been in § 251.44(a). The information concerning the filing of exhibits remains the same and is moved to a separate section merely for clarification purposes.

Currently, § 251.44(e)(2) requires a party not represented by counsel to sign and verify all documents filed in a proceeding. Since the party's signature constitutes certification by the signing party that to the best of his or her knowledge and belief there are good grounds to support the filing, the rule is amended to require only the party's signature.

Section 251.44(f) is amended by removing redundant references to the Library of Congress, the Copyright Office, and the CARP, since parties will file all pleadings with the Copyright Office, as required under the new § 251.44(a).

Section 251.44(g) is also amended to harmonize the time for filing oppositions and replies with the filing requirements specified in § 251.45(b), and now requires all oppositions be filed within seven business days of the filing of the motion. Additionally, the language referring to the date of service has been removed, because the filing date of the motion or opposition is the relevant date for determining the appropriate response date. Each party, however, must make service of all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

Discovery and Prehearing Motions

Sections 251.45(b)(1)(i) and (b)(2)(i) are amended and will allow parties to file replies to a response within five business days of the filing of the response. Additionally, the amendment clarifies that the seven-day period specified for filing responses to a pleading refers to business days. This correction creates a consistent time frame for filing CARP documents, and removes the distinction between a pleading cycle within a 45-day precontroversy period and a pleading cycle at any other time.

Sections 251.45(b)(1)(i) and (b)(2)(i) is amended further to state that each party must effect actual delivery of a complete copy of its written direct case on each party, no later than the first day of the 45-day precontroversy discovery period.

Consideration of Petition; Settlement

Historically, parties in a rate setting proceeding have engaged in a period of negotiation before the initiation of formal hearings. Section 251.63(a) continues this tradition, but refers to the 30-day negotiation period as a ''period for consideration for their settlement.'' To avoid any confusion arising from this language, the amended section now reads ''a 30-day period for negotiation of a settlement.''

Filing of Claims

Each year, the Copyright Office receives claims for cable compulsory license fees, for compulsory license fees for secondary transmissions by satellite carriers, and for statutory license fees for digital audio recording technology and media distributed in the United States. The Copyright Act defines the filing period for each license, *see* 17 U.S.C. 111(d)(4)(A), 119(b)(4)(A) and 1007(a)(1), but the regulations define the parameters for compliance with the statutory dates. *See* 37 CFR 252.4(e), 257.4(e), and 259.5(e).

Specifically, the rules allow a party to provide a receipt from the U.S. Postal Service which shows that the claim was properly mailed, and therefore, properly filed. Properly mailed, however, means both that a claim has a correct address and that it is mailed during the appropriate time period. The only acceptable proof of a timely filing, however, is the certified mail return receipt bearing a U.S. Postal Service mark demonstrating that the mailing occurred during the relevant time period to the appropriate address. Therefore, the word ''mailed'' in the phrase, ''a claimant may nonetheless prove that the claim was properly mailed,'' is being replaced with the word ''filed'' as a means of clarifying the language in all the regulatory sections which discuss proof of a timely filing. Additionally, the amended rule states

specifically that the receipt must bear a July date stamp of the U. S. Postal Service, except where paragraph (b) of the section applies, when the claim is filed under §§ 252.4(e) or 257.4(e), or a January or February date stamp of the U.S. Postal Service, except where paragraph (b) of the section applies, when the claim is filed under § 259.5(e), before the Office will accept the receipt as proof of a timely filed claim.

Authorizations for DART Claimants

On December 1, 1995, the Office published a final rule which specified the nature of the authorization which an organization acting as a common agent must obtain before making a claim for DART fees on behalf of its members and affiliates. 60 FR 61657 (December 1, 1995). The rule also included two limited exceptions to the rule requiring separate, specific, and written authorization. These exceptions were available to all organizations acting as a common agent on behalf of its members.

On December 19, 1995, and again on February 1, 1996, in letters to the Copyright Office, the Alliance of Artists and Recording Companies (''AARC'') voiced its concern that the new rule could create confusion, rather than reduce it, where a claimant, whose interests were represented by different organizations, asserted a claim in both the Sound Recordings Fund and the Musical Works Fund. Initially, the performance rights organizations strongly opposed AARC's proposal to change the rule. Joint Letter from ASCAP, BMI, Inc. and SESAC, Inc. dated January 24, 1995. These parties, however, pursued further discussions concerning the potential problems associated with the exceptions in § 259.2(c); and on June 4, 1996, ARCC and the performance rights organizations announced that they had reached agreement upon a proposed change that would address AARC's concerns. As all known parties affected by the proposed limitation on the exceptions agree to the proposed change, § 259.2(c) is amended accordingly. Under the amended rule, an organization acting as a common agent can take advantage of the exceptions to the rule requiring written, separate, and specific authorization only when it files a claim to the Musical Works Fund.

List of Subjects

37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Part 252

Cable television, Claims, Copyright.

37 CFR Part 257

Claims, Copyright, Satellites.

27 CFR Part 259

Claims, Copyright, Digital audio recordings devices and media.

Accordingly, 37 CFR chapter II is corrected by making the following corrections and amendments.

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES AND PROCEDURES

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. Section 251.1 is revised to read as follows:

§ 251.1 Official addresses.

Claims, pleadings, and general correspondence should be addressed to:

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024

or, hand-delivered to:

Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, S.E., Washington, DC 20540

§ 251.3 Arbitration lists. [Amended]

3. In § 251.3(a) introductory text, the phrase ''of each year'' is removed and the phrase '', 1998, and every two years thereafter'' is added after the phrase ''before January 1''.

4. In § 251.3(b), the phrase ''of each year,'' is removed and the phrase '', 1998, and every two years thereafter'' is added after the phrase ''after January 1''.

§ 251.5 Qualifications of the arbitrators. [Corrected]

5. In § 251.5(c), the word ''or'' is removed and the word ''and'' is added before the word ''facilitating''.

6. In § 251.32, paragraphs (a) and (b)(2)(ii) are revised to read as follows:

§ 251.32 Financial disclosure statement.

(a) Within 45 days of their nomination, each nominated arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.31.

(b) * * *

(2) * * *

(ii) Such list shall be included in an order issued no later than the commencement of the 45-day precontroversy discovery period;

* * * * *

7. Section 251.32(d) is corrected by removing the word ''any'' in the phrase ''if there are any changes in the arbitrator's financial interests,'' and adding the word ''no'' before the word ''changes'' in the same phrase.

§ 251.43 Written cases. [Amended]

8. Section 251.43(a) is amended by removing the phrase ''Copyright Arbitration Royalty Panel'' and adding ''Copyright Office'' in its place.

9. In § 251.44, paragraphs (a), (b), (e)(2), (f) and (g) are revised to read as follows:

§ 251.44 Filing and service of written cases and pleadings.

(a) Filing of pleadings. In a royalty fee distribution proceeding or in a rate adjustment proceeding, the submitting party shall deliver an original and five copies of all filings to the Copyright Office at the address listed in § 251.1, unless otherwise instructed by the Librarian of Congress or the CARP. The Copyright Office will make further distribution to the CARP, as necessary. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) Exhibits. All exhibits must be included with a party's case; however, in the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Librarian of Congress or the CARP may reduce the number of required copies. Nevertheless, a complete copy must still be submitted to the Copyright Office.

* * * * *

(2) The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's address and telephone number.

* * * * *

(f) The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP.

(g) Oppositions and replies. Except as otherwise provided in this part or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within seven business days of the filing of the motion, and replies to oppositions shall be filed within five business days of the filing of the opposition. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

10. In § 251.45, paragraphs (b)(1)(i) and (b)(2)(i) are revised to read as follows:

§ 251.45 Discovery and prehearing motions.

* * * * *

(b) * * *

(1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b) and objections to arbitrators appearing on the arbitrator list under § 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

* * * * *

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under § 251.41(b) and objections to arbitrators appearing on the arbitrator list under § 251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

* * * * *

§ 251.63 Consideration of petition; settlements. [Amended]

11. Section 251.63(a) is amended by removing the phrase ''consideration of their settlement.'' and adding the phrase ''negotiation of a settlement.'' after the phrase ''designate a 30-day period for''.

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

12. The authority citation for part 252 continues to read as follows:

Authority: 17 U.S.C. 111(d)(4), 801, 803.

13. In § 252.4, paragraph (e) is revised to read as follows:

§ 252.4 Compliance with statutory dates.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

14. The authority citation for part 257 continues to read as follows:

Authority: 17 U.S.C. 119(b)(4).

15. In § 257.4, paragraph (e) is revised to read as follows:

§ 257.4 Compliance with statutory dates.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a July date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

16. The authority citation for part 259 continues to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.2 Time of filing. [Amended]

17. In § 259.2, the last sentence in paragraph (c) introductory text is amended by removing the phrase ''in cases'' and adding the phrase ''for claimants to the Musical Works Fund'' after the word ''required''.

18. In § 259.5, paragraph (e) is revised to read as follows:

§ 259.5 Compliance with statutory dates.

* * * * *

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly filed if it was sent by certified mail return receipt requested, and the claimant can provide a receipt bearing a January or February date stamp of the U.S. Postal Service, except where paragraph (b) of this section applies. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted in lieu of the receipt.

Dated: November 12, 1996.

Marybeth Peters,

Register of Copyrights.

So Adopted:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–30458 Filed 11–29–96; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH61

Community Residential Care Program and Contract Program for Veterans With Alcohol and Drug Dependence Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document updates the Department of Veterans Affairs (VA) regulations concerning the Community Residential Care Program and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders by incorporating by reference relevant portions of the latest editions of the National Fire Protection Association Life Safety Code entitled ''NFPA 101, Life Safety Code'' and ''NFPA 101A, Guide on Alternative Approaches to Life Safety.'' This is intended to ensure that buildings used for treatment and residential services for veterans meet appropriate fire and safety standards. Also, this document amends the regulations for such programs by delegating authority to each of the Veterans Integrated Service Network (VISN) Directors of the Veterans Health Administration to grant certain equivalencies or variances to building standards of the Life Safety Code. Further, this final rule does not adopt the portion of the proposed rule concerning the Adult Day Health Care Program since the Adult Day Health Care Program and the corresponding regulations are no longer in existence.

EFFECTIVE DATE: This rule is effective January 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1997.

FOR FURTHER INFORMATION CONTACT: James R. Kelley, Director, Extended Care Service, for issues relating to the Community Residential Care Program at (202) 273–6342 (this is not a toll-free number); and Richard T. Suchinsky, M.D., Associate Director for Addictive Disorders and Psychiatric Rehabilitation, for issues relating to the Contract Program for Veterans With Alcohol and Drug Disorders at (202) 273–8437 (this is not a toll-free number), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On September 11, 1995, we published a proposed rule concerning the Adult Day Health Care Program; the Community Residential Care Program; and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders (60 FR 47133). We proposed to update these regulations by incorporating by reference relevant portions of the latest editions of the National Fire Protection Association Life Safety Code entitled ''NFPA 101, Life Safety Code'' and ''NFPA 101A, Guide on Alternative Approaches to Life Safety.'' We also proposed changes to delegations of authority. We requested that comments to the proposed rule be submitted on or before November 13, 1995. The portion of the proposed rule concerning the Adult Day Health Care Program is not adopted and instead is withdrawn since the Adult Day Health Care Program and the corresponding regulations are no longer in existence (see 61 FR 21964). Based on the reasons stated in the proposed rule and this document, the provisions of the proposed rule concerning the Community Residential Care Program and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders are adopted in this final rule with changes as discussed below.

The Community Residential Care Program is authorized under 38 U.S.C. 1730 and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders is authorized under 38 U.S.C. 501 and 1720A.

We received thirteen comments, seven of which were identical. All of the comments concerned the Community Residential Care Program.

The commenters, in general, objected to any increased costs which may be associated with operating a residential care facility under the provisions of the proposed rule. For example, some commenters objected to the possibility that they would have to install sprinkler systems. One commenter asserted that his homeowner's insurance would be canceled if he had to install a sprinkler system. A number of commenters asserted that the Life Safety Code was never intended to apply to ''mom and pop'' operations and some commenters further asserted that small operations, such as those housing eight or fewer veterans, should be exempt from the provisions of the Life Safety Code. Some commenters asserted that the Life Safety Code is arbitrary in the manner in which increasingly stringent criteria are applied depending upon whether a facility has sleeping accommodations for more than three residents or more than 16 residents. No changes are made based on these comments except as discussed below.

The Life Safety Code was intended to apply to the ''mom and pop'' residential care facilities and we believe that the adoption of the current Life Safety Code is necessary to ensure minimum levels of fire safety for residential care facilities participating in VA programs. The Life Safety Code is a national consensus code based on actual fire experience across the country. The code adopts standards designed to protect the occupants from loss of life but yet is intended to avoid standards which might involve significant hardship or inconvenience while yielding little additional increases in safety. Providing a safe environment is just as much a part of enhancing a veteran's life as other requirements of these programs.

Although some facilities may face greater costs due to changes in the Life Safety Code, our belief is that the need to increase the life safety of veterans in participating programs takes first priority. However, the Life Safety Code does provide for relief in appropriate circumstances. In this regard, Appendix A, at A–1–4.4 provides:

> In existing buildings, it is not always practical to strictly apply the provisions of this *Code*. Physical limitations may require disproportionate effort or expense with little increase in public safety. In such cases, the authority having jurisdiction should be satisfied that reasonable life safety is ensured.
>
> In existing buildings, it is intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life, even though such conditions are not literally in compliance with the *Code*.

It was intended that all of Appendix A be included in the material incorporated by reference since it consists of explanatory material relating to provisions incorporated by reference. Accordingly, the final rule incorporates by reference the provisions set forth in Appendix A. Also, it was intended that any equivalencies or variances be required to be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director and this delegation is added to each of the regulatory provisions affected by this rule.

Identical submissions from a number of commenters asserted that the technical committee that serves the National Fire Protection Association (NFPA) in developing the requirements of the Life Safety Code should include a member from the community residential program. In response, we note that in our view the committee is

well balanced and does have representation from community providers. In this regard, representatives of the Association of Residential Resources in Minnesota and the American Network of Community and Options are members on NFPA's technical advisory committees responsible for developing standards. Further, the committees also have representation from the VA, insurance companies, and state regulatory officials.

Commenters asserted this rule might have a disproportionate effect and expense for small entities and that therefore a cost-benefit analysis should be undertaken. In our view, special consideration for small entities is not warranted since the rule already is designed for small entities and in all likelihood only small entities will conduct activities affected by this rule.

The section numbers for the regulations amended by this rulemaking are different from those in the proposed rule because they recently were changed. Sections 17.51j, 17.53b, and 17.53c were changed respectively to sections 17.63, 17.81, and 17.82 (see 61 FR 21964).

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule already is designed for small entities and in all likelihood only small entities will conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Catalog

The Catalog of Federal Domestic Assistance Numbers are 64.015 and 64.019.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant program—health, Grant program—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Medical health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 9, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR, part 17 is amended as set forth below:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.63 paragraph (a)(2) is revised to read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(a) * * *

(2) Meet the requirements of chapters 1–7, 22–23, and 31 and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (1995 edition), which are incorporated by reference. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

* * * * *

3. In § 17.81, paragraph (a)(1)(i) is revised to read as follows:

§ 17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable residential occupancy chapters (1–7, 22–23, and 31) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

* * * * *

4. In § 17.82, paragraph (a)(1)(i) is revised to read as follows:

§ 17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable business occupancy chapters (1–7, 26–27, and 31) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, N.W., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

* * * * *

[FR Doc. 96–30574 Filed 11–29–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180
[OPP–300444; FRL–5574–8]

RIN 2070-AB78

Triadimefon; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the fungicide triadimefon in or on the raw agricultural commodity chili peppers in connection with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of triadimefon on chili peppers in New Mexico. This regulation establishes a maximum permissible level for residues of triadimefon in this food pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This tolerance will expire and be revoked automatically without further action by EPA on November 8, 1998.

DATES: This regulation becomes effective December 2, 1996. This regulation expires and is revoked automatically without further action by EPA on November 8, 1998. Objections and requests for hearings must be received by EPA on or before January 31, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300444], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300444], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300444]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8327, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide triadimefon, 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1-H-1,2,4-triazol-1-yl)-2-butanone, in or on chili peppers at 0.5 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on November 8, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section

408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemption for Triadimefon on Chili Peppers and FFDCA Tolerances

On September 10, 1996, the New Mexico Department of Agriculture availed of itself the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of triadimefon on chili peppers to control powdery mildew (*Oidiopsis taurica*). New Mexico stated that emergency conditions developed due to unusually wet conditions in the chili pepper growing regions of the state, which resulted in an outbreak of powdery mildew. This pest, New Mexico asserts, can have devastating effects on growers' production and revenue.

As part of its assessment of this crisis declaration, EPA assessed the potential risks presented by residues of triadimefon in or on chili peppers. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for triadimefon will permit the marketing of chili peppers treated in accordance with the provisions of the section 18 emergency exemption. Consistent with the need to move quickly on the emergency exemption and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked automatically without further action by EPA on November 8, 1998, under FFDCA section 408(l)(5), residues of triadimefon not in excess of the amount specified in the tolerance remaining in or on chili peppers after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether triadimefon meets the requirements for registration under FIFRA section 3 for use on chili peppers, or whether a permanent tolerance for triadimefon for chili peppers would be appropriate. This action by EPA does not serve as a basis for registration of triadimefon by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than New Mexico to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for triadimefon, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose a reasonable certainty of no harm.

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

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant

information in support of this action. Triadimefon is already registered by EPA for use on almonds, apples, apricots, barley, chick pea seed, cucurbits, grapes, grass, nectarines, peaches, pears, pineapples, plums, raspberries, sugar beets, and wheat (see 40 CFR 180.410 for specific tolerances). At this time, EPA is not in possession of a registration application for triadimefon on chili peppers. However, based on information submitted to the Agency, EPA has sufficient data to assess the hazards of triadimefon and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of triadimefon on chili peppers at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, EPA has established the RfD for triadimefon at 0.04 milligrams(mg)/kilogram(kg)/day. This RfD is based on a 2-year dog feeding study with a NOEL of 11.4 mg/kg/day and an uncertainty factor of 300. An uncertainty factor of 300 was applied to account for inter-species extrapolation (10), intra-species variability (10), and the lack of an adequate reproduction study (3). Decreased food intake, depression in weight gain, and significantly ($p < 0.05$) increased alkaline phosphatase activity in both sexes were the effects observed at the lowest effect level (LEL).

2. *Acute toxicity*. Agency toxicologists recommended that the developmental NOEL from the rabbit developmental toxicity study (20 mg/kg/day) be used for acute dietary risk calculations. The rabbit developmental study is discussed below under Unit IV.D. of this preamble. The population of concern for this risk assessment is females 13+ years old.

3. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified triadimefon as Group ''C'' for carcinogenicity (possible human carcinogen) based on the results of carcinogenicity studies in two species. The classification as Group C was based on borderline statistically significant increases in thyroid adenomas in male rats, and increases in liver adenomas in both sexes of mice. Because the tumors were benign, and there were no apparent genotoxicity concerns, the Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk.

B. Aggregate Exposure

Tolerances have been established (40 CFR 180.410) for the combined residues of triadimefon and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on various raw agricultural commodities ranging from 0.04 ppm in milk, eggs, and fat, meat and meat by-products in hogs and poultry to 145.0 ppm in grass seed cleanings (including hulls). There are no animal feed items associated with chili peppers, therefore the livestock dietary burden will not be increased by this section 18 exemption.

In conducting this exposure assessment, EPA has made very conservative assumptions--that 100% of chili peppers and all other commodities having triadimefon tolerances will contain triadimefon residues and those residues would be at the level of the tolerance--which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

1. *Chronic exposure*. Given the emergency nature of this request for the use of triadimefon and the resulting need for a timely analysis and risk assessment, EPA has utilized the TMRC to estimate chronic dietary exposure from the tolerance for triadimefon on chili peppers at 0.5 ppm. The TMRC is obtained by multiplying the tolerance level residue for chili peppers by average consumption data, which estimate the amount of chili peppers and chili peppers products eaten by various population subgroups. This calculation is performed as well for every food having existing triadimefon tolerances. The risk assessment is therefore considered to be overestimated. The Agency has extensive experience refining chronic dietary risk assessments for a broad range of pesticide chemicals. It is the Agency's experience that when the chronic dietary risk assessment is refined using ARC (anticipated residue contribution) estimates derived from anticipated residue levels and percent of crop treated data, the percent of the RfD occupied by the ARC is generally in the range of an order of magnitude lower than the percent of the RfD occupied by the unrefined TMRC.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources.

Based on the available studies used in EPA's assessment of environmental risk, triadimefon and its metabolites are mobile and persistent and have the potential to leach into groundwater. There is no established Maximum Concentration Level for residues of triadimefon in drinking water. No drinking water health advisory levels have been issued for triadimefon or its metabolite triadimenol. The ''Pesticides in Groundwater Database (EPA 734-12-92-001, September 1992) indicated that triadimefon was monitored for in 14 wells in California from 1984 to 1989. There were no detectable residues (limit of detection was not stated). The Agency does not have available data to perform a quantitative drinking water risk assessment for triadimefon at this time.

Previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and the Agency's best scientific judgement, EPA concludes that it is not likely that the potential exposure from residues of triadimefon in drinking water added to the current dietary exposure will result in an exposure which exceeds the RfD.

Triadimefon is currently registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, the Agency does not have reliable data which would allow quantitative incorporation of risk from these uses into a human health risk assessment.

Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-dietary, non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

2. *Acute exposure*. EPA has not estimated non-occupational exposures other than dietary for triadimefon. Acceptable, reliable data are not currently available with which to assess acute risk. Triadimefon is registered for outdoor residential use (lawn use). While dietary and residential scenarios could possibly occur in a single day, triadimefon would rarely be present on both the food eaten and the lawn on that single day. Even assuming this were the case, it is yet more unlikely that residues would be present at tolerance level on all food eaten that day for

which triadimefon tolerances exist, as is assumed in the acute dietary risk analysis, and on the lawn that same day.

Because the acute dietary exposure estimate assumes tolerance level residues and 100% crop treated for all crops evaluated it is a large over-estimate of exposure and it is considered to be protective of any acute exposure scenario.

At this time, the Agency has not made a determination that triadimefon and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance only, the Agency is considering only the potential risks of triadimefon in its aggregate exposure.

C. Determination of Safety for U.S. Population

1. *Chronic risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to triadimefon will utilize 7.8 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Acceptable, reliable data are not available to quantitatively assess risk from drinking water or from residential uses. However, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to triadimefon residues.

2. *Acute risk.* For the population subgroup of concern, females 13+ years old, the calculated Margin Of Exposure (MOE) value is 555. This MOE does not exceed the Agency's level of concern for acute dietary exposure.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of triadimefon, EPA considered data from developmental toxicity studies in the rat and rabbit. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development.

In the developmental toxicity study in rats, the maternal systemic NOEL was 30 mg/kg/day and the LOEL 90 mg/kg/day. The NOEL for developmental toxicity was 30 mg/kg/day and the LOEL was 90 mg/kg/day. In the developmental toxicity study in rabbits, the maternal systemic NOEL was 50 mg/kg/day and the LOEL 120 mg/kg/day. The NOEL for developmental toxicity was 20 mg/kg/day and the LOEL was 50 mg/kg/day. Effects seen at the developmental LEL in the rabbit study were irregular spinous process and ossification of various bones.

An acceptable 2-generation reproduction study in rats is not available.

1. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percentage of the RfD that will be utilized by aggregate exposure to residues of triadimefon ranges from 25.6 percent for children 7-12 years old, up to 74.8 percent for non-nursing infants.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data requirements, the data base for triadimefon relative to pre- and post-natal toxicity is not complete. An additional 3-fold uncertainty factor has already been incorporated into the calculation of the RfD because of the absence of an acceptable reproduction study. The reproduction study would provide additional information regarding post-natal toxicity to infants and children.

The Agency notes that there is approximately a two-fold difference between the developmental NOEL of 20 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 11.4 mg/kg/day from the 2-year dog feeding study which was the basis of the RfD. It is further noted that in the rabbit developmental toxicity study, the developmental NOEL of 20 mg/kg/day is lower than the maternal systemic NOEL of 50 mg/kg/day, suggesting the possibility of increased sensitivity for the pre-natal child.

The TMRC value for the most highly exposed infant and children subgroup (non-nursing infants <1 year old) occupies 74.8% of the RfD. However, this calculation also assumes 100% crop treated and uses tolerance level residues for all commodities. As mentioned previously, refinement of the dietary risk assessment by using percent of crop treated and anticipated residue data would likely greatly reduce the dietary exposure estimate and result in an anticipated residue contribution (ARC) which would occupy a percent of the RfD that is substantially lower than the currently calculated TMRC value.

Should an additional uncertainty factor be deemed appropriate, when considered in conjunction with a refined exposure estimate, it is unlikely that the dietary risk will exceed 100 percent of the RfD. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to triadimefon residues.

2. *Acute risk.* At present, the acute dietary MOE for females 13+ years old is 555. This MOE calculation was based on the developmental NOEL of 20 mg/kg/day, compared to the less sensitive maternal NOEL of 50 mg/kg day from the same rabbit developmental study. This risk assessment also assumed 100% crop treated with tolerance level residues on all treated crops consumed, resulting in a significant over estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants.

V. Other Considerations

The metabolism of triadimefon in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of triadimefon on chili peppers. There is a practical analytical method for detecting and measuring levels of triadimefon in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. Enforcement methods are published in PAM Vol. II Pesticide Reg. Sec. 180.410 as Methods I and II.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of triadimefon in chili peppers at 0.5 ppm. This tolerance will expire and be automatically revoked without further action by EPA on November 8, 1998.

VII. Objections and Hearing Requests

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

can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 31, 1996, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300444]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

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

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

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

List of Subjects in 40 CFR Part 180

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

Dated: November 20, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

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

2. In 180.410, by adding a new paragraph (c) to read as follows:

§ 180.410 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1-H-1,2,4-triazol-1-yl)-2-butanone; tolerances for residues.

* * * * *

(c) A time-limited tolerance is established for residues of the fungicide triadimefon 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1-H-1,2,4-triazol-1-yl)-2-butanone in connection with use of the pesticide under the section 18 emergency exemption granted by EPA. The tolerance is specified in the following table. The tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Chili peppers	0.5	November 8, 1997

[FR Doc. 96–30552 Filed 11–29–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50623; FRL–4964–3]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is January 31, 1997. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on December 16, 1996.

If EPA receives notice before January 2, 1997 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS–50623 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number 50623. No CBI should be submitted through e-mail. Electronic comments on this final rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit X of this document.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart B where the significant

new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII of this preamble.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs P–94–357, P–94–658, P–95–1777, P–94–1779, P–94–1799/1800/1801, P–94–2237, P–95–92, P–95–142, and P–95–143 which are subject to a final TSCA section 5(e) consent order. The section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the section 5(e) order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a notice of commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Numbers P–91–1210 and P–92–714

Chemical name: (generic) Aliphatic polyisocyanates.
CAS number: Not available.
Effective date of section 5(e) consent order: April 26, 1995.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Test data on the substances and similar isocyanates have shown them to cause skin sensitization and chronic lung toxicity in test animals.
Recommended testing: EPA has determined that the results of a 90-day chronic inhalation toxicity study (40 CFR 798.3260) would help to characterize the possible human health risks caused by the manufacture, import, processsing, and use of the PMN substances.
CFR citation: 40 CFR 721.4497.

PMN Numbers P–91–1299, P–95–1667, P–95–1298, and P–95–1297

Chemical name: l-Aspartic acid, homopolymer and ammonium and potassium salts.
CAS number: 25608–40–6 (P–91–1299 and P–95–1667) and 64723–18–8 (P–91–1298).
Effective date of section 5(e) consent order: March 29, 1993.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II), of TSCA based on findings that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure to the substances.
Recommended testing: EPA has determined that a 28-day oral study (OECD 407), an acute oral study (OPPTS 870.1100 test guideline), an ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a developmental toxicity study in one species by the oral route (40 CFR 798.4900), would help characterize possible environmental effects of the substance. The PMN submitter of P–91–1297, P–91–1298, and P–91–1299 has agreed not to exceed the production volume limit without performing these tests on one of the PMN substances.
CFR citation: 40 CFR 721.979.

PMN Number P–93–1694

Chemical name: 3-(Dichloroacetyl)-5-(2-furanyl)-2,2-dimethyloxazolidine.
CAS number: 121776–57–6.
Effective date of section 5(e) consent order: November 29, 1994.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: The PMN substance and similar chemicals have been shown to cause oncogenicity, maternal and developmental toxicity, reproductive toxicity, systemic toxicity (liver and thymus), and environmental toxicity in test organisms.
Recommended testing: No testing recommended. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.5545.

PMN Number P–94–351

Chemical name: (generic) Halogenated indane.
CAS number: Not available.
Effective date of section 5(e) consent order: January 30, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to cause oncogenicity

in test organisms. Laboratory animal and human epidemiological studies of halogenated dibenzodioxins and dibenzofurans have shown mutagenic and oncogenic effects; these may form as a by-product of manufacture of the PMN substance or during the incineration of the polymer matrices that contain the PMN substance.
Recommended testing: (1) Dioxin/Furan contamination study; and (2) incineration simulation testing (protocol guidelines are available in the March 29, 1991, Midwest Research Institute report entitled ''Guidelines for the Determination of Polyhalogenated Dibenzo-para-Dioxins and Dibenzofurans in PMN Substances, Selected Waste Streams, and Simulated Incinerator Emissions'') would help characterize the potential for dioxin and furan formation through incineration of polymer matrices containing the PMN substance. EPA feels a 90-day subchronic toxicity study (40 CFR 798.2650) would help EPA characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the first production volume limit without performing the dioxin/furan contamination study. The PMN submitter has also agreed not to exceed the second and third higher production volume limits without performing incineration simulation testing and the 90-day subchronic toxicity study.
CFR citation: 40 CFR 721.4484.

PMN Number P–94–437

Chemical name: (generic) Polycyclic isocyanate.
CAS number: Not available.
Effective date of section 5(e) consent order: March 14, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Similar chemicals have been shown to cause pulmonary sensitization and lung effects in test animals. The PMN substance itself has been shown to cause dermal sensitization in test animals. In addition, based on structure activity relationship (SAR) predictions for isocyanates, there is concern that the substance may cause toxicity to aquatic organisms at concentrations above 5 ppb.
Recommended testing: A 90-day subchronic toxicity study conducted via the inhalation route (rats) as described at 40 CFR 798.2450 and a pulmonary sensitization study conducted either by the Karol method (*Toxicology and Applied Pharmacology* 68:229–241 (1983)) or an equivalent method are needed to help characterize the lung effects and pulmonary sensitization, respectively. An acute algal (40 CFR 797.1050), an acute daphnid (40 CFR 797.1300), and an acute fish (40 CFR 797.1400) study are needed to help characterize the aquatic toxicity effects of the PMN substance. The PMN submitter has agreed not to exceed a production volume limit without performing the 90-day subchronic and pulmonary sensitization studies.
CFR citation: 40 CFR 721.4494.

PMN Number P–94–1557

Chemical name: (generic) Hydrated alkaline earth metal salts of metalloid oxyanions.
CAS number: Not available.
Effective date of section 5(e) consent order: May 12, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health, is expected to be produced in substantial quantities, and may reasonably be expected to enter the environment in substantial quantities.
Toxicity concern: Similar chemicals have been shown to cause acute toxicity, reproductive toxicity, developmental toxicity, kidney and liver effects, and spleen, blood and adrenal toxicity in test animals.
Recommended testing: EPA has determined that a 90-day subchronic toxicity study (OPPTS 870.3100 test guidelines), developmental toxicity study (40 CFR 798.4900), an acute algal study (40 CFR 797.1050), and an activated sludge sorption isotherm study (OPPTS 835.1110 test guideline) would help characterize the human health and environmental effects of the substance. The PMN submitter has agreed not to exceed a specified production volume limit without performing the acute algal and activated sludge adsorption isotherm studies.
CFR citation: 40 CFR 721.4468.

PMN Numbers P–94–1634/1635/1636/1637/1638/1639

Chemical name: Fatty acids, C(14-18)-unsaturated, branched and linear, methyl and butyl esters.
CAS number: Not available.
Effective date of section 5(e) consent order: September 28, 1994.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(II), of TSCA based on findings that this substance is expected to be produced in substantial quantities, and may reasonably be expected to enter the environment in substantial quantities.
Recommended testing: EPA has also determined that a one-species developmental toxicity study (40 CFR 798.4900) by the oral route would help characterize possible health effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test on P–94–1639.
CFR citation: 40 CFR 721.3628.

PMN Number P–94–1744

Chemical name: (generic) Substituted benzotriazole.
CAS number: Not available.
Effective date of section 5(e) consent order: February 3, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar substances have been shown to cause systemic effects and reproductive toxicity in test animals.
Recommended testing: 90-day oral (gavage) subchronic study (as described in 40 CFR 798.2650). The PMN submitter has agreed not to exceed the production limit without performing this test.
CFR citation: 40 CFR 721.1738.

PMN Number P–94–1747

Chemical name: (generic) Halogenated alkane aromatic compound.
CAS number: Not available.
Effective date of section 5(e) consent order: February 8, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II) of TSCA based on findings that this substance may present an unreasonable risk of injury to health and the environment, and that the substance will be produced in substantial quantities and there may be significant (or substantial) human exposure to the substance.
Toxicity concern: Similar substances have been shown to cause cancer, developmental toxicity, and reproductive toxicity in test animals, and toxicity to fish.
Recommended testing: Incineration testing (MRI guidelines, or comparable EPA-approved protocol) to help characterize health effects. The PMN submitter has agreed not to exceed the production limit without performing this test.

In addition, EPA has determined that the following tests would be necessary

to evaluate possible aquatic toxicity: (1) fish bioconcentration test (OPPTS 850.1730 test guideline), (2) fish early life stage toxicity test (40 CFR 797.1600), (3) algal acute toxicity test (40 CFR 797.1050), (4) daphnid chronic toxicity test (40 CFR 797.1330), (5) oyster acute toxicity test (OPPTS 850.1025 test guideline), (6) tadpole/sediment subchronic test (OPPTS 850.1800 test guideline), and (7) chironamid sediment invertebrate test (OPPTS 850.1790 test guideline). The above aquatic toxicity tests would be required on the likely photolysis products or, in the absence of degradation, the parent PMN substance. The following information is required to identify the test species to be used in the above aquatic tests before testing commences: Laboratory determination of direct photolysis reaction quantum yield in aqueous solution and sunlight photolysis (OPPTS 835.2210 test guideline) and gas phase absorption spectra and photolysis (OPPTS 835.2310 test guideline).

In addition, a 2-year rodent bioassay (40 CFR 798.3300) would be necessary to evaluate the carcinogenic effects which may be caused by the PMN substance, and a soil/sediment adsorption (adsorption isotherm) test (40 CFR 796.2750) would be required to evaluate potential for leaching of the PMN substance from landfills to ground water sources.
CFR citation: 40 CFR 721.785.

PMN Number P–94–2061

Chemical name: (generic) Benzotriazole derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: February 8, 1995.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause systemic toxicity (organ effects, immunotoxicity, blood effects) and reproductive toxicity in test animals. Neurotoxicity was indicated by acute studies on this chemical substance.
Recommended testing: A 90-day gavage study in rats (40 CFR 798.2650). The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.1737.

PMN Numbers P–95–116/96–1250 and P–96–117/96–1251

Chemical name: (generic) Isothiazolinone derivatives.
CAS number: Not available.
Basis for action: The PMN substances will be used as preservatives. Based on analogy of the substances to isothiazolones, EPA is concerned that toxicity to aquatic organisms may occur at a concentrations as low as 10 ppb of the PMN substances in surface waters. Based on analogy of the substances similar substances, EPA is concerned for acute lethality, corrosion, developmental toxicity, liver toxicity, sensitization, and cancer to exposed workers. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters above a concentration of 10 ppb and significant worker exposure would not occur because the substance was not manufactured domestically. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance. EPA has determined that a developmental toxicity study (40 CFR 798.4900) and a 90-day subchronic study (40 CFR 797.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4525.

PMN Number P–95–175

Chemical name: (generic) Substituted purine metal salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a contained-use component of a manufactured consumer article. Based on analogy to purines and similar chemicals, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 8 ppb of the PMN substance in surface waters. EPA determined that use of the substance did not present an unreasonable risk because because the substance was not released to surface waters above 8 ppb. EPA has determined that releases to surface water above 8 ppb of the substance may result in significant environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4685.

PMN Number P–95–240

Chemical name: (generic) Azo chromium complex dyestuff preparation.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to similar compounds, the PMN substance may cause cancer, neurotoxicity, and kidney toxicity. EPA has determined that persons exposed by inhalation to the PMN substance may be at risk for cancer, neurotoxicity, and kidney toxicity. EPA determined that use of the substance as a liquid did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that use of the substance in a solid or powder form may result in significant inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300) and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2097.

PMN Number P–95–241

Chemical name: (generic) Perfluoroalkylethyl acrylate copolymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as a water and oil repellent. Based on analogy to perfluoro compounds, the PMN substance may cause lung toxicity. EPA has determined that persons exposed by inhalation to the PMN substance may be at risk for lung toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that use of the substance in an application that generates a vapor, mist, or aerosol may result in significant inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR

798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.336.

PMN Number P–95–274

Chemical name: (generic) Phenylenebis[imino(chlorotriazinyl) imino(substituted naphthyl)azo(substituted phenyl) azo, sodium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a textile dye. Based on analogy to similar substances, EPA is concerned that respiratory sensitization will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur since the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a respiratory sensitization study (*Fundamental and Applied Toxicology* 18:107–114) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5930.

PMN Number P–95–284

Chemical name: (generic) Phosphoric acid derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300) and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6097.

PMN Numbers P–95–510/511

Chemical name: (generic) [(Disubstituted phenyl)]azodihydro hydroxyalkyloxoalkyl substituted pyridines.
CAS number: Not available.
Basis for action: The PMN substances will be used as textile dyes. Based on analogy to similar substances and submitted toxicity data, EPA is concerned that liver toxicity, kidney toxicity, cancer, and reproductive toxicity will occur in exposed workers. EPA determined that use of the substances did not present an unreasonable risk because significant worker exposure would not occur because the substances were not manufactured domestically. EPA has determined that domestic manufacture of the substances may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(B), (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300), a two-generation reproduction study (40 CFR 798.4700), and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.8673.

PMN Number P–95–512

Chemical name: (generic) Aminofluoran derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as a color former for carbonless copy paper. Based on analogy to neutral organic chemicals, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance did not present an unreasonable risk because significant environmental exposure would not occur since the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in significant environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21-day chronic daphnid toxicity test (40 CFR 797.1330) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.646.

PMN Number P–95–513

Chemical name: (generic) *N*-[2-[(substituted dinitrophenyl)azo]diallylamino-4-substituted phenyl] acetamide.
CAS number: Not available.
Basis for action: The PMN substance will be used a colorant. Based on analogy to similar substances, EPA is concerned that liver toxicity, blood toxicity, oncogenicity, neurotoxicity, and developmental toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur because the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300), a developmental toxicity test (40 CFR 798.4900) and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.267.

PMN Number P–95–514

Chemical name: (generic) Substituted diphenylazo dye.
CAS number: Not available.
Basis for action: The PMN substances will be used as a dye. Based on analogy to similar substances, EPA is concerned that liver toxicity, blood toxicity, oncogenicity, neurotoxicity, and developmental toxicity will occur in exposed workers. EPA determined that use of the substances did not present an unreasonable risk because significant worker exposure would not occur because the substances were not manufactured domestically. EPA has determined that domestic manufacture of the substances may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300), a developmental toxicity test (40 CFR 798.4900) and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2527.

PMN Number P–95–529

Chemical name: (generic) Alkaline titania silica gel.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based

on potential silicosis, EPA is concerned that lung effects will in workers exposed via inhalation. EPA determined that use of the substance as described in the PMN does not present an unreasonable risk; significant worker inhalation exposure is not expected because the substance will not be manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substance as a powder may result in significant worker inhalation exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study (40 CFR 798.2650) with a 60-day holding period would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9680.

PMN Number P–95–538

Chemical name: 2-Naphthalenol, heptyl-1-[[(4-phenylazo)phenyl] azo]-, *ar*',*ar*''-Me derivs.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant in high sulfur diesel fuel. Based on data on the potential diaminoazo reduction product and by analogy to similar chemicals, EPA is concerned that reproductive effects and cancer will occur in workers exposed via inhalation. EPA determined that use of the substance as described in the PMN does not present an unreasonable risk; significant worker inhalation exposure is not expected because the substance will not be manufactured, processed, or used as a powder. EPA has determined that manufacture, processing, and use of the substance as a powder may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300) and a two-generation reproductive toxicity study (40 CFR 798.4700) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5276.

PMN Numbers P–95–655, P–95–782, and P–95–871

Chemical name: (generic) Substituted phenyl azo substituted phenyl esters.
CAS number: Not available.
Basis for action: The PMN substances will be used as textile dyes. Based on analogy to similar substances and submitted toxicity data, EPA is concerned that liver toxicity, blood toxicity, oncogenicity, kidney toxicity, and sensitization will occur in exposed workers. EPA determined that use of the substances did not present an unreasonable risk because the substances would not be manufactured as a powder and significant worker exposure would not occur. EPA has determined that manufacture of the substances as a powder may result in significant worker exposure. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300) and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.3063.

PMN Numbers P–95–979/980/981

Chemical name: Fluorinated carboxylic acid alkali metal salts.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy of the PMN substances to anionic surfactants and perfluorinated fatty acids, EPA expects toxicity to aquatic organisms at surface water concentrations as low as 100 ppb for P–95–979, 30 ppb for P–95–980, and 3 ppb for P–95–981. EPA expects liver toxicity based on analogy to a structurally similar substance, developmental toxicity based on branched carboxylic acids, and lung toxicity due to surfactancy. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures or environmental releases. EPA has determined that other uses of the substances may result in significant inhalation or environmental exposures. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(iii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation assay (40 CFR 798.2450) would help characterize the health effects of the PMN substances and a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300) and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.4663.

PMN Number P–95–1022

Chemical name: (generic) Polyester silane.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy of the PMN substance to alkoxysilanes EPA expects irritation to mucous membranes and lung toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that industrial uses of the substance may result in significant inhalation exposures. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation assay (40 CFR 798.2450) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9507.

PMN Numbers P–95–1024/1040

Chemical name: (generic) Acrylosilane resins.
CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMN. Based on analogy of the PMN substances to alkoxysilanes, EPA expects irritation to mucous membranes and lung toxicity. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because there were no significant inhalation exposures. EPA has determined that nonindustrial uses of the substances may result in significant inhalation exposures. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation assay (40 CFR 798.2450) would help characterize the health effects of the PMN substances.
CFR citation: 40 CFR 721.9495.

PMN Number P–95–1030

Chemical name: (generic) *o*-Xylene compound.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on toxicity data submitted with the PMN, EPA identified health concerns for liver, kidney, thyroid, and developmental toxicity and chronic toxicity to aquatic organisms. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant human or environmental exposure would not occur. EPA has determined that use of the substance other than as described in the PMN may result in significant human or environmental

exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (b)(4)(i).
Recommended testing: EPA has determined that a 28-day contaminated sediment test with chironomids and natural sediments would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9970.

PMN Number P–95–1208

Chemical name: (generic) Fluorinated acrylic copolymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as a soil repellant. Based on the molecular weight and physical properties of the substance, EPA is concerned that a significant risk of lung toxicity would occur. EPA determined that use of the substance did not present an unreasonable risk because the substance would not be manufactured, processed, or used as a powder or an aerosol and significant worker inhalation exposure would not occur. EPA has determined that manufacture, processing, or use of the substance as a powder or an aerosol may result in significant worker inhalation exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2450) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.484.

PMN Number P–95–1242

Chemical name: (generic) Chromate(3-), bis 2-[[substituted-3-[(5sulfo-1-naphthalenyl) azo]phenyl]azo]substituted monocycle, trisodium.
CAS number: Not available.
Basis for action: The PMN substance will be used as a leather dye. Based on potential azo reduction products, EPA is concerned that blood toxicity, oncogenicity, mutagenicity, neurotoxicity, and developmental toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur because the substance was not manufactured domestically or in the form of a powder. EPA has determined that domestic manufacture of the substance or any use of the substance as a powder may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(iii).
Recommended testing: EPA has determined that a 2-year two-species oral bioassay (40 CFR 798.3300), a developmental toxicity study (40 CFR 798.4900), and a 90-day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2095.

PMN Number P–96–175

Chemical name: Lithium Manganese Oxide (LiMn204)
CAS number: Not applicable.
Effective date of section 5(e) consent order: April 17, 1996.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II), of TSCA based on findings that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure to the substances.
Recommended testing: EPA has determined that a sediment and soil adsorption isotherm test (40 CFR 796.2750) and a 90-day subchronic study via the inhalation route with a 60-day holding period (40 CFR 798.2450). The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.4587.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 19 of the 45 substances regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In the other 26 cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

(1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

(2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

(3) When necessary to prevent unreasonable risks EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

(4) All manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective January 31, 1997, unless EPA receives a written notice by January 2, 1997 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e)

orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a bona fide intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a bona fide intent to manufacture or import the substance, EPA will tell the person whether the use identified in the bona fide submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the bona fide submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the bona fide submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the bona fide submission to EPA. If the person later intends to exceed that volume, a new bona fide submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a bona fide intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple bona fide submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued for 19 substances and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 39 of the 45 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN bona fide submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the Federal Register of April 24, 1990 (55 FR 17376) (FRL–3658–5), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the

public record for this rule (OPPTS–50623).

X. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS–50623 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The public record is located in the TSCA Nonconfidential Information Center Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

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

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

XI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

This action will not result in the annual expenditure of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub. L. 104–4), nor does it uniquely affect small govbernments in any way. As such, the requirements of sections 202, 203, and 205 of Title II of the UMRA do not apply to this action.

EPA has determined that this action does not impose any adverse economic impacts on a substantial number of small entities. Pursuant section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Agency has certified that this action will not impose a significant economic impact on a substantial number of small entities. Information relating to this determination is included in the docket for this rulemaking. Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at the address listed above.

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The information collection requirements related to this action have already been approved by OMB under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

XII. Submission to Congress and the General Accounting Office

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the Administrative Procedure Act. Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted this action to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to its publication in today's Federal Register.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: November 21, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.267 to subpart E to read as follows:

§ 721.267 N-[2-[(substituted dinitrophenyl)azo]diallylamino-4-substituted phenyl] acetamide (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as *N*-[2-[(substituted dinitrophenyl)azo]diallylamino-4-substituted phenyl] acetamide (PMN P–95–513) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.336 to subpart E to read as follows:

§ 721.336 Perfluoroalkylethyl acrylate copolymer (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a perfluoroalkylethyl acrylate copolymer (PMN P–94–241) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.484 to subpart E to read as follows:

§ 721.484 Fluorinated acrylic copolymer (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a fluorinated acrylic copolymer (PMN P–95–1208) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1), and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.646 to subpart E to read as follows:

§ 721.646 Aminofluoran derivative (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminofluoran derivative (PMN P–95–512) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.785 to subpart E to read as follows:

§ 721.785 Halogenated alkane aromatic compound (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a halogenated alkane aromatic compound (PMN P–94–1747) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (g)(1)(vii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

7. By adding new § 721.979 to subpart E to read as follows:

§ 721.979 l-Aspartic acid, homopolymer and ammonium and potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances l-Aspartic acid, homopolymer and ammonium and potassium salts (P–91–1299 and P–95–1667, P–91–1298, and P–91–1297) (CAS Nos. 25608–40–6 and 64723–18–8) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substance is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that these substances may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received their substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (h), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

8. By adding new § 721.1737 to subpart E to read as follows:

§ 721.1737 Benzotriazole derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a benzotriazole derivative (PMN P–94–2061) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), and (b)(concentration set at 5.0 percent) and (c). The following paragraphs apply during manufacturing and processing: (a)(5)(ii), (a)(5)(iv), and (a)(5)(v). The following paragraphs apply during use: (a)(5)(iii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), and (a)(6)(ii).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e)(concentration set at 5.0 percent), (f), (g)(1)(vi), (g)(2)(ii),

(g)(2)(iii), and (g)(2)(iv). The following additional statements shall appear on each label and MSDS required by this paragraph: This substance may cause kidney effects. This substance may cause liver effects. This substance may cause neurotoxicity effects. This substance may cause blood effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1) and (b)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), (i), (j) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

9. By adding new § 721.1738 to subpart E to read as follows:

§ 721.1738 Substituted benzotriazole (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted benzotriazole (PMN P–94–1744) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0%), (f), (g)(1)(iv), (g)(1)(vi), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

10. By adding new § 721.2095 to subpart E to read as follows:

§ 721.2095 Chromate(3-), bis 2-[[substituted-3-[(5-sulfo-1-naphthalenyl)azo]phenyl]azo]substituted monocycle, trisodium (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chromate(3-), bis 2-[[substituted-3-[(5-sulfo-1-naphthalenyl) azo]phenyl]azo]substituted monocycle, trisodium (PMN P–95–1242) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (w)(1), and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

11. By adding new § 721.2097 to subpart E to read as follows:

§ 721.2097 Azo chromium complex dyestuff preparation (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an azo chromium complex dyestuff preparation (PMN P–95–240) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80 (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.2527 to subpart E to read as follows:

§ 721.2527 Substituted diphenylazo dye (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted diphenylazo dye (PMN P–95–514) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

13. By adding new § 721.3063 to subpart E to read as follows:

§ 721.3063 Substituted phenyl azo substituted phenyl esters (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted phenyl azo substituted phenyl esters (PMNs P–95–655, P–95–782 and P–95–871) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(w)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

14. By adding new § 721.3628 to subpart E to read as follows:

§ 721.3628 Fatty acids, C(14-18)-unsaturated, branched and linear, methyl and butyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances fatty acids, C(14-18) unsaturated, branched and linear, methyl and butyl esters (P–94–1634/35/36/37/38/39) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

15. By adding new § 721.4484 to subpart E to read as follows:

§ 721.4484 Halogenated indane (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a halogenated indane (PMN P–94–351) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to P–94–351 after incorporation into a plastic, resin matrix, or pelletized so humans are not reasonally likely to be exposed.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements during manufacture as specified in § 721.72 (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements during manufacture as specified in § 721.63 (a), (b), (c), (d), (e), (f), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

16. By adding new § 721.4494 to subpart E to read as follows:

§ 721.4494 Polycyclic isocyanate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a polycyclic isocyanate (PMN P–94–437) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5). In addition the following human health and environmental hazard and precautionary statements shall appear on each label as specified in paragraph (b) of this section and the MSDS as specified in paragraph (c) of this section: This substance may cause skin sensitization. This substance may cause pulmonary sensitization.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

17. By adding new § 721.4497 to subpart E to read as follows:

§ 721.4497 Aliphatic polyisocyanates (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as aliphatic polyisocyanates (P–91–1210 and P–92–714) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. Non-spray uses are exempt from the provisions of this rule.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5). Manufacturers, importers, and processors who

implement the product stewardship provisions of the section 5(e) consent order for these substances are exempt from the requirements of §§ 721.63 and 721.72.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) are applicable to manufacturers, importers, and processors of this substance. Manufacturers, importers, and processors who implement the product stewardship provisions or keep records as required by the section 5(e) consent order for these substances are exempt from the requirements of § 721.125.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Applicability of § 721.5.* The provisions of § 721.5 do not apply to manufacturers, importers, and processors, implementing the product stewardship provisions in the section 5(e) consent order for these substances.

18. By adding new § 721.4525 to subpart E to read as follows:

§ 721.4525 Isothiazolinone derivatives (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as isothiazolinone derivatives (PMNs P–95–116/117) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where n = 10).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.4587 to subpart E to read as follows:

§ 721.4587 Lithium Manganese Oxide (LiMn204) (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as lithium manganese oxide (LiMn204) (P–96–175) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that these substances may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received their substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (h), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

20. By adding new § 721.4663 to subpart E to read as follows:

§ 721.4663 Fluorinated carboxylic acid alkali metal salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as fluorinated carboxylic acid alkali metal salts (PMNs P–95–979/980/981) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80 (v)(2), (w)(2), and (x)(2).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4), (N = 100 ppb for P–95–979), (N = 30 ppb for P–95–980), and (N = 3 ppb for P–95–981).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.4668 to subpart E to read as follows:

§ 721.4668 Hydrated alkaline earth metal salts of metalloid oxyanions.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hydrated alkaline earth metal salts of metalloid oxyanions (PMN P–94–1557) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(5)(viii), (a)(6)(i), (b), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(vi), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

22. By adding new § 721.4685 to subpart E to read as follows:

§ 721.4685 Substituted purine metal salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted purine metal salt (PMN P–95–175) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N = 8)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

23. By adding new § 721.5276 to subpart E to read as follows:

§ 721.5276 2-Naphthalenol, heptyl-1-[[(4-phenylazo)phenyl]azo]-, *ar*',*ar*''-Me derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-naphthalenol, heptyl-1-[[(4-phenylazo)phenyl] azo]-, *ar*',*ar*''-Me derivs (PMN P–95–538) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.5545 to subpart E to read as follows:

§ 721.5545 3-(Dichloroacetyl)-5-(2-furanyl)-2,2-dimethyl-oxazolidine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 3-(dichloroacetyl)-5-(2-furanyl)-2,2-dimethyloxazolidine (PMN P–93–1694) (CAS no. 121776–57–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1%), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1%), (f), (g)(1)(iv), (g)(1)(vii), (g)(1)(ix), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), and (g)(5).

(iii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80 (b), (c), (k) (as a seed safener), and (o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

25. By adding new § 721.5930 to subpart E to read as follows:

§ 721.5930 Phenylenebis[imino (chlorotriazinyl)imino(substituted naphthyl)azo(substituted phenyl)azo, sodium salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenylenebis[imino (chlorotriazinyl)imino(substituted naphthyl)azo (substituted phenyl) azo, sodium salt (PMN P–95–274) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

26. By adding new § 721.6097 to subpart E to read as follows:

§ 721.6097 Phosphoric acid derivative (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a phosphoric acid derivative (PMN P–95–284) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

27. By adding new § 721.8673 to subpart E to read as follows:

§ 721.8673 [(Disubstituted phenyl)]azo dihydro hydroxy alkyl oxo alkyl-substituted-pyridines (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as [(disubstituted phenyl)]azo dihydro hydroxy alkyl oxo alkyl-substituted-pyridines (PMN P–95–510/511) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

28. By adding new § 721.9495 to subpart E to read as follows:

§ 721.9495 Acrylosilane resins.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as acrylosilane resins (PMNs P–95–1024/1040) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(l).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

29. By adding new § 721.9507 to subpart E to read as follows:

§ 721.9507 Polyester silane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a polyester silane (P–95–1022) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(l).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

30. By adding new § 721.9680 to subpart E to read as follows:

§ 721.9680 Alkaline titania silica gel (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkaline titania silica gel (PMN P–95–529) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

31. By adding new § 721.9970 to subpart E to read as follows:

§ 721.9970 o-Xylene compound (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an *o*-xylene compound (PMN P–95–1030) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 96–30474 Filed 11–29–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 403, 405, 411, 413, 447, and 493

[BPO–118–FC]

RIN 0938–AC99

Medicare Program; Changes Concerning Suspension of Medicare Payments, and Determinations of Allowable Interest Expenses

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: We are revising the Medicare regulations concerning suspension of Medicare payments and determination of allowable interest expenses. These changes are being made to conform the regulations with law and established policy, to provide necessary clarification, and to protect the Government's interests.

DATES: *Effective date:* These regulations are effective January 2, 1997.

Comment Date: We are providing a comment period on the issues described in section V of this preamble. Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 31, 1997.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–118–FC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (Fax) transmission. In commenting, please refer to file code BPO–118–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: James Conrad (suspension of payments, fraud and abuse), (410) 786–6976; Ward Pleines (all other provisions), (410) 786–4528.

SUPPLEMENTARY INFORMATION:

I. Suspension of Medicare Payments

A. Background

Sections 1815 (a) and (d) and 1833(j) of the Social Security Act (the Act) and the Federal Claims Collection Act of 1966, as amended, (31 U.S.C. 3711) allow a Medicare contractor (that is, an intermediary or carrier) that has the opportunity to offset an overpayment to do so. This provision is set forth in existing regulations at 42 CFR 401.607 (a) and (d) and 405.1803(c). In addition, existing § 405.370 provides that payments authorized to be made to providers and suppliers under the Medicare program may be suspended, in whole or in part, by a Medicare contractor when the contractor has determined that the provider or supplier has been overpaid or when the contractor has reliable evidence that either an overpayment exists or that the payments to be made may not be correct. Existing § 405.370(b), however, requires that, in order to proceed with a suspension of payment, the contractor must have determined that ''the suspension of payments, in whole or in part, is needed to protect the program against financial loss.'' Section 405.370 does not specify the disposition of suspended payments, nor do the regulations address how long payment may be suspended. Also, the existing regulations do not differentiate between the terms ''suspension of payments,'' ''offset,'' and ''recoupment.''

In addition, the existing regulations do not clearly specify the procedures applicable when fraud is suspected; they merely provide that payment may be suspended without advance notice and that the provider or supplier will be notified of the suspension and the reasons for it. (When the existing regulations were published (May 27, 1972, 37 FR 10723), the HHS Office of Inspector General (OIG), which is responsible for conducting investigations involving fraud and willful misrepresentation, had not been created, and the Social Security Administration (SSA) administered the Medicare program. Suspension of Medicare payment based on fraud or abuse was accomplished by Medicare contractors in consultation with SSA, at the direction of the Bureau of Health Insurance, the SSA component then responsible for Medicare. Therefore, the regulations reflect only the role of intermediaries and carriers.)

Under current law and delegations of authority, HCFA is responsible for operating the Medicare program. The OIG is responsible for conducting investigations and identifying wrongdoers and abusers of HHS programs so appropriate remedies can be applied, as well as identifying weaknesses or problems in the management of HHS programs. (See the Statements of Organization, Function, and Delegations of Authority, for HCFA and for OIG (49 FR 35247, published September 6, 1984, and 54 FR 46775, published November 7, 1989, respectively).)

B. Provisions of Proposed Rule

On August 22, 1988, we published a proposed rule, at 53 FR 31888, in which we proposed to eliminate the requirement that, before suspension of payment, the contractor make a determination that suspension of payments to a provider or supplier is needed to protect the program against financial loss. We also proposed clarifying our policy regarding the disposition of suspended payments. As proposed, suspended funds would first be applied to liquidate, in whole or in part, overpayments that are the basis for the suspension. Any remaining suspended funds would be applied to any other determined Medicare overpayments. In the absence of a further obligation to HHS (such as Medicaid overpayments) or other legal requirement (such as civil money penalties or an Internal Revenue Service levy), the excess would be released to the provider or supplier. Readers who are interested in the details of our proposals are referred to the proposed rule.

(Note that, in order to expedite certain changes that were contained in the August 1988 proposed rule, that is, proposed changes pertaining to the assessment of interest charges on overpayments and underpayments, we proceeded with them in a separate final rule, published in the Federal Register on July 10, 1991, at 56 FR 31332. The provisions of the July 1991 rule appear at § 405.376. The remaining proposed changes are contained in this final rule.)

C. Summary of and Responses to Public Comments

In response to the proposed rule, we received 12 items of correspondence, each containing comments on the issue of suspension of Medicare payments. The commenters included health care facilities, health care associations, a Medicare contractor, and an accounting firm. Three commenters believed that the changes would make suspension more effective, would reduce administrative costs, and would have little effect on current practice. The other commenters were primarily concerned with the cash flow problems that could result from the suspension of payment without a 30-day notice. Their specific concerns are presented below. Note that, unless otherwise indicated, references in our responses to sections of the regulations are to the sections in this final rule.

Comment: Several commenters expressed concern that the proposed changes concerning suspension of Medicare payments in cases of overpayments would allow an intermediary or carrier to withhold all payment to a provider or supplier without notification until an overpayment was recouped and that this could have a devastating effect on the cash flow of providers and suppliers, possibly even causing bankruptcies.

Response: There appears to be some confusion and misunderstanding of the scope of the changes we proposed to make in this area. We generally do not intend to suspend payments without at least a 15-day notice of this action to the provider or supplier. (There are three exceptions to giving prior notice: (1) When a suspension is imposed in accordance with section 1815(a) or section 1833(e) of the Act because the provider or supplier, respectively, has failed to submit information requested by the Medicare contractor that is needed to determine the amounts due the provider or supplier; (2) when we or the Medicare contractor determines that the Medicare Trust funds would be harmed by giving prior notice; and (3) at our discretion in cases involving fraud or misrepresentation.) Our proposal merely intended to eliminate the requirement for a separate determination that a suspension of payments is necessary to protect Medicare against financial loss before contractors can proceed with the suspension. In addition, in this final rule, we clarify that at least a 15-day notice to the provider or supplier is given in cases of recoupment or offset, terms that are defined in this rule.

Payment is recouped or offset in those cases in which the amount of an overpayment has been determined, and any future payment to a provider or supplier will be offset (that is, applied) against the identified overpayment generally until the amount of the overpayment is recovered. Offset or recoupment constitutes constructive payment to the provider or supplier. Payment is suspended if we or the

Medicare contractor has determined that the provider or supplier has been overpaid but the actual amount of the overpayment has not yet been determined. Therefore, additional effort is required before the amount of the overpayment can be determined. We believe that the notice requirement provides ample time for providers and suppliers to submit evidence to the intermediary or carrier to prevent suspension, recoupment, or offset and to avoid cash flow problems. However, in response to the commenters' concerns and in an effort to eliminate confusion, in this final rule we have—

- Added, at § 405.370, the following definitions of ''suspension of payment,'' ''offset,'' and ''recoupment.''

Offset. The recovery by Medicare of a non-Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. (Examples are Public Health Service debts or Medicaid debts recovered by HCFA).

Recoupment. The recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness.

Suspension of payment. The withholding of payment by an intermediary or carrier from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists.

- Reorganized and revised the provisions related to suspension of payment in order to set forth our policy more clearly (see § 405.372, ''Proceeding for suspension of payment''). These changes from the proposed rule have been made to improve the readability of the regulations and to clearly set forth the existing process and policy; we have not made any substantive changes that were not included in our proposed rule or that are not being made in response to public comment. (Note that, because of the restructuring of the provisions related to suspension, it was necessary to also reorganize and revise other provisions set forth in existing §§ 405.370 through 405.373. Again, in accomplishing this reorganization, we have not made any substantive changes that were not included in our proposed rule or that are not being made in response to public comment.) We will, however, consider timely comments from anyone who believes that, in making these changes, we have unintentionally altered the meaning.
- Revised existing § 405.374, ''Collection and compromise of claims for overpayment'' by changing the section heading to ''Suspension and termination of collection action and compromise of claims for overpayment'' to better describe the section's contents (and redesignated it as § 405.376). For the same reason, we have revised the headings of paragraph (e) (from ''Basis for terminations'' to ''Basis for termination of collection action'') and paragraph (f) (from ''Basis for suspension'' to ''Basis for suspension of collection action'').
- Revised existing § 405.375, ''Withholding Medicare payments to recover Medicaid overpayments'' (and redesignated it as § 405.377), to clarify our policy with regard to withholding Medicare payments to offset Medicaid overpayments.

We are also taking this opportunity to create two separate provisions to address two separate situations concerning failure to furnish information. Current regulations at § 405.371(d) (''Failure to furnish information requested'') provide for suspending payments in all situations in which information is not supplied, including when a provider fails to file a cost report. It has been our long-standing policy that, if a provider has failed to timely file an acceptable cost report, payment is immediately suspended until an acceptable cost report is filed. This regulation and policy are based on sections 1815(a) and 1833(e) of the Act. Section 1815(a) provides, in part, that ''no * * * payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part [Medicare Part A] for the period with respect to which the amounts are being paid or any prior period.'' Section 1833(e) of the Act contains similar language with respect to payments made under Part B of Medicare.

In this final rule we set forth a separate provision, new § 405.371(c), specifically addressing the suspension of payments in the case of unfiled cost reports. Section 405.371(c) specifies that, if a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended until a cost report is filed and determined by the intermediary to be acceptable. This section further specifies that, in the case of an unfiled cost report, the provisions of § 405.372 (''Proceeding for suspension of payment'') do not apply. We believe that this is consistent with the above-cited mandate that ''no payment shall be made * * * unless it has furnished such information * * *.''

In addition, we are retaining, with editorial modifications, the provision in current regulations at § 405.371(d) to apply to all instances of failure to supply information except those in which a cost report is not filed. This provision is set forth at § 405.372(a)(2) in this final rule. As in the current regulations, it specifies that the prior notice and rebuttal provisions do not apply if the provider failed to submit evidence requested by the intermediary that is needed to determine the amounts due the provider under the Medicare program. However, unlike new § 405.371(c) (''Suspension in the case of unfiled cost reports''), the time limitation on suspension established by this final rule, and discussed in the response to the following comment, applies.

Comment: Since immediate suspension of payments could cause great hardship to many Medicare providers and suppliers, one commenter believed it only fair to continue the requirement of a separate determination that suspension is needed to protect the program from financial loss.

Response: As discussed above, all providers and suppliers will generally receive prior notification of the suspension, recoupment, or offset action and have at least 15 days to reply. The notification of overpayment will state that, if there is no reply within the timeframe specified in the notification, the Medicare contractor will then begin action. If no reply is received from the provider or supplier, we believe that suspension is required to protect a program such as Medicare or Medicaid from financial loss and that it is not necessary to make a separate determination on that fact. Even if a reply is received, suspension may be required, and a separate determination is unnecessary.

If the provider or supplier submits a statement as to why a suspension of payment, recoupment, or offset should not be put into effect, the intermediary or carrier will have 15 days from the date the statement is received to consider the statement and make a determination whether the facts justify a suspension, or removal of a suspension already initiated. Suspension, however, will not be delayed in order to review any statement submitted.

In further response to the concerns expressed by the commenters, we have decided to impose a limitation upon how long we will suspend payment pending a determination whether or not an overpayment exists and in matters involving fraud or willful misrepresentation. The purpose of suspending payment is to verify whether, and how much, payment was

actually due the provider for past claims and to ensure that, if a provider or supplier was overpaid, sufficient funds are available to recover the overpayment. These actions are clearly necessary to protect the Trust Funds from loss. It is implicit that, when payment is suspended, determinations of overpayment, or of fraud or willful misrepresentation, should be made promptly. Accordingly, because it is appropriate that a provider or supplier receive a prompt determination so that it may receive any balances actually due after application of recoupment or offset, we have decided to limit suspension of Medicare payment to 180 days, with a possible extension of up to 180 additional days being granted to the intermediary, carrier, or OIG by HCFA. This period will enable us or the carrier or intermediary, as the case may be, to investigate and to determine the amounts of any Medicare overpayments or, in cases involving the OIG, for the OIG to complete its investigation, while protecting the Medicare Trust Funds. At the same time, providers and suppliers have the security of knowing that the suspension may culminate in an appealable determination within a specific period of time if the claims are subsequently denied. (A decision to suspend payment is not an initial determination subject to appeal under §§ 405.704, 405.803, or 405.1803.)

In addition, we recognize that there may be special circumstances in which the specified time limit (that is, 180 days plus up to 180 additional days) may not be sufficient. Therefore, we may grant an exception to the time limits in the following situations:

- The case has been referred to, and is being considered by, the OIG for administrative action, that is, civil money penalties.
- The Department of Justice, generally through the United States Attorney with jurisdictional responsibility, submits a written request to HCFA that the suspension be continued based on the ongoing investigation and anticipated filing of criminal and/or civil actions. At a minimum, the request must include the following:

*Identification of the entity under suspension.

*The amount of time needed for continued suspension in order to implement the criminal and/or civil proceedings.

*A statement of why and/or how criminal and/or civil actions may be affected if the requested extension is not granted.

Once a determination is made, any overpayments will be recouped or offset, first from suspended funds, then from any other monies owed the debtor in accordance with usual Medicare program rules. (See, for example, § 401.607(a)). Note that, in contrast to the decision to suspend payment, an overpayment determination is an initial determination, subject to appeal, but that appeals do not delay recoupment. Also note that, as defined in this final rule at § 405.370, recoupment may constitute 100 percent of any monies due if the debt to Medicare is equal to or greater than the amounts payable. Nonetheless, for the very reasons raised by the commenters, Medicare usually does not impose 100 percent recoupment in the absence of a basis for doing so, such as the debtor's failure to respond to a demand letter.

Under current law and delegations of authority, HCFA is responsible for operating the Medicare program. This includes making determinations whether to suspend payment. In cases of suspected fraud or willful misrepresentation, the determination whether to suspend is generally made after consultation with the OIG, the Medicare contractor, U.S. Attorney, and other law enforcement agencies as appropriate to the case. Where the OIG or other law enforcement agency requests suspension, the requesting agency must advise us of the basis for the request. Thus, although the OIG is responsible for identifying, investigating, and pursuing matters of fraud and abuse, HCFA is responsible for determining whether there is reliable evidence of an overpayment, whether to suspend payment, and, if the decision is to suspend payment, whether advance notice of the suspension should be given. (If advance notice is to be given, we usually direct the Medicare contractor to give the notice.) The Medicare contractor is responsible for promptly determining the overpayment. Once the amount of an overpayment is determined, the suspended payments are applied to recoup the overpayment. Although the Medicare contractor may implement a suspension, offset, or recoupment, HCFA is the real party in interest and is responsible for the actions.

This final rule clarifies that our decision regarding whether to suspend payment may be based on information provided by the intermediary, carrier, a law enforcement agency, or other source. We will normally provide at least a 15-day delay before suspension is imposed. However, when it appears that the Medicare Trust Funds would be harmed by providing this notice or in matters involving fraud or misrepresentation, suspension may be imposed without prior notice. (We believe, however, that suspension without prior notice would be the exception.)

II. Determination of Allowable Interest Expense

A. Background

Under the Medicare program, health care providers not subject to the prospective payment system generally are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Section 1861(v)(1)(A) of the Act defines reasonable costs as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. Section 1861(v)(1)(A) also provides that reasonable costs be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services.

Providers may generally include interest expense (the cost incurred for the use of funds borrowed for patient care-related purposes) in allowable costs, but, under existing § 413.153(b)(2)(iii), allowable interest expense must be reduced by investment income. Additionally, this section of the regulations provides that investment income from gifts and grants (whether restricted or unrestricted) is not used to reduce interest expense if the gift and grant funds are held separate and not commingled with other funds. The latter provision was intended to ensure that providers maintain the discrete nature of the grant funds and to facilitate the intermediaries' application of proper payment principles to the resulting investment income.

Section 1134 of the Act, which was added by section 901 of the Omnibus Reconciliation Act of 1980 (ORA '80), Public Law 96–499, provides that, in the case of nonprofit hospitals, interest income from grants, gifts, or endowments, that have not been designated by the donor to be used to defray specific operating costs, is not to be offset against interest income.

The provisions of section 901 of ORA '80, as well as our established position on commingling of funds, were incorporated in Transmittal No. 279 issued in January 1983. This transmittal, which revised section 202.6 of the Provider Reimbursement Manual (HCFA Pub. 15–1), permits the pooling of funds for investment purposes, provided adequate records are maintained to enable the proper identification of funds

and investment income applicable to each.

Existing § 413.153(b)(2)(iii) excludes the following types of income from the interest expense offset requirements:

- Investment income from separately held and noncommingled gifts and grants.
- Income from a provider's funded depreciation.
- Income from qualified employee pension funds.
- Interest received as a result of judicial review by a Federal court.

Under our current operating policy, investment income from a provider's deferred compensation funds and self-insurance funds that meet the program's qualifying compensation plans provided in section 2140 of the Provider Reimbursement Manual and the qualifying criteria for self-insurance funds described in subsection 2162.7 of the Manual must become part of those funds and, as such, is unavailable for offset against interest expense.

B. Provisions of the Proposed Regulations

We proposed to revise § 413.153(b)(2)(iii) to modify the restriction against commingling to permit the pooling of grant, gift, or endowment funds for investment purposes for all providers, rather than only the nonprofit hospitals referenced in section 1134 of the Act. This change was proposed to conform the regulations to our current operating policy as set forth in section 202.6 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

As a conforming change, we also proposed to remove the regulations text located at § 413.5(c)(3). This section contains outdated statements concerning offsetting of restricted grants, gifts, and income from endowments and ceased being effective with cost reporting periods beginning on or after October 1, 1983.

We also proposed to make a technical change to the regulations at § 413.90(b)(2) to remove the provision that required the offset of research grant funds (used for usual patient care purposes in conjunction with basic medical and hospital research) against usual patient care costs. This provision became obsolete with cost reporting periods beginning on or after October 1, 1983.

We further proposed to clarify § 413.153(b)(2)(iii) by adding to the exclusions from interest expense offset investment income on—

- A provider's deferred compensation plans; and
- Self-insurance trust funds.

Because established program policy has always required that investment income earned on a provider's deferred compensation fund (Provider Reimbursement Manual, section 2140 ff.) or self-insurance fund (section 2162.7) become part of those funds, it is unavailable for offset against interest expense. We simply proposed to add these exclusions from interest expense offset to the regulations text to conform it to the established policy.

C. Analyses of and Responses to Public Comments

We received a comment on these proposals with the following concern:

Comment: The commenter requested that the proposed clarification of § 413.153(b)(2)(iii) to permit the pooling of funds from grants and gifts be further modified to explicitly include monies from funded depreciation for nonprofit hospitals.

Response: Section 413.153(b)(2)(iii) never prohibited the commingling of funded depreciation monies for investment purposes by either proprietary or nonprofit providers. Therefore, we believe that the change suggested by the commenter is unnecessary.

III. Provisions of the Final Rule

This final rule with comment period incorporates those provisions of the August 1988 proposed rule that were not incorporated into the regulations by the July 10, 1991 final rule, with the changes listed below. The rationale for these changes has been discussed above in our responses to comments.

- We include definitions of the terms ''offset,'' ''recoupment,'' and ''suspension of payment.'' (See § 405.370.)
- We clarify that at least a 15-day notice to the provider or supplier is given in cases of recoupment or offset, as well as in cases of suspension of payment. (See § 405.374(a).)
- We limit the duration of a suspension of payment. (See § 405.372(d).)
- We clarify the procedures applicable to suspension of payment when fraud or willful misrepresentation is suspected. (See § 405.372 (a) and (e).)

In addition to the above changes, which were discussed in the responses to comments, we make the following clarifying, conforming, and technical changes:

- We revise § 401.601, which sets forth the basis and scope of subpart F (Claims Collection and Compromise) of part 401 (General Administrative Requirements). Paragraph (d) of this section identifies, as related regulations, HHS regulations applicable to HCFA that generally implement the Federal Claims Collection Act (FCCA) for the Department and are located at 45 CFR part 30. We add a statement to paragraph (d) to clarify that those regulations apply only to the extent HCFA regulations do not address a situation.
- We revise § 401.607 (Claims collection). Paragraph (d)(1) of this section states that ''[i]n conformity with 4 CFR 102.3, HCFA may offset, where possible, the amount of a claim against the amount of * * * monies that a debtor is receiving or is due from the Federal government.'' The ''conformity'' phrase was included to reflect that offset of Medicare debts is consistent with general FCCA regulations. It was not intended to impose additional requirements not included in HCFA's FCCA regulations. It has come to our attention, however, that this phrase has caused confusion. Therefore, in order to eliminate this confusion, we remove the phrase.
- In § 405.1803, ''Intermediary determination and notice of amount of program reimbursement,'' we revise paragraph (c), currently titled ''Use of notice as basis for recovery of overpayments,'' to conform it to the terminology and process this rule establishes in §§ 405.370 through 405.377. First, we change the word ''recovery'' wherever it appears in paragraph (c) to ''recoupment''. Second, we replace the phrase ''including the suspending of further payments to the provider in order to recover, or to aid in the recovery of,'' with ''including recoupment under § 405.373 from ongoing payment to the provider of''. Third, we make a minor editorial change to break the existing first sentence into two sentences. Finally, because the cross reference made by the last sentence is no longer correct and we believe a cross reference is not necessary, we remove the last sentence.
- We make a number of technical changes (such as revising cross-reference citations because of the redesignations made by this final rule) that do not affect the substance of the provisions.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a final rule with comment period will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and suppliers are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Elimination of the requirement at existing § 405.370(b) that an intermediary or carrier make a prior determination that a suspension of payment is needed to protect the Medicare program against financial loss may have an adverse economic effect on some providers and suppliers. However, we do not believe that this policy will affect a significant number of providers and suppliers. Additionally, the time limits on suspension established by this final rule may mitigate the adverse effect of our modifications to § 405.370(b).

In addition to the changes previously discussed in the notice of proposed rulemaking, we have made certain clarifying changes. We do not anticipate any economic effects resulting from our clarifications of already existing policy.

For these reasons, we are not preparing analyses for either the RFA or section 1102 of the Act since we have determined, and the Secretary certifies, that this rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Public Comment Period

We have made certain changes from the proposed rule to improve the readability of the regulations and to clearly set forth the existing process and policy. In doing so, we have not made any substantive changes to existing regulations that were not included in our proposed rule or that are not being made in response to public comment on the proposed rule. While a prior public comment period is not required in this case, we are granting the public an opportunity to comment on these changes. As stated earlier, we are providing 60-day comment period on the following:

(1) The differences between suspension, recoupment, and offset.

(2) The fact that suspension or offset or recoupment will not be delayed beyond the date stated in the notice from the intermediary or carrier in order to review any statement submitted.

(3) The inclusion of time limits on the period during which payment may be suspended.

(4) The clarification of applicable procedures in the case of suspension of payment if fraud or willful misrepresentation is suspected.

(5) The creation of two separate provisions concerning suspension of payment for failure to furnish information.

(6) The reorganization of the provisions.

Because of the large number of items of correspondence we normally receive on regulations, we cannot acknowledge or respond to them individually. We will, however, consider all comments concerning the issues noted directly above that are received by the date and time specified in the ''**DATES**'' section of this preamble. If we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as set forth below:

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

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

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879 and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

2. The undesignated center heading preceding § 405.370 is revised to read as follows:

SUSPENSION AND RECOUPMENT OF PAYMENT TO PROVIDERS AND SUPPLIERS AND COLLECTION AND COMPROMISE OF OVERPAYMENTS

3. Sections 405.370 through 405.373 are redesignated as §§ 405.371 through 405.374, respectively, and current §§ 405.374 through 405.376 are redesignated as § 405.376 through 405.378, respectively.

4. New §§ 405.370 and 405.375 are added, and redesignated §§ 405.371 through 405.374 are revised, to read as follows:

§ 405.370 Definitions.

For purposes of this subpart, the following definitions apply:

Offset. The recovery by Medicare of a non-Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. (Examples are Public Health Service debts or Medicaid debts recovered by HCFA).

Recoupment. The recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness.

Suspension of payment. The withholding of payment by an intermediary or carrier from a provider or supplier of an approved Medicare payment amount before a determination of the amount of the overpayment exists.

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

(a) *General.* Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be—

(1) Suspended, in whole or in part, by HCFA, an intermediary, or a carrier if HCFA, the intermediary, or the carrier possesses reliable information that an overpayment or fraud or willful misrepresentation exists or that the payments to be made may not be correct, although additional evidence may be needed for a determination; or

(2) Offset or recouped, in whole or in part, by an intermediary or a carrier if the intermediary, carrier, or HCFA has determined that the provider or supplier to whom payments are to be made has been overpaid.

(b) *Steps necessary for suspension of payment, offset, and recoupment.* Except as provided in paragraph (c) of this section, HCFA, the intermediary, or carrier suspends payments only after it has complied with the procedural requirements set forth at § 405.372. The intermediary or carrier offsets or recoups payments only after it has complied with the procedural requirements set forth at § 405.373.

(c) *Suspension of payment in the case of unfiled cost reports.* If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended until a cost report is filed and determined by the intermediary to be acceptable. In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

§ 405.372 Proceeding for suspension of payment.

(a) *Notice of intention to suspend*—(1) *General rule.* Except as provided in paragraphs (a)(2) through (a)(4) of this section, if the intermediary, carrier, or HCFA has determined that a suspension of payments under § 405.371(a)(1) should be put into effect, the intermediary or carrier must notify the provider or supplier of the intention to suspend payments, in whole or in part, and the reasons for making the suspension.

(2) *Failure to furnish information.* The notice requirement of paragraph (a)(1) of this section does not apply if the intermediary or carrier suspends payments to a provider or supplier in accordance with section 1815(a) or section 1833(e) of the Act, respectively, because the provider or supplier has failed to submit information requested by the intermediary or carrier that is needed to determine the amounts due the provider or supplier. (See § 405.371(c) concerning failure to file timely acceptable cost reports.)

(3) *Harm to Trust Funds.* A suspension of payment may be imposed without prior notice if HCFA, the intermediary, or carrier determines that the Medicare Trust Funds would be harmed by giving prior notice. HCFA may base its determination on an intermediary's or carrier's belief that giving prior notice would hinder the possibility of recovering the money.

(4) *Fraud or misrepresentation.* If the intended suspension of payment involves suspected fraud or misrepresentation, HCFA determines whether to impose the suspension and if prior notice is appropriate. HCFA directs the intermediary or carrier as to the timing and content of the notification to the provider or supplier. HCFA is the real party in interest and is responsible for the decision. HCFA may base its decision on information from the intermediary, carrier, law enforcement agencies, or other sources. HCFA determines whether the information is reliable.

(b) *Rebuttal*—(1) *If prior notice is required.* If prior notice is required under paragraph (a) of this section, the intermediary or carrier must give the provider or supplier an opportunity for rebuttal in accordance with § 405.374. If a rebuttal statement is received within the specified time period, the suspension of payment goes into effect on the date stated in the notice, and the procedures and provisions set forth in § 405.375 apply. If by the end of the period specified in the notice no statement has been received, the suspension goes into effect automatically, and the procedures set forth in paragraph (c) of this section are followed.

(2) *If prior notice is not required.* If, under the provisions of paragraphs (a)(2) through (a)(4) of this section, a suspension of payment is put into effect without prior notice to the provider or supplier, the intermediary or carrier must, once the suspension is in effect, give the provider or supplier an opportunity to submit a rebuttal statement as to why the suspension should be removed.

(c) *Subsequent action.* If a suspension of payment is put into effect, the intermediary, carrier, or HCFA takes timely action after the suspension to obtain the additional evidence it may need to make a determination as to whether an overpayment exists or the payments may be made. The intermediary, carrier, or HCFA makes all reasonable efforts to expedite the determination. As soon as the determination is made, the intermediary or carrier informs the provider or supplier and, if appropriate, the suspension is rescinded or any existing recoupment or offset is adjusted to take into account the determination.

(d) *Duration of suspension of payment*—(1) *General rule.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, a suspension of payment is limited to 180 days, starting with the date the suspension begins.

(2) *180-day extension.* (i) An intermediary, a carrier, or, in cases of fraud and misrepresentation, OIG or a law enforcement agency, may request a one-time only extension of the suspension period for up to 180 additional days if it is unable to complete its examination of the information or investigation, as appropriate, within the 180-day time limit. The request must be submitted in writing to HCFA.

(ii) Upon receipt of a request for an extension, HCFA notifies the provider or supplier of the requested extension. HCFA then either extends the suspension of payment for up to an additional 180 days or determines that the suspended payments are to be released to the provider or supplier.

(3) *Exceptions to the time limits.* (i) The time limits specified in paragraphs (d)(1) and (d)(2) of this section do not apply if the case has been referred to, and is being considered by, the OIG for administrative action (for example, civil money penalties).

(ii) HCFA may grant an extension in addition to the extension provided under paragraph (d)(2) of this section if the Department of Justice submits a written request to HCFA that the suspension of payment be continued based on the ongoing investigation and anticipated filing of criminal and/or civil actions. At a minimum, the request must include the following:

(A) Identification of the entity under suspension.

(B) The amount of time needed for continued suspension in order to implement the criminal and/or civil proceedings.

(C) A statement of why and/or how criminal and/or civil actions may be affected if the requested extension is not granted.

(e) *Disposition of suspended payments.* Payments suspended under the authority of § 405.371(b) are first applied to reduce or eliminate any overpayments determined by the intermediary, carrier, or HCFA, including any interest assessed under the provisions of § 405.378, and then applied to reduce any other obligation

to HCFA or to HHS. In the absence of a legal requirement that the excess be paid to another entity, the excess is released to the provider or supplier.

§ 405.373 Proceeding for offset or recoupment.

(a) *General rule.* Except as specified in paragraph (b) of this section, if the intermediary, carrier, or HCFA has determined that an offset or recoupment of payments under § 405.371(a)(2) should be put into effect, the intermediary or carrier must—

(1) Notify the provider or supplier of its intention to offset or recoup payment, in whole or in part, and the reasons for making the offset or recoupment; and

(2) Give the provider or supplier an opportunity for rebuttal in accordance with § 405.374.

(b) Paragraph (a) of this section does not apply if the intermediary, after furnishing a provider a written notice of the amount of program reimbursement in accordance with § 405.1803, recoups payment under paragraph (c) of § 405.1803. (For provider rights in this circumstance, see §§ 405.1809, 405.1811, 405.1815, 405.1835, and 405.1843.)

(c) *Actions following receipt of rebuttal statement.* If a provider or supplier submits, in accordance with § 405.374, a statement as to why an offset or recoupment should not be put into effect on the date specified in the notice, the intermediary or carrier must comply with the time limits and notification requirements of § 405.375.

(d) *No rebuttal statement received.* If, by the end of the time period specified in the notice, no statement has been received, the recoupment or offset goes into effect automatically.

(e) *Duration of recoupment or offset.* If a recoupment or offset is put into effect, it remains in effect until the earliest of the following:

(1) The overpayment and any assessed interest are liquidated.

(2) The intermediary or carrier obtains a satisfactory agreement from the provider or supplier for liquidation of the overpayment.

(3) The intermediary or carrier, on the basis of subsequently acquired evidence or otherwise, determines that there is no overpayment.

§ 405.374 Opportunity for rebuttal.

(a) *General rule.* If prior notice of the suspension of payment, offset, or recoupment is given under § 405.372 or § 405.373, the intermediary or carrier must give the provider or supplier an opportunity, before the suspension, offset, or recoupment takes effect, to submit any statement (to include any pertinent information) as to why it should not be put into effect on the date specified in the notice. Except as provided in paragraph (b) of this section, the provider or supplier has at least 15 days following the date of notification to submit the statement.

(b) *Exception.* The intermediary or carrier may for cause—

(1) Impose a shorter period for rebuttal; or

(2) Extend the time within which the statement must be submitted.

§ 405.375 Time limits for, and notification of, administrative determination after receipt of rebuttal statement.

(a) *Submission and disposition of evidence.* If the provider or supplier submits a statement, under § 405.374, as to why a suspension of payment, offset, or recoupment should not be put into effect, or, under § 405.372(b)(2), why a suspension should be terminated, HCFA, the intermediary, or carrier must within 15 days, from the date the statement is received, consider the statement (including any pertinent evidence submitted), together with any other material bearing upon the case, and determine whether the facts justify the suspension, offset, or recoupment or, if already initiated, justify the termination of the suspension, offset, or recoupment. Suspension, offset, or recoupment is not delayed beyond the date stated in the notice in order to review the statement.

(b) *Notification of determination.* The intermediary or carrier must send written notice of the determination made under paragraph (a) of this section to the provider or supplier. The notice must—

(1) In the case of offset or recoupment, contain rationale for the determination; and

(2) In the case of suspension of payment, contain specific findings on the conditions upon which the suspension is initiated, continued, or removed and an explanatory statement of the determination.

(c) *Determination is not appealable.* A determination made under paragraph (a) of this section is not an initial determination and is not appealable.

5. In redesignated § 405.376, the heading of the section, paragraph (a), and the headings of paragraphs (e) and (f) are revised to read as follows:

§ 405.376 Suspension and termination of collection action and compromise of claims for overpayment.

(a) *Basis and purpose.* This section contains requirements and procedures for the compromise of, or suspension or termination of collection action on, claims for overpayments against a provider or a supplier under the Medicare program. It is adopted under the authority of the Federal Claims Collection Act (31 U.S.C. 3711). Collection and compromise of claims against Medicare beneficiaries are explained at 20 CFR 404.515.

* * * * *

(e) *Basis for termination of collection action.*

* * * * *

(f) *Basis for suspension of collection action.*

* * * * *

6. Redesignated § 405.377 is revised to read as follows:

§ 405.377 Withholding Medicare payments to recover Medicaid overpayments.

(a) *Basis and purpose.* This section implements section 1885 of the Act, which provides for withholding Medicare payments to certain Medicaid providers that have not arranged to repay Medicaid overpayments as determined by the Medicaid State agency or have failed to provide information necessary to determine the amount (if any) of overpayments.

(b) *When withholding may be used.* HCFA may withhold Medicare payment to offset Medicaid overpayments that a Medicaid agency has been unable to collect if—

(1) The Medicaid agency has followed the procedure specified in § 447.31 of this chapter; and

(2) The institution or person is one described in paragraph (c) of this section and either—

(i) Has not made arrangements satisfactory to the Medicaid agency to repay the overpayment; or

(ii) Has not provided information to the Medicaid agency necessary to enable the agency to determine the existence or amount of Medicaid overpayment.

(c) *Institutions or persons affected.* Withholding under paragraph (b) of this section may be made with respect to any of the following entities that has or had in effect an agreement with a Medicaid agency to furnish services under an approved Medicaid State plan:

(1) An institutional provider that has in effect an agreement under section 1866 of the Act. (Part 489 (Provider and Supplier Agreements) implements section 1866 of the Act.)

(2) A physician or supplier that has accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act. (Section 424.55 sets forth the conditions a supplier agrees to in accepting assignment.)

(d) *Amount to be withheld.* (1) HCFA contacts the appropriate intermediary or carrier to determine the amount of Medicare payment to which the institution or person is entitled.

(2) HCFA may require the intermediary or carrier to withhold Medicare payments to the institution or person by the lesser of the following amounts:

(i) The amount of the Medicare payments to which the institution or person would otherwise be entitled.

(ii) The total Medicaid overpayment to the institution or person.

(e) *Notice of withholding.* If HCFA intends to withhold payments under this section, it notifies by certified mail, return receipt requested, the institution or person and the appropriate intermediary or carrier of the intention to withhold Medicare payments and follows the procedure in § 405.374. The notice includes—

(1) Identification of the institution or person; and

(2) The amount of Medicaid overpayment to be withheld from payments to which the institution or person would otherwise be entitled under Medicare.

(f) *Termination of withholding.* HCFA terminates the withholding if—

(1) The Medicaid overpayment is completely recovered;

(2) The institution or person enters into an agreement satisfactory to the Medicaid agency to repay the overpayment; or

(3) The Medicaid agency determines that there is no overpayment based on newly acquired evidence or a subsequent audit.

(g) *Disposition of funds withheld.* HCFA releases amounts withheld under this section to the Medicaid agency to be applied against the Medicaid overpayment made by the State agency.

Subpart R—Provider Reimbursement Determinations and Appeals

7. The authority citation for part 405, subpart R continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

8. In § 405.1803, paragraph (c) is revised to read as follows:

§ 405.1803 Intermediary determination and notice of amount of program reimbursement.

* * * * *

(c) *Use of notice as basis for recoupment of overpayments.* The intermediary's determination contained in its notice is the basis for making the retroactive adjustment (required by § 413.64(f) of this chapter) to any program payments made to the provider during the period to which the determination applies, including recoupment under § 405.373 from ongoing payments to the provider of any overpayments to the provider identified in the determination. Recoupment is made notwithstanding any request for hearing on the determination the provider may make under § 405.1811 or § 405.1835.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Sec. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

§ 413.5 [Amended]

2. In § 413.5, paragraph (c)(3) is removed and reserved.

3. In § 413.90, paragraph (b)(2) is revised to read as follows:

§ 413.90 Research costs.

* * * * *

(b) *Application.* (1) * * *

(2) If research is conducted in conjunction with, and as a part of, the care of patients, the costs of usual patient care and studies, analyses, surveys, and related activities to serve the provider's administrative and program needs are allowable costs in the determination of payment under Medicare.

4. In § 413.153, paragraph (a)(1) introductory text is republished, and paragraphs (a)(1)(ii) and (b)(2) are revised to read as follows:

§ 413.153 Interest expense.

(a)(1) *Principle.* Necessary and proper interest on both current and capital indebtedness is an allowable cost. However, interest costs are not allowable if incurred as a result of—

(i) * * *

(ii) An interest assessment on a determined overpayment (as described in § 405.377 of this chapter); or

* * * * *

(b) *Definitions.* (1) * * *

(2) *Necessary.* Necessary interest is interest that meets the following requirements:

(i) It is incurred on a loan made to satisfy a financial need of the provider. Loans that result in excess funds or investments are not considered necessary.

(ii) It is incurred on a loan made for a purpose reasonably related to patient care.

(iii) It is reduced by investment income except income from—

(A) Gifts, grants, and endowments, whether held separately or pooled with other funds;

(B) Funded depreciation that meets the program's qualifying criteria;

(C) The provider's qualified pension funds;

(D) The provider's deferred compensation funds that meet the program's qualifying criteria; and

(E) The provider's self-insurance trust funds that meet the program's qualifying criteria.

(iv) It is not reduced by interest received as a result of judicial review by a Federal court (as described in § 413.64(j)).

* * * * *

C. Technical Amendments.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

§ 401.601 [Amended]

2. In § 401.601, the following changes are made:

a. The following sentence is added at the end of paragraph (d)(1): ''These regulations apply only to the extent HCFA regulations do not address a situation.''

b. In paragraph (d)(2)(iii), the phrase ''§§ 405.374 and 405.376'' is removed, and the phrase ''§§ 405.377 and 405.378'' is added in its place.

§ 401.607 [Amended]

3. In § 401.607, in paragraph (d)(1), the phrase ''In conformity with 4 CFR 102.3,'' is removed.

PART 403—SPECIAL PROGRAMS AND PROJECTS

4. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 403.310 [Amended]

5. In § 403.310, in the last sentence of paragraph (a), the citation ''§ 405.376'' is

removed, and the citation ''§ 405.378'' is added in its place.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart G—Reconsiderations and Appeals Under Medicare Part A

6. The authority citation for part 405, subpart G continues to read as follows:

Authority: Secs. 1102, 1151, 1154, 1156, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

§ 405.705 [Amended]

7. In § 405.705, in paragraph (d), the following changes are made:

a. The citation ''(31 U.S.C. 951–953)'' is removed, and the citation ''(31 U.S.C. 3711)'' is added in its place.

b. The citation ''§ 405.374'' is removed, and the citation ''§ 405.376'' is added in its place.

§ 405.1801 [Amended]

8. In § 405.1801, in paragraph (a)(4), the citation ''§ 405.374'' is removed, and the citation ''§ 405.376'' is added in its place.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

9. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 411.28 [Amended]

10. In § 411.28, in paragraph (b), the citation ''§ 405.374'' is removed, and the citation ''§ 405.376'' is added in its place.

§ 413.20 [Amended]

11. In § 413.20, in paragraph (e), the citation ''§ 405.371(a)'' is removed wherever it appears (twice), and the citation ''§ 405.372(a)'' is added in place of the first appearance, and ''§ 405.372(b)'' is added in place of the second appearance.

§ 413.153 [Amended]

2. In § 413.153, in paragraph (a)(1)(iii), the citation ''§ 405.376'' is removed, and the citation ''§ 405.378'' is added in its place.

PART 447—PAYMENTS FOR SERVICES

13. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 447.31 [Amended]

14. In § 447.31, in paragraph (a), the citation ''§ 405.375'' is removed, and the citation ''§ 405.377'' is added in its place.

PART 493—LABORATORY REQUIREMENTS

15. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395(s)(12), 1395(s)(13), 1395(s)(14), 1395(s)(15), and 1395(s)(16)).

§ 493.1834 [Amended]

16. In § 493.1834, in paragraph (i)(1)(ii), the citation ''§ 405.376(d)'' is removed, and the citation ''§ 405.378(d)'' is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 30, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 16, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–30057 Filed 11–29–96; 8:45 am]

BILLING CODE 4120–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Non-LSC Funds

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (''Corporation'' or ''LSC'') interim rule concerning the use of non-LSC funds by LSC recipients. The revisions to this rule are intended to implement provisions first appearing in the Corporation's Fiscal Year (''FY'') 1996 appropriations act that are currently incorporated by reference in the Corporation's FY 1997 appropriations act. With a few exceptions, many of the new statutory conditions effectively restrict a recipient's non-LSC funds to the same degree they restrict a recipient's LSC funds. This rule also clarifies the extent to which conditions on a recipient's non-LSC funds apply when a recipient transfers its funds to another person or entity. Technical revisions are also made to the rule.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the LSC Board of Directors (''Board'') requested the LSC staff to prepare an interim rule to implement section 504 in the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which applied most conditions contained therein to any person or entity receiving LSC funds, effectively restricting virtually all of a recipient's funds to the same degree that it restricts LSC funds. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal Register. Although the interim rule was effective upon publication, *see* 61 FR 41960 (August 13, 1996), the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

The Corporation received 8 comments on the rule. The Committee held public hearings on the rule on September 29, 1996, and made several recommendations for revisions to the Board. The Board adopted this final rule on September 30, 1996.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, *see* Pub. L. 104–208, 110 Stat. 3009. It incorporated by reference the § 504 conditions on LSC grants and other sections of the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the appropriate section number of the FY 1996 appropriations act.

As did the interim rule, this final rule generally serves two purposes. First, it incorporates the new statutory conditions which apply to both a recipient's LSC and non-LSC funds. Past appropriations acts applied restrictions contained in those acts only to the funds appropriated thereunder. In contrast, the new statutory provisions prohibit LSC from funding any recipient that engages in certain specified activities or that fails to act in a manner consistent with new statutory requirements. Second, this rule retains several technical revisions made in the interim rule which corrected provisions in the prior rule that had never been revised to be consistent with longstanding amendments to the LSC Act. Finally, in

response to public comment, this rule revises provisions in the interim rule dealing with transfers of a recipient's funds.

A section-by-section discussion of this final rule is provided below.

Section 1610.1 Purpose

The purpose of this rule is to implement statutory conditions on a recipient's use of non-LSC funds. These conditions are found in the LSC Act (''Act''), 42 U.S.C. § 2996 *et seq.*, and Pub. L. 104–134, 110 Stat. 1321 (1996), as incorporated by Pub. L. 104–208, 110 Stat. 3009 (1996).

Section 1610.2 Definitions

The interim rule revised the definition of ''purposes prohibited by the LSC Act'' in several ways. It deleted reference to a prohibition on the representation of juveniles, because the prohibition is no longer in the LSC Act. It also deleted reference to those restrictions on activities in the LSC Act that are now included in the broader restriction in the Corporation's appropriations act. Numbering changes were also made to correspond to the numbering changes that were made by the 1977 amendments to the LSC Act. These changes have been retained in the final rule.

The interim rule also deleted reference to fee-generating cases from the definition of a ''purpose prohibited by the LSC Act.'' The deletion had a very narrow impact on recipients, in that they could take fee-generating cases with private funds without following the procedures set out in 45 CFR part 1609. However, LSC staff recommended and the Board agreed that the reference to fee-generating cases should be included in the final rule.

The deletion of the provision relating to fee-generating cases was based on an analysis that the provision in the Act merely imposes procedural requirements and does not prohibit the taking of fee-generating cases. On reflection, however, the Board concluded that the fee-generating provision is a prohibition.

One comment stated that the definition of ''purpose prohibited by the LSC Act'' is deficient, because the word ''purpose'' is not adequately defined in either the LSC Act or part 1610. The LSC Act and part 1610, however, do not attempt to define the word ''purpose;'' rather, the rule interprets the clause in the LSC Act that includes the word—''purpose prohibited by the LSC Act''—by specifically listing every activity the Corporation has determined to be a prohibited purpose under the Act. The prohibited purposes listed in this definition have been in the definition since 1978, and the listing has been and still is very specific, in that it cites to sections of the LSC Act containing the prohibited purposes as well as to the regulations implementing those sections. In addition, the use of ''purpose'' is well understood in Federal Appropriations Law, and is rooted in 31 U.S.C. § 1301(a), which requires the use of Federal funds for the purposes for which they are appropriated. See Principles of Federal Appropriations Law, Chapter 4, ''Availability of Appropriations: Purpose'' at 4–1 (1991). No changes were made in response to this comment.

''Activity prohibited by or inconsistent with Section 504'' lists the prohibitions and requirements in section 504 (a) of the Corporation's FY 1996 appropriations act that have been included by reference in the Corporation's FY 1997 appropriations act. These prohibitions and requirements apply to a recipient's activities, regardless of the source of funding. The definition also makes reference to subsections 504(b) and 504(e), which provide exceptions to those conditions on specific activities supported by non-LSC funds.

A few comments suggested that the Corporation should distinguish between those conditions on funds in the definition of ''activity prohibited by or inconsistent with Section 504'' that are prohibitions, such as restrictions on class actions and certain lobbying activities, and those that are operational requirements, such as those on priorities and timekeeping. The main concern of the comments relates to application of the rule to transfers of recipients' funds. The Board agreed that the concerns raised by the comments should be addressed, but did not make any changes to the definition. Rather, it made changes reflected in § 1610.7, which deals with the application of the conditions in this definition to transfers of recipient funds.

The definitions for ''IOLTA funds,'' ''non-LSC funds,'' ''private funds,'' ''public funds,'' and ''tribal funds'' are the same as in the interim rule. ''IOLTA funds'' is defined as funds derived from programs established by State court rules or legislation that collect and distribute interest earned on lawyers' client trust accounts. ''Non-LSC funds'' are funds derived from a source other than the Corporation and would include both public and private funds. ''Private funds'' are defined as funds derived from an individual or entity other than a governmental source or LSC. ''Public funds'' is similar to the definition of ''public funds'' in part 1600, but also clarifies that, for the purposes of this part, IOLTA funds will be treated in the same manner as public funds. ''Tribal funds'' are defined as funds received by a recipient from an Indian tribe or from a private nonprofit foundation or organization that are given for the benefit of Indians or Indian tribes.

The definitions of ''private attorney,'' ''law firm,'' and ''State or local entity of attorneys'' have been deleted as no longer necessary, due to changes made by the Board to § 1610.6 of the interim rule, as discussed below.

A new definition of ''transfer'' has been added that was not included in the interim rule. The definition is necessary to clarify the application of this part to a transfer of recipient funds, as discussed below under § 1610.7. A ''transfer'' is defined as a transfer of a recipient's funds for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. A transfer is not intended to include a non-programmatic fee-for-service arrangement or a payment for goods or services.

Section 1610.3 Prohibition

The prohibition section in the interim rule included the new statutory restrictions on various activities in Section 504. No comments were received suggesting changes to this section, and the only changes made in the final rule are technical.

Section 1610.4 Authorized Use of Other Funds

This section clarifies that the restrictions in section 504 apply to activities supported by all funds except tribal funds, while those restrictions in the LSC Act which are not covered by section 504 apply only to LSC and private funds.

Section 1610.4(a): Paragraph (a) sets out an exception included in both the LSC Act and Section 504 for tribal funds. The exception exempts tribal funds from the general prohibition on the use of non-LSC funds, as long as the tribal funds are used for the purposes for which they were provided.

Section 1610.4(b). Section 1610.4(b) implements the exception in the LSC Act for public funds which permits recipients to use public funds in accordance with the purposes for which the funds were provided. However, because the Corporation's FY 1996 appropriations act contains no exception for public funds for most of its restrictions on activities, language is included providing that public funds

may not be used for any activity prohibited by or inconsistent with Section 504. In accordance with current LSC policy, the section also provides that for purposes of applying this regulation, IOLTA funds are to be treated the same as public funds.

Section 1610.4(c). Paragraph (c) states the exception that allows recipients to use private funds if they use them for the purposes for which they were provided, and if they do not use their private funds for any activity prohibited by the LSC Act or prohibited by or inconsistent with § 504.

Section 1610.4(d). Section 1610.4(d) reflects § 504(d)(2)(B) of the Corporation's FY 1996 appropriations act, which provides that a recipient may use non-LSC funds to provide legal assistance to financially ineligible persons, provided that the funds are used for the specific purpose for which they were received and are not used in a manner that violates the LSC Act or § 504.

Section 1610.5 Notification

This section incorporates the requirement of § 504(d)(1) of the appropriations act that recipients may not accept funds from non-LSC sources unless they provide written notice to the funders that their funds may not be used in any manner inconsistent with the LSC Act or § 504. The requirement applies only to cash contributions; recipients are not required to notify persons or organizations who make non-cash donations or volunteer their time or services to the recipient.

In an effort to relieve recipients of some of the administrative burden that might be imposed by the notice requirement, the interim regulation contained a de minimis exception. The exception relieves recipients of the notice requirement for contributions of less than $250. One comment questioned whether the rule intends that LSC recipients follow the same reporting requirements and guidelines used by the IRS in reporting donations of $250 or more. The comment also asked when and how often notification is required and commented that it is impracticable to include the notice in a one or two page community-wide solicitation letter.

Section 1610.5 is not intended to implement the IRS instructions and guidelines concerning contributions to charities; therefore, it does not incorporate the IRS reporting or other procedural requirements. Rather, it simply recognizes that, because recipients must provide acknowledgements for donations for $250 or more for IRS purposes, it does not constitute any significant additional burden to incorporate the required notification into the acknowledgement. No change has been made in response to this comment.

Section 504(d)(1) and the interim rule required notification before the recipient ''accepts'' the funds. The Corporation has advised recipients in Program Letter 96–3 that notice should be given during the course of soliciting funds or applying for a grant or contract. For unsolicited donations, the program letter states that notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants already awarded for which notice has not been given, recipients are advised in the program letter to notify the funding source before the next payment is accepted. No change has been made in response to this comment.

Finally, the notification requirement relates to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the non-profit work of the recipient. It does not include funds received from sources such as court payment to attorneys for their work under court appointments; nor does it include payments to the recipient for rent, bank interest, or sale of goods, such as manuals.

The Board determined that the substance of this section, including the under-$250 *de minimis* exception, should be retained. Nonetheless, the Board made two changes to this section in the final rule. First, in response to a comment from a recipient that receives tribal funds, paragraph (a) is revised to clarify that notification is required only when the funds are in fact restricted. Thus, when a recipient receives tribal funds to which the restrictions do not apply, no notice is required to the source of the funds. This language clarifies that notice is not required for those restrictions on non-LSC funds that are found exclusively in the LSC Act. Second, for clarity, a technical change was made to paragraph (b) by adding ''receipt of '' before contributions.

Section 1610.6 Applicability

This section in the interim rule addressed two distinct situations. Paragraph (a) addressed the applicability of this part to a recipient's use of non-LSC funds for court appointments and for certain criminal representation as permitted under section 1010(c) of the LSC Act. The rest of the section dealt with transfers of a recipient's funds.

For clarity, the final rule treats these issues in two separate sections: the subject matter of paragraph (a) becomes the whole of § 1610.6, and a new § 1610.7 (corresponding to §§ 1610.6(b) and (c) of the interim rule) is created to address the transfer of funds provisions.

Comments on paragraph (a) of the interim rule expressed concern and confusion about the scope of the paragraph. Most of the confusion focused on the paragraph's attempt to implement a provision in section 1010(c) of the LSC Act. Section 1010(c) generally requires that if a recipient's LSC funds are subject to a prohibition under the LSC Act, a recipient's private funds are also subject to the same prohibition. An exception to this requirement, however, was included in the Act for ''private attorneys, private law firms, or other State or local entities of attorneys, or * * * legal aid societies having separate public defender programs.'' This exception was intended to provide relief for these individuals and entities with limited or special grants or contracts made by the Corporation, such as demonstration grants. See Conf. Rep. No. 845 93rd Cong., 2d Sess. 30–31 (1974); Cong. Rec. H5132–33 (June 21, 1973); H3952–53 (May 16, 1974); S12629 (July 16, 1974); S12923, 12925, 12935, 12954 (July 18, 1974). The exception was also intended to allow the Corporation to fund the civil legal assistance activities of programs, such as legal aid societies, with separate public defender programs.

The new statutory conditions in the Corporation's FY 1996 appropriations act, as incorporated by the Corporation's FY 1997 appropriations act, modify this exception because the Corporation is prohibited from giving grants to any person or entity that does not comply with the conditions set out in section 504. Accordingly, the Board decided to revise paragraph (a) in the final rule to limit the exception to a recipient's public defender programs and projects which provide legal representation in criminal proceedings and actions challenging criminal convictions, and to explicitly permit such representation on behalf of aliens and prisoners. There is no conflict with the restrictions in section 504 on representation of aliens and prisoners because these restrictions apply only to civil representation. Except for the narrow category of separately funded public defender programs or projects protected by section 1010(c), LSC recipients are prohibited from engaging in or using resources for any criminal representation.

The interim rule's exception for criminal or related cases accepted by a recipient or subrecipient pursuant to a

court appointment has been retained as paragraph (b) in the final rule.

Section 1610.7 Transfers of Recipient Funds

A new § 1610.7 has been added to this rule to address the applicability of the statutory conditions listed in § 1610.2 (a) and (b) when a recipient transfers its LSC or non-LSC funds to another individual or entity (hereinafter, both ''individual'' and ''entity'' are referred to as ''entity''). This section replaces § 1610.6 (b) and (c) of the interim rule. The statutory conditions on a recipient's funds in the LSC Act and the Corporation's current appropriations act do not address the effect of these provisions on a transfer of a recipient's funds to another entity. However, as a matter of policy, the Corporation has historically applied such provisions to transfers of a recipient's funds. See, for example, 45 CFR parts 1627 and 1632 and Program Letter dated December 11, 1995. This policy reflects the intent of the Corporation that transfers of funds not become a means to circumvent statutory conditions on a recipient's LSC and non-LSC funds.

The interim rule continued this policy. Comments made it clear, however, that more specific guidance was necessary. Other comments described situations where Congressional intent would not be served by strict application of this policy. Accordingly, certain substantive changes have been made by the Board in this final rule, as described below.

Section 1610.7(a) (Transfers of LSC funds): Paragraph (a) provides that, for transfers of LSC funds, the conditions in § 1610.2 (a) and (b) of this part, except as modified by paragraphs (c) and (d) of this section, will apply to both the LSC funds and the non-LSC funds of the entity receiving those funds. This requirement is based on the Corporation's interpretation of legislative intent that the statutory conditions on LSC funds attach to a recipient's non-LSC funds and that, in most situations, this should also be the case when LSC funds are transferred by a recipient. Otherwise, recipients would be able to avoid legislative intent by simply transferring their LSC funds to other persons or entities.

Section 1610.7(b) (Transfers of non-LSC funds): This paragraph provides that, for a transfer of non-LSC funds, the conditions in § 1610.2 (a) and (b) of this part, except as modified by paragraphs (c) and (d) of this section, will apply to the funds transferred but not to the other funds of the entity receiving the funds. When a recipient transfers its non-LSC funds to an entity that has no LSC funds, the conditions remain attached to the transferred funds; but because they are not LSC funds, the other funds of the entity are not affected. The Corporation requires that the transferred non-LSC funds be subject to the conditions, because otherwise recipients would be able to avoid the conditions on their non-LSC funds by simply transferring the funds.

Section 1610.7(c): Modifications to the requirements in paragraphs (a) and (b) of this section are set out in this paragraph which provides that the § 1610.2(b) requirements regarding priorities and timekeeping be modified for entities that receive transfers of recipients' funds. The provisions on priorities and timekeeping are administrative requirements more appropriately applicable to a recipient's own use of its funds. The intent is to assure greater accountability for the recipient's use of its funds. The administrative burden of extending these requirements to all funds of an entity to which a recipient's funds are transferred would be significant.

Accordingly, the final rule applies the administrative requirements on priorities and timekeeping only to the funds transferred and only to the extent to ensure accountability for those funds. Thus, paragraph (c) requires that entities receiving a transfer of recipient funds must either use the funds consistent with the recipient's priorities or establish their own priorities for the use of those funds. In regard to timekeeping, the language tracks the statutory requirement so that such entities are required to maintain records of time spent on each case or matter undertaken with the funds transferred. However, they are not required to keep time in accordance with the Corporation's timekeeping regulation, 45 CFR part 1635.

Section 1610.7(d) (Transfers for PAI activities): Paragraph (d) responds to comments from the American Bar Association and others that pointed out that many of the individual attorneys, private firms, and bar associations that provide representation or establish projects or programs for referral of cases pursuant to a recipient's private attorney involvement program (''PAI'') would not be able to continue their involvement in PAI if involvement meant the application of all of the conditions listed in this part to their other funds.

The Board determined that a strict application of the Corporation's policy to PAI activities would significantly undermine PAI efforts. Accordingly, this paragraph provides an exception for the other funds of bar associations, private attorneys and other entities when the sole purpose of the transfer is to fund involvement in PAI activities. Such activities would include establishing judicare panels or referral services. This paragraph does not authorize any involvement in any restricted activities with the funds transferred. It is clear in this paragraph and under part 1614 that no activities inconsistent with the conditions on the use of LSC funds may be attributed to a recipient's PAI requirement under part 1614.

Section 1610.8 Accounting

This section has been renumbered from the interim rule but has not been otherwise revised. This section sets out the general accounting requirement for recipients for their non-LSC funds. Currently, recipients are directed by the accounting guidance issued by the Corporation.

List of subjects in 45 CFR Part 1610

Grant programs—law, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR part 1610 to read as follows:

PART 1610—USE OF NON–LSC FUNDS

Sec.

Authority: 42 U.S.C. 2996i; 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a) (2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Statement of facts and client identification);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(13) and 45 CFR part 1642 of the LSC Regulations (Attorneys' fees);

(10) Section 504(a)(14) (Abortion litigation);

(11) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(12) Section 504(a)(16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

(13) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(14) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a transfer of a recipient's funds for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

§ 1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

§ 1610.4 Authorized use of other funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with section 504.

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than $250.

§ 1610.6 Applicability.

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

§ 1610.7 Transfers of recipient funds.

(a) For a transfer of LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply both to the funds transferred and to the non-LSC funds of the person or entity.

(b) For a transfer of non-LSC funds, the prohibitions and requirements referred to in this part, except as modified by paragraphs (c) and (d) of this section, will apply to the funds transferred, but will not apply to the other non-LSC funds of the person or entity.

(c)(1) In regard to the requirement in § 1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC or non-LSC funds shall either:

(i) Use the funds transferred consistent with the recipient's priorities; or

(ii) Establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in § 1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC or non-LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(d) For a transfer of LSC or non-LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

§ 1610.8 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct

receipts and disbursements in a manner directed by the Corporation.

Dated: November 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–30619 Filed 11–29–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1617

Class Actions

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (''Corporation'' or ''LSC'') interim regulation concerning class actions. The revisions are intended to implement a restriction contained in the Corporation's Fiscal Year (''FY'') 1996 appropriations act which is currently incorporated by reference in the Corporation's FY 1997 appropriations act. The restriction prohibits the involvement of LSC recipients in class actions.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the LSC Board of Directors' (''Board'') requested LSC staff to prepare an interim rule to implement § 504(a)(7), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which prohibited involvement of LSC recipients in class actions. The Committee held public hearings on staff proposals on July 8 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal Register. Although the interim rule was effective upon publication, see 61 FR 41963 (Aug. 13, 1996), the Corporation also solicited comments on the rule for review and consideration by the Committee and Board.

The Corporation received 7 comments on the interim rule. The Committee held public hearings on the rule on September 29, 1996, and made several recommendations for revisions to the Board. The Board adopted this final rule on September 30, 1996.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Pub. L. 104–208, 110 Stat. 3009. It incorporated by reference the § 504 condition on LSC grants included in the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the appropriate section number of the FY 1996 appropriations act.

The interim rule was intended to implement a clear prohibition in the Corporation's FY 1996 appropriations act on any participation in class actions by LSC recipients. Other than providing a transition period for programs to withdraw from pending cases, the appropriations act provided no exceptions and allowed for no Corporation waivers to the prohibition. The legislative history of this provision indicates an intent that legal services programs should focus their resources on representation of individual poor clients and not be involved in any class actions. Accordingly, the interim rule contained a strict prohibition on participation in class actions with no exceptions or waivers. This final rule continues the interim rule's strict prohibition but better clarifies those activities that constitute participation in class actions.

A section-by-section discussion of this final rule is provided below.

Section 1617.1 Purpose

The purpose of this rule is to prohibit involvement by LSC recipients in class actions.

Section 1617.2 Definitions

The definition of ''class action'' in the interim rule deferred to widely accepted Federal and local court rules and statutory definitions. Thus, a class action for the purposes of this part was defined as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure governing the action in the court where it is filed. No comments challenged the definition, and no changes have been made to the definition in this final rule.

The definition of ''initiating or participating in any class action'' in the interim rule was intended to clarify that any involvement in a class action is prohibited prior to an order granting relief. Public comments on part 1617 generally asked for more clarity as to the scope of the definition. In general, the Board decided that it should state in the rule that all participation, whether before or after entry of an order, is prohibited; and the final rule reflects that change. In addition, the Board decided to address some of the specific issues addressed by the comments.

One comment urged the deletion of ''non-adversarial'' before ''monitoring,'' stating that any action, even an adversarial action, should be allowed once an order granting relief has been issued. The Board did not take this approach. Participation in adversarial actions, even after entry of an order, constitutes active participation in a class action, and such involvement is not permitted under the law. The use of the term ''non-adversarial'' was intentional. The Corporation meant to prohibit any adversarial action after relief is granted, and the term is retained in this final rule. Furthermore, the term ''monitoring'' is replaced with ''activities'' because its use seemed to imply a more active role for recipients than was intended.

Comments further indicated that the rule should be more explicit about the types of activities the Corporation considers to be adversarial and non-adversarial. Accordingly, this final rule adds language to clarify what would be considered to be non-adversarial. Non-adversarial activities would include efforts to remain informed about the terms of an order granting relief as well as efforts to explain, clarify, educate or give advice about an order granting relief.

One comment questioned the use of the term ''legal assistance'' in the definition of ''initiating or participating in any class action.'' Because the term as defined in 45 CFR part 1600 has a different focus than is intended in this definition, the Board changed ''legal assistance'' to ''representation.''

Other comments suggested deleting the language in the definition that prohibits program attorneys from assisting their clients to ''withdraw from'' or ''opt out of'' a class action. The comments stated that the inclusion of the language in the definition goes beyond the intent of the statutory restriction and has the opposite effect of ''participating'' in a class action. Arguing that representation to withdraw from or opt out of a class action may be essential to allow individual representation, the comments urged the Corporation to change the rule to allow such representation.

The Board agreed that efforts to withdraw from a class action are consistent with the Congressional intent that LSC recipients provide representation to individual clients and should not be viewed as efforts to participate or to be included in a class action. The Board revised paragraph (b) of the definition of ''initiating or participating in any class action'' to clarify that the definition does not include the representation of an individual client seeking to withdraw from or opt out of a class by deleting reference to withdrawing or opting out from the definition. This change only authorizes actions by a recipient

necessary to ensure that its client is not included in the class or that any class order would not apply to the recipient's client. Any other activity in the case, however, is not permitted.

In summary, the final rule clarifies the definition of ''initiating or participating in any class action'' as extending to all types of involvement at all stages of a class action. Recipients may not initiate a class action or participate in one initiated by others, either at the trial or appellate level, nor may they continue involvement in a case that is later certified or otherwise determined by the court to be a class action. However, in response to comments on a situation where the recipient's client does not file for or move for certification of a class action, the Board requested that the following example be included in this commentary regarding the definition of ''initiating or participating in a class action'': In a case where the recipient files or otherwise initiates action to have the case certified as a class action, participation in the case is prohibited from the point that the recipient takes such actions. On the other hand, if the recipient is representing a client in a pending action that was not filed as a class action, and another party moves to have the case certified as a class action, the recipient will not be deemed to be participating in a class action until the court certifies it as such. Finally, recipients may not act as amicus curiae or co-counsel in a class action or intervene in a class action on behalf of individual clients who seek to intervene in, modify, or challenge the adequacy of the representation of a class. Finally, recipients may not represent defendants in a class action.

Certain situations are not within the definition and are thus not prohibited by this rule. For example, recipients may advise clients about the pendency of a class action or its effect on the client and what the client would need to do to benefit from the case. Recipients may represent an eligible client in withdrawing from or opting out of a class action. Furthermore, the definition of a class action would not include a mandamus action or injunctive or declaratory relief actions, unless such actions are filed or certified as class actions.

Recipients may also represent an individual client seeking the benefit of the order, provided that any such involvement is only on behalf of an individual client and does not involve representation of an entire class and may represent an individual client seeking to withdraw from or opt out of a class.

Section 1617.3 Prohibition

This section prohibits LSC recipients from initiating or participating in any class action.

Section 1617.4 Recipient Policies and Procedures

This section requires recipients to adopt written policies and procedures to guide the recipient's staff in ensuring compliance with this rule.

List of Subjects in 45 CFR Part 1617

Grant programs—law, Legal services.

For reasons set out in the preamble, LSC revises 45 CFR part 1617 to read as follows:

PART 1617—CLASS ACTIONS

Sec.
1617.1 Purpose.
1617.2 Definitions.
1617.3 Prohibition.
1617.4 Recipient policies and procedures.

Authority: 29 U.S.C. 2996e(d)(5); 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

§ 1617.1 Purpose.

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b)(1) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to or after an order granting relief. ''Involvement'' includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(2) *Initiating or participating in any class action* does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§ 1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: November 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–30620 Filed 11–29–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1632

Redistricting

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (''LSC'' or ''Corporation'') regulation on redistricting to implement a new restriction contained in the Corporation's Fiscal Year (''FY'') 1997 appropriations act, which extends the rule's prohibition to all the funds of recipients.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8910.

SUPPLEMENTARY INFORMATION: The prior LSC regulation on redistricting that is revised by this final rule allowed recipients to use some non-LSC funds on redistricting activities. New legislation, enacted as Section 504(a)(1) of the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), went further than the Corporation's prior rule and prohibited the Corporation from providing financial assistance to any person or entity (''recipient'') that makes available any funds, personnel or equipment for use in advocating or opposing any plan, proposal or litigation that is intended to or has the effect of altering, revising or reapportioning a legislative, judicial or elective district at any level of government, including influencing the timing or manner of the taking of a census. This legislative restriction prohibited recipient involvement in redistricting activities, regardless of the source of funds used for such activities. The Corporation's FY 1997 appropriations act continues this restriction, Pub. L. 104–208, 110 Stat. 3009, by incorporating by reference the restrictions in the FY 1996 appropriations act.

On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the Corporation's Board of Directors (''Board'') requested LSC staff to prepare an interim rule to implement the new statutory restriction on redistricting activities. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal

Register. The Committee recommended and the Board agreed to publish the rule as an interim rule. However, the Corporation also solicited public comment on the rule for review and consideration by the Committee and Board.

One comment was received by the Corporation on this rule which expressed approval of the interim rule and made no recommendations for changes. The Committee held public hearings on the interim rule on September 29, 1996, and made a recommendation to the Board on September 30, 1996, to adopt the interim rule as a final rule with no revisions. The Board adopted the rule as recommended.

A section-by-section discussion of the final rule is provided below. See note 1.

Section 1632.1 Purpose

The purpose section implements the new statutory restrictions on involvement of LSC recipients in redistricting activities. The prior rule [1] was not based on any express statutory restriction, but on policies adopted by a former board of directors.

Section 1632.2 Definitions

Section 1632.2 is amended by revising the definition of ''redistricting'' and adding paragraph designations to the definitions. The revision to ''redistricting'' is not substantive and is only intended to track more closely the statutory restriction contained in the Corporation's appropriations act.

Section 1632.3 Prohibition

The prohibition in § 1632.4(a) of the prior rule has been revised and renumbered as § 1632.3(a) to track the statutory restriction in the Corporation's appropriations act. Also, some language which simply restates the definition of redistricting has been deleted, since its repetition was confusing and unnecessary. Paragraph (b) clarifies that not all litigation brought under the Voting Rights Act of 1965 is prohibited. Only litigation which involves redistricting activities as defined by this rule is prohibited.

Section 1632.4 Recipient Policies

A new § 1632.4 requires recipients to adopt written policies to implement the requirements of this part.

[1] References to the ''prior rule'' refer to the rule prior to the interim rule. Because the interim rule and final rule are the same, explanations of the revisions here are essentially the same as in the interim rule.

Miscellaneous Changes

All provisions of the prior rule's § 1632.4 on permissible activity have been deleted. Paragraph (a) of the prior rule, on litigation brought under the Voting Rights Act, has been moved and is now included in § 1632.3 of this final rule. Paragraph (b) of the prior rule was deleted because it was contrary to current law as it would have allowed a recipient to use some non-LSC funds for redistricting activities. Such use of non-LSC funds is now prohibited by this final rule as required by LSC's appropriations act. Finally, paragraphs (c) and (d) in the prior rule have been deleted, because they simply restate law that is already reflected in other regulations.

List of Subjects in 45 CFR Part 1632

Grant programs—law; Legal services.

For reasons set forth in the preamble, 45 CFR part 1632 is revised to read as follows.

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Recipient policies.

Authority: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 3009; 110 Stat. 1321(1996).

§ 1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§ 1632.2 Definitions.

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, *recipient* includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§ 1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

Dated: November 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–30621 Filed 11–29–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1633

Restriction on Representation in Certain Eviction Proceedings

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (''LSC'' or ''Corporation'') interim regulation that prohibits the representation of persons in public housing eviction proceedings when such persons have been charged with or convicted of engaging in certain illegal drug activity. The prohibition in the prior rule applied only to LSC funds. This rule is revised to implement new legislation that extends the prohibition to a recipient's non-LSC funds. Revisions are also made to respond to comments received by the Corporation.

DATES: This final rule is effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8910.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's regulation, 45 CFR Part 1633, prohibits recipients from representing persons in public housing eviction proceedings when such persons have been charged with or convicted of engaging in certain illegal drug activity. The prior rule applied the prohibition only to a recipient's LSC funds. The interim rule extended the prohibition to a recipient's non-LSC funds as required by § 504(a)(17) of the Corporation's Fiscal Year (''FY'') 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996). The Corporation's FY 1997 appropriations act, Pub. L. 104–208, 110 Stat. 3009 (1996), retains the restriction by incorporating Section 504 of the FY 1996 appropriations act by reference.

Background

In order to implement the new statutory restriction in its FY 1996 appropriations act, on May 19, 1996, the Operations and Regulations Committee (''Committee'') of the LSC Board of Directors (''Board'') requested LSC staff to prepare an interim rule. The Committee held hearings on staff proposals on July 9 and 19, and the Board adopted an interim rule on July 20 for publication in the Federal Register. However, the Corporation also solicited public comment on the interim rule for review and consideration by the Committee and Board.

Nine comments were received by the Corporation, and the Committee held public hearings on Sept. 29, 1996, to review the comments and consider revisions to the interim rule. The Committee made several recommendations to the Board for revisions to the rule based largely on the comments. The Board adopted the Committee's recommendations as a final rule on September 30, 1996.

Generally, the revisions to this final rule, as did the interim rule, implement § 504(a)(17) of Public Law 104–134, which prohibits the Corporation from providing funds to recipients that defend persons in public housing eviction proceedings who have been charged with certain illegal drug activities, regardless of the source of the funds used to pay for the representation. In addition, revisions have been made in response to comments requested by the Corporation on policy guidelines announced by the United States Department of Housing and Urban Development (''HUD'') in March 1996, after the LSC Board initially adopted part 1633 on February 24, 1996.

A section-by-section discussion is provided below.

Section 1633.1 Purpose

This section is revised to reflect new law that applies the prohibition in this rule to all of a recipient's funds. The final rule retains the language of the interim rule.

Section 1633.2 Definitions

The definition of ''charged with'' has been revised to better conform with the intent of the rule. While the interim rule left the language of this section unchanged from the prior rule, the Board revised the definition of ''charged with'' in this final rule to better conform with the overall intent of the rule. The revised definition clarifies that a person must be charged by a governmental entity having the authority to make such charges. The prohibition on representation applies only when a formal charge of illegal drug activity, whether by information or indictment or their equivalent, has been made by the appropriate authority and is pending against a person, or when there has been a conviction. Thus, the prohibition on representation of a person does not apply when a charge has been dismissed or the person has been acquitted of the illegal drug activity. *See* 63 FR 14250–14251 (April 1, 1996).

Section 1633.3 Prohibition

Except for the change which extended the prohibition in this section to a recipient's non-LSC funds, the interim rule did not alter the prior rule. In this final rule, however, the Board has made further changes in response to the comments received as a result of the Corporation's request for comments on conforming the rule to the new HUD policy guidelines on public housing evictions.

The Corporation received 8 comments opposed to extending the rule's prohibition to incorporate the HUD policies. On the other hand, the Corporation also received one comment from the Public Housing Authorities Directors Association (''Housing Association''), which represents approximately 1700 public housing authorities, suggesting several changes to conform to the HUD policy.

One element of the HUD policy requires housing authorities to include in each tenant's lease a provision holding the leaseholder responsible for the actions of all members of the household and guests. The Housing Association suggested that, because housing authorities are now required by law to initiate eviction proceedings against a household ''even if the illegal activity was not undertaken by the head of the household,'' the Corporation should adopt this policy in part 1633. Comments opposing the inclusion of this policy in part 1633 stated that innocent tenants should not be denied representation in eviction proceedings because of the alleged actions of another family member. These comments explained that most of these innocent tenants are poor and legal services programs may be their only source of representation. According to one comment, the innocent family members often need legal protection from the drug abuser and to single them out for denial of legal assistance would ''stand justice on its head.''

The LSC Board agreed that the prohibition should not be extended to family members. Section 504(a)(17), which expressly limits the prohibition to the person who has been charged with certain drug activities, does not require the Corporation to adopt the HUD policy. While the HUD policy may require housing authorities to begin eviction proceedings based on the activity of other family members in the drug abuser's household, no legislation prohibits legal services attorneys from representing such family members regarding their eviction.

The Housing Authority also commented that the underlying legislation for this rule is deficient in that it does not apply the restriction on representation to a person who has been charged with the manufacture and use of a controlled substance. The prohibition in the interim rule tracked the statutory language and only prohibited representation of persons who have been charged with the illegal sale or distribution of a controlled substance.

The Board agreed to revise the final rule to add other drug activities that would pose a danger to the people in the housing communities. The Board determined the changes to be consistent with the Congressional intent to address the evil of drug dealing in public housing projects. Thus, the rule now prohibits a recipient from defending any person in an eviction proceeding if that person ''has been charged with or has been convicted of the illegal sale, distribution or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute.''

Another issue raised by the Housing Association was whether part 1633 is intended to give legal services programs the authority to determine whether, in a particular case, the drug activity constitutes a threat to the health and safety of the housing project's tenants. The Board agreed that the rule already clearly assumes that such authority lies with the Housing Authorities. Recipients are prohibited from representing a client when a Housing Authority has brought an eviction proceeding on the basis that the drug activity threatens the health and safety of the other tenants. Since it is the Housing Authority that brings the eviction proceeding and the proceeding must be based on the health and safety factor, then it is the decision of the Housing Authority that is operative for the purposes of this rule. Accordingly, no changes were made in the final rule to address this concern.

The Housing Association also recommended that more specific language be used in the rule stating that eviction proceedings contemplated by this rule may be initiated even when the illegal drug activity takes place outside

of the housing premises. The Board determined that there is no need to address this issue in the rule. There is nothing in the rule that limits the prohibition to drug activity on the housing premises. It is the decision of the Housing Authority whether to allege that illegal drug activity threatens the health or safety of other tenants, regardless of where it has taken place. When an eviction proceeding is initiated alleging such a threat and the other terms of the rule are met, legal services programs may not provide representation to the persons charged with the violations.

Finally, the Housing Association opposed the provision in the interim rule that representation is prohibited if ''the person has been charged with or, within one year, prior to the date when services are requested from a recipient, has been convicted of the illegal sale or distribution of a controlled substance.'' [emphasis added]. According to the Housing Association, this one-year provision exceeds statutory authority and ''does not adequately address the wide variety of circumstances that are associated with illegal drug activities.'' The Board agreed to delete the one-year provision on the grounds that it is unnecessary, because a Housing Authority must allege and presumably demonstrate in court that drug related activities are a current threat to the health and safety of the other tenants. The Board did make a revision to § 1633.3(b) of the final rule, however, to clarify that the illegal drug activity for which the person has been charged currently threatens the health and safety of other tenants.

List of Subjects in 45 CFR Part 1633

Grant programs-law, Legal services.

For reasons set forth in the preamble, 45 CFR part 1633 is revised to read as follows:

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.
1633.1 Purpose.
1633.2 Definitions.
1633.3 Prohibition.
1633.4 Recipient policies, procedures and recordkeeping.

Authority: 42 U.S.C. 2996e(a), 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e); 110 Stat. 3009; 110 Stat. 1321 (1996).

§ 1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) *Controlled substance* has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) *Charged with* means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

§ 1633.3 Prohibition.

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: November 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–30622 Filed 11–29–96; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1, 2, 15, 24 and 97

[ET Docket No. 93–62]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rules adopted in the *Report and Order* regulations, which were published on August 7, 1996 (61 FR 41006). The rules relate to the permissible exposure limits from FCC-regulated transmitters as contained in § 1.1307.

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT:

David Sylvar, Office of Engineering and Technology, (202) 418–2424.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of these corrections, supersede § 1.1307 with respect to evaluating the environmental effect of radio frequency radiation. In addition, § 1.1301, § 2.1091, and § 2.1093 have been added to further define and clarify the FCC's requirements under the National Environmental Policy Act of 1969.

Need for Correction

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

Correction of Publication

Accordingly, the publication on August 7, 1996 the final rules in ET Docket 93–62, which were the subject of FR Doc. 96–20082, is corrected as follows:

1. Page 41011, first column, second paragraph, the third sentence is revised to read as follows:

''Of these 295 owners, 158 or 54 percent had annual revenues of 10.5 million or less.''

2. Page 41011, first column, third paragraph, the first sentence is revised to read as follows:

''In summary, based on the foregoing extreme analysis using census data, we estimate that our rules will apply to as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities.''

3. Page 41011, second column, first paragraph, the second sentence is revised to read as follows:

''That represents approximately 32 percent of commercial radio stations.''

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–30662 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 96–88; RM–8760]

Radio Broadcasting Services; Two Rivers and Manitowoc, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A to Two Rivers, Wisconsin, as that community's first local service in response to a petition filed by Lyle Robert Evans d/b/a High Mark Radio Company. *See* 61 FR 18539, April 26, 1996. The coordinates for Channel 255A are 44–03–00 and 87–39–42. There is a site restriction 13.5 kilometers (8.4 miles) southwest of the community. We shall also take this opportunity to make an editorial amendment to the FM Table by deleting Channel 272A at Two Rivers, Wisconsin, and adding Channel 272A at Manitowoc, Wisconsin. With this action, this proceeding is terminated.

DATES: Effective December 30, 1996. The window period for filing applications for Channel 255A at Two Rivers, Wisconsin, will open on December 30, 1996, and close on January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–88, adopted November 8, 1996, and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 255A at Two Rivers, and by removing Channel 272A at Two Rivers and adding Channel 272A at Manitowoc.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30586 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 950815208–6299–02; I.D. 080295B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Electronic Reporting

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

ACTION: Final rule.

SUMMARY: NMFS is implementing regulations that will require all catcher/processor vessels, mothership processor vessels, and shoreside processors subject to observer coverage to have electronic communication equipment, hardware, and software necessary for electronic transmission of observer data. These requirements do not apply to processors that do not process groundfish. The equipment is intended for use by observers. Electronic submission of observer data is necessary to reduce both the time and expense of collecting fishery information by providing real-time data and to improve the overall efficiency of fisheries management. The action is intended to further the objectives of the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATE: July 1, 1997.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action may be obtained from Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) are managed by NMFS in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMPs are implemented by regulations that appear at 50 CFR part 679.

Timely communication between the fishing industry and NMFS is a critical element of successful fisheries management. Observers submit reports of catch to the NMFS Observer Program Office. These reports are crucial to effective inseason management of the groundfish quotas and prohibited species bycatch allowances. At present, most observer reports are submitted by fax and often must be resubmitted to obtain a readable copy. Catch data from these reports must then be verified and keypunched into an inseason management database. As a result, transmission and processing of faxed reports is costly, time-consuming, and can be inefficient for both NMFS and the industry. Because of the method by which reports are currently submitted and the burden of data entry, information available for management is often not current with the real-time status of the fishery. Electronic communication of observer reports would greatly improve management efficiency and reduce the costs associated with report submission and processing. Implementation of requirements for hardware and software that would support electronic transmission of inseason data in a more timely and efficient way would benefit both NMFS and the industry.

This rule requires each processor vessel subject to observer coverage under regulations at § 679.32(c) and § 679.50 to have the following equipment: A personal computer (PC) in working condition that contains a full 486DX 66Mhz or greater capacity processing chip, at least 16 megabytes of RAM, at least 75 megabytes of free hard disk storage, DOS version 6.0 or a successor version of the DOS operating system, Windows 3.1, 3.11, or Windows95 (or equivalent and

compatible software approved by NMFS), a 3.5-inch floppy disk drive, a 28.8kbs Hayes-compatible modem (except with the Standard C units) and a mouse. For vessel processors, the above-mentioned equipment must be connected to either an INMARSAT Standard C unit or a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols:

ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Those processors that use an INMARSAT Standard C unit are not required to have the 28.8kbs Hayes-compatible modem. NMFS is including the Standard C unit in the list of acceptable requirements at the present time to accommodate those vessels that are currently using Standard C communications. However, the Standard C unit does not conform to the requirement to have a point-to-point modem connection; therefore, this unit may be removed from the list of required equipment in the future once less expensive point-to-point methods become available. NMFS expects the Standard C transmission costs to be approximately $60–80 per week, based on a compressed 11KB file. The 486DX computer equipment specified above is the minimum requirement; however, greater processing capacity is preferable and would run the NMFS-supplied software more efficiently.

Equipment that differs from these specifications would not operate the data-entry software that allows electronic data transmission to NMFS. Not all computer hardware and software and satellite systems are compatible, and it would be economically and practically inefficient to set up multiple systems to transmit and collect the same information.

For shoreside processors, the required equipment must be connected to a communication device that provides point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols:

ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34.

The above-specified hardware requirements for shoreside and at-sea processors do not apply to processors that do not process groundfish.

NMFS published a notice of proposed rulemaking on August 31, 1995 (60 FR 45393), which specified proposed hardware and software equipment that processors subject to observer coverage would be required to provide for use by the observer. Reasons for these requirements were addressed in that notice. Public comment was invited through September 29, 1995. One letter of comments was received and is summarized and responded to below in the ''Response to Comments'' section.

NMFS has made the following changes to the final rule from the proposed rule: NMFS has modified the final rule to include performance based standards for electronic communication instead of requiring specific satellite communication units. This change is in response to general industry comments received at a meeting on August 8, 1996. The proposed rule required INMARSAT Standard A, B, or C units. Under the final rule, Standard A and B units would conform to the performance standards and are still acceptable. As mentioned above, NMFS will continue to accept the Standard C unit until inexpensive point-to-point technology is available.

NMFS has determined that some updates to the computer equipment are necessary. The new requirements specify increased RAM and hard disk storage space, and update the DOS operating system to version 6.0, as well as including Windows95 in the list of acceptable operating systems.

NMFS has also removed some software requirements that were included in the proposed rule. NMFS intends to take a more graduated approach to implementation of the electronic hardware and software intended to support the Observer Program operations. The hardware and some software requirements will be established in this final rule for mid 1997. The Observer Program Office intends to work with the industry to install the observer data entry software and communications package. After all of the software has been installed, NMFS intends to initiate rulemaking later in 1997 to require full function compliance with the Observer Program data entry and electronic communications software. This approach will provide both NMFS and the industry ample time and opportunity to resolve any unexpected operational details.

NMFS intends to continue to explore new technology to improve electronic communications, including the future use of the Internet. NMFS encourages the public to provide information on the feasibility of applying new communications technology to at-sea operations, as well as means to facilitate shoreside transmission of data.

This final rule amends a final rule implementing a revised observer coverage plan that was published in the Federal Register on November 1, 1996 (61 FR 56425).

Response to Comments

Comment: The requirement for electronic reporting will force the vessel owners to spend in excess of $30,000 to purchase and install the satellite system for the sole purpose of submitting observer data to NMFS. The cost to install the system is significant and will cause economic hardship for the vessel. NMFS is urged to reconsider this requirement for 1995.

Response: In response to industry comments, NMFS has modified the final rule from the proposed rule to specify certain performance standards, outlined in the preamble to this rule, for the communication technology instead of requiring specific INMARSAT technology. The performance standards encompass an INMARSAT Standard A or B satellite communication unit for transmission of observer data from at-sea vessels. Alternatively, the industry could use other methods that conform to the performance standards. On an interim basis, vessels will also be permitted to use the INMARSAT Standard C unit. By establishing performance standards, NMFS has potentially increased the scope of acceptable units and provided more flexibility to the industry. Currently, however, approximately 75 percent of the affected industry has either an INMARSAT A or C unit. For those vessels that choose to purchase an INMARSAT A unit, the cost would be approximately $30,000; however, an INMARSAT C unit would cost from $4,000 to $6,000.

Comment 2: Does the current NMFS computer system have all of the problems worked out and will it accept all of these transmissions?

Response 2: NMFS has been receiving data transmissions from some groundfish processor vessels via satellite communications for several years. Vessels that have these communications systems voluntarily transmit data electronically, because it is a cheaper and more effective means of data submission. NMFS has also implemented regulations requiring certain processor vessels that participate in specified fisheries to provide satellite communication capability for transmission of observer data (60 FR 34904, July 5, 1995). These requirements provide a reliable and efficient means of submitting and receiving observer data for timely inseason management of groundfish fisheries. NMFS also intends to implement the hardware and some software requirements first and allow gradual implementation of the data entry software and communications

package to provide the opportunity for any potential problems to be resolved.

Classification

The Assistant General Counsel for Legislation and Regulation, Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant impact on a substantial number of small entities. Although this regulation would affect a substantial number of small entities, such as a number of shoreside processors, the effects on those processors are not anticipated to cause a reduction in annual gross revenues by more than 5 percent, have annual compliance costs that increase total costs of production by more than 5 percent, or impose compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. This rule would require the processors to obtain some computer hardware and software, which many of them already have. They would also incur costs to transmit data, but the cost is estimated to be small. One comment was received concerning the issue of the cost of the required equipment. NMFS has responded to this issue above. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control number 0648–0307. NMFS estimates an installation time of approximately 9–13 hours for the satellite communication units. Data transmission time is estimated at no more than ten minutes for each observer report. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.50, paragraphs (f)(1)(iii)(B)(*1*) and (f)(2)(iii)(B)(*1*) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(B) * * *

(*1*) *Hardware and software.* Providing for use by the observer a personal computer in working condition that contains a full 486DX 66Mhz or greater capacity processing chip, at least 16 megabytes of RAM, at least 75 megabytes of free hard disk storage, DOS version 6.0 or a successor version of the DOS operating system, Windows 3.1, 3.11, or Windows95 (or equivalent and compatible software approved by NMFS), a mouse, and a 3.5-inch floppy disk drive. The computer equipment specified in this paragraph (B) must be connected to either an INMARSAT Standard C unit capable of transmitting binary files or a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Those processors that use other than an INMARSAT Standard C unit must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

* * * * *

(2) * * *

(iii) * * *

(B) * * *

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full 486DX 66Mhz or greater capacity processing chip, at least 16 megabytes of RAM, at least 75 megabytes of free hard disk storage, DOS version 6.0 or a successor version of the DOS operating system, Windows 3.1, 3.11, or Windows95 (or equivalent and compatible software approved by NMFS), at least a 28.8kbs Hayes-compatible modem, a mouse, and a 3.5-inch floppy disk drive. The computer equipment specified in this paragraph (B) must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

* * * * *

[FR Doc. 96–30635 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 61, No. 232
Monday, December 2, 1996

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AH67

Excepted Service—Schedule A Authority for Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend the Schedule A excepted service appointing authority used by agencies to fill positions in temporary organizations at GS–15 and below. These regulations would delete the maximum grade level limitation to permit agencies to make such appointments also to Senior Level positions.

DATES: Comments must be received on or before January 31, 1997.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: The Schedule A authority for appointing staff in temporary organizations was established in 1979. It permits agencies to fill positions on the staffs of temporary boards and commissions established by law or Executive order for specified periods not to exceed 4 years. The authority also permits appointments in temporary organizations established within existing agencies to perform work outside the agency's continuing responsibilities. Currently appointments can only be made at GS–15 and below.

OPM has authority to except positions under Schedule A when examining for them is impracticable. Temporary boards and commissions established by law or Executive order need to be staffed and become operational immediately. The urgency of the staffing needs does not permit use of normal appointment procedures.

When the authority was originally established there was no need to include positions above GS–15, because the executive assignments system covered positions at grades GS–16, 17 and 18. Under this system positions could be filled noncompetitively in the competitive service by limited executive assignments. Agencies used this authority to appoint individuals to temporary organizations.

The Federal Employees Pay Comparability Act of 1990 abolished grades GS–16, 17, and 18, and the executive assignment system, and established the Senior Level system. Unlike the executive assignment system, the Senior Level system does not provide for noncompetitive time-limited appointments. Agencies, therefore, have no mechanism to staff temporary organizations quickly with individuals above the GS–15 level. Removal of the GS–15 limit would restore to agencies the staffing flexibility they had prior to 1990.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures used to appoint certain employees in Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; and Pub. L. 103–353.

2. In § 213.3199, the first sentence of paragraph (a) and the introductory text in paragraph (b) are revised to read as follows:

§ 213.3199 Temporary organizations.

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. * * *

(b) Positions on the staffs of temporary organizations within continuing agencies when all of the following conditions are met: * * *

* * * * *

[FR Doc. 96–30596 Filed 11–29–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–89–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Model 58P and 58PA Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required the following on Raytheon Aircraft Company (formerly Beech Aircraft Corporation) Model 58P and 58PA airplanes: inspecting for cracks and missing rivets in the cabin structure (longeron) adjacent to and aft of the second right-hand (RH) cabin window, and repairing any cracked structure and installing rivets, if missing. The Federal Aviation Administration (FAA) has received several reports of airplanes with cracks in the cabin structure which are also missing rivets that should have been installed in the cabin structure to secure the frame, splice, and longeron together. The missing rivets could lead to cabin structure cracks, and therefore

prompted the previously proposed AD action.

Since publication of that proposal, the FAA has determined that the proposed action is still a valid safety issue, but that cracks have also been reported in the RH lower longeron and that this area should also be inspected for cracks, repaired if there are cracks and re-reinforced if no cracks are found. This proposed new action revises the previous proposal by incorporating this change. The actions specified by the proposed AD are intended to prevent structural cracking to the cabin caused by missing rivets, which if not corrected, could cause decompression injuries to passengers, structural damage to the fuselage, and loss of the airplane.

Since the comment period for the original proposal has closed and the change described above goes beyond the scope of what was originally proposed, the FAA is allowing additional time for the public to comment.

DATES: Comments must be received on or before February 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–89–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Aircraft Corporation (Beech) Model 58P and 58PA airplanes was published in the Federal Register on February 8, 1996 (61 FR 4756). The action proposed to require inspecting for cracks and missing rivets in the cabin structure (upper longeron) adjacent to and aft of the second right-hand (RH) cabin window, and repairing any cracked structure and installing rivets, if missing. After the proposed notice was published, the name of the manufacturer changed from Beech Aircraft Corporation to Raytheon Aircraft Company (Raytheon). The model designation in the applicability section of the proposed AD remains the same.

Since publication of the proposal, additional reports have been received regarding cracking in another area of the longeron. The FAA has re-examined all information related to this subject and determined that the right-hand (RH) lower longeron between two doublers adjacent to the lower aft side of the RH second cabin window should also be inspected for cracks, repaired, if cracked, and re-reinforced, if no cracks are found.

Accomplishment of the proposed inspection, repair and installation would be in accordance with Beechcraft Service Bulletin (SB) No. 2630, Issued: November, 1995, and Raytheon Aircraft Mandatory SB No. 2691, Rev. 1, Issued: June, 1996; Revised: October, 1996.

The FAA estimates that 386 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours to accomplish the inspection and that the average labor rate is approximately $60 an hour. In estimating the total cost impact of the proposed AD on U.S. operators, the FAA is only using the proposed inspection criteria (3 workhours). This estimate is based on the assumption that no affected airplane will have missing rivets or a cracked longeron. Based on these figures, the total cost impact of the proposed AD on U. S. operators is estimated to be $69,480 or $180 per airplane.

If, during the proposed inspection, cracks are found and rivets are missing, the estimated costs for accomplishing the following proposed actions would be:

—2 workhours to install rivets at an estimated cost of $125 per airplane ($120 for labor and $5 for rivets),

—8 workhours to repair any crack in the designated area of the RH upper longeron at an estimated cost of $675 per airplane ($480 for labor and $195 for parts),

—6 workhours to re-reinforce the RH lower longeron at an estimated cost of $460 per airplane ($360 for labor and $100 for parts), or

—16 workhours to repair any crack found in the RH lower longeron at an estimated cost of $2,060 per airplane ($960 for labor and $1,100 for parts).

Raytheon has informed the FAA that parts have been distributed to equip approximately 19 airplanes. And, for a period of one year from the date of issue of the service bulletin, Raytheon is allowing warranty credit for parts and labor on all affected airplanes.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

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

Raytheon Aircraft Company: Docket No. 95–CE–89–AD.

Applicability: Models 58P and 58PA airplanes, having the following serial numbers, and certificated in any category:

Serial Numbers Listed in Beech Service Bulletin (SB) No. 2630

TJ–2 through TJ–177
TJ–179
TJ–181 through TJ–212
TJ–214 through TJ–270
TJ–272 through TJ–283
TJ–285 through TJ–288
TJ–290 through TJ–313
TJ–315 through TJ–321
TJ–323, TJ–324
TJ–326 through TJ–368, and
TJ–370 through TJ–497

Serial Numbers Listed in Raytheon SB No. 2691

TJ–2 through TJ–121
TJ–123 through TJ 394
TJ–396 through TJ–497

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished:

To prevent structural cracking to the cabin caused by missing rivets, which if not corrected, could cause decompression injuries to passengers, structural failure of the fuselage, and loss of the airplane, accomplish the following:

(a) Inspect cabin window upper longeron (next to the upper aft splice) between the second and third right-hand (RH) cabin side windows for cracks and missing rivets in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beechcraft Mandatory (Beech) Service Bulletin (SB) No. 2630, Issued: November 1995.

(1) If cracks are found in the longeron, prior to further flight, repair the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2630, Issued: November 1995.

(2) If rivets are found missing, prior to further flight, install the rivets in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2630, Issued: November 1995.

(b) Inspect the RH lower longeron between the two doublers adjacent to the lower aft side of the RH second cabin window for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART I of Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

(1) If cracks are found, prior to further flight, repair the cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART II in Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

(2) If no cracks are found, prior to further flight, reinforce the RH lower longeron in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART III in Raytheon Mandatory SB No. 2691, Rev. 1, Issued: June, 1996, Revised: October 1996.

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

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

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

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

Issued in Kansas City, Missouri, on November 25, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–30576 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ANM–23]

Proposed Removal of Class D Airspace and Establishment of Class E Airspace; Coeur d'Alene, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM), reopening of comment period.

SUMMARY: On September 9, 1996, the FAA proposed to remove Class D Airspace and establish Class E Airspace at Coeur d'Alene, Idaho. This action is the result of decommissioning the air traffic control tower at Coeur d'Alene Air Terminal, Idaho. The Notice of Proposed Rulemaking (NPRM), as published, inadvertently omitted the removal of Class E4 airspace associated with the Class D airspace action. The part-time airspace verbiage was also omitted. Also, an error was identified with the 4,800-foot MSL ceiling for the proposed airspace designation. This Supplemental Notice of Proposed Rulemaking (SNPRM) corrects those errors and omissions and provides an additional comment period.

DATES: Comments must be received on or before December 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–23, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–5322, Federal Aviation Administration, Docket No. 96–ANM–23, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of SNPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviataion Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation regulations (14 CFR part 71) to remove Class D airspace, along with the associated Class E4 airspace designation, and establish Class E airspace at Coeur d'Alene, Idaho. Changes to the airspace designations are as follows: (1) The Class E4 airspace designation would be removed and the airspace would be incorporated within the Class E2 airspace. (2) The part-time airspace verbiage will be added to the Class E airspace designation to reflect a non-twenty four hour operation. (3) The 4,800-foot MSL ceiling, not associated with Class E2 airspace areas, would be removed. The FAA published an NPRM on this proposal on September 9, 1996 (61 FR 47465). Since issuance of the NPRM, the FAA has discovered errors in the proposal. Changes to the proposal to correct these errors are significant enough to warrant issuance of a SNPRM and reopening of the comment period.

Comments received in response to the original NPRM and this SNPRM would be addressed in the final disposition of the rule. The area would be depicted on aeronautical charts for pilot reference. Class D and Class E airspace areas are published in Paragraphs 5000, 6002, and 6004 respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order. The Class D and E4 airspace descriptions listed in this document would be removed subsequently from the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM ID D Coeur d'Alene, ID [Remove]

* * * * *

Paragraph 6004 Class E Airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM ID E4 Coeur d'Alene, ID [Remove]

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM ID E2 Couer d'Alene, ID [New]

Coeur d'Alene Air Terminal, ID
(lat. 47°46′28″N, long. 116°49′11″W)
Coeur d'Alene VOR/DME
(lat. 47°46′25″N, long. 116°49′14″W)

Within a 4.4-mile radius of the Coeur d'Alene Air Terminal and within 3.5 miles each side of the Coeur d'Alene VOR/DME 251 degree radial extending from the 4.4-mile radius to 6 miles southwest of the airport and within 1.8 miles each side of the Coeur d'Alene VOR/DME 183 degree radial extending from the 4.4-mile radius to 8 miles south of the airport. This Class E airspace is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on November 13, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–30640 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–30]

Proposed Amendment to Class E Airspace; Deland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Deland, FL, An amendment to the VOR or GPS RWY 30 Standard Instrument Approach Procedure (SIAP) has been developed for the Deland Muni-Sidney H. Taylor Field Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

DATES: Comments must be received on or before January 20, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–30, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–30.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Deland, FL. An amendment to the VOR or GPS RWY 30 SIAP has been developed for the Deland Muni-Sidney H. Taylor Field Airport. Additional controlled airspace extending upward from 700 feet above the surface ((AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Deland, FL [Revised]

Deland Muni-Sidney H. Taylor Field Airport, FL
(lat. 29°04′00″ N, long. 81°17′03″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Deland Muni-Sidney H. Taylor Field Airport, excluding that airspace within the Daytona Beach, FL Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 21, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30641 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–35]

Proposed Establishment of Class E Airspace, Apalachicola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notices proposes to establish Class E airspace at Apalachicola, FL. A NDB RWY 13 and a NDB RWY 31 Standard Instrument Approach Procedures (SIAP's) have been developed for Apalachicola Municipal Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to

accommodate this SIAP and for instrument flight rules (IFR) operations at Apalachicola Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comment must be received on or before January 20, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–35, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing to FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–35.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability Of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Apalachicola, FL. A NDB RWY 13 and NDB RWY 31 SIAP's have been developed for Apalachicola Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Apalachicola Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Apalachicola, FL [News]

Apalachicola Municipal Airport, FL
(lat. 29°43′46″N, long. 85°01′44″W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Apalachicola Municipal Airport.

* * * * *

Issued in College Park, Georgia, on November 21, 1996.

Benny L. McGlamery,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30642 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–34]

Proposed Amendment to Class E Airspace; Eglin AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Eglin AFB, FL. A GPS RWY 32 Standard Instrument Approach Procedure (SIAP) has been developed for the Destin-Fort Walton Beach Airport, Destin, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 20, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–34, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–34.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Class E airspace at Eglin AFB, FL. A GPS RWY 32 SIAP has been developed for the Destin-Fort Walton Beach Airport, Destin, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Eglin AFB, FL [Revised]

Eglin AFB, FL
(lat. 30°29′13″N, long. 86°31′34″W)
Eglin AF Aux No. 3 Duke Field
(lat. 30°39′07″N, long. 86°31′23″W)
Hurlburt Field
(lat. 30°25′44″N, long. 86°41′20″W)
Destin-Fort Walton Airport
(lat. 30°24′01″N, long. 86°28′19″W)
Fort Walton Beach Airport
(lat. 30°24′23″N, long. 86°49′45″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Eglin AFB, Eglin AF Aux No. 3 Duke Field and Hurlburt Field, and within a 7.8-mile radius of Destin-Fort Walton Beach Airport; excluding that airspace within the Crestview, FL, Class E airspace area and a 1.5-mile radius of Fort Walton Beach Airport.

* * * * *

Issued in College Park, Georgia, on November 21, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30643 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–36]

Proposed Establishment of Class E Airspace; Hazard, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Hazard, KY. A VOR/DME RWY 14 and a GPS RWY 14 Standard Instrument Approach Procedures (SIAP's) have been developed for Wendell H. Ford Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at Wendell H. Ford Airport.

The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before January 20, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–36, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–36.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, GA 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Hazard, KY. A VOR/DME RWY 14 and a GPS RWY 14 SIAP's have been developed for Wendell H. Ford Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAP's and for IFR operations at Wendell H. Ford Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Hazard, KY [New]

Wendell H. Ford Airport, KY
(lat. 37°23′16″N, long. 83°15′43″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Wendell H. Ford Airport.

* * * * *

Issued in College Park, Georgia, on November 21, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–30644 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 96N–0320]

Radiology Devices; Proposed Classifications for Five Medical Image Management Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration is proposing to classify five generic types of radiology devices that provide functions related to medical image communication, storage, processing, and display. Under the proposal, the medical image storage device and the medical image communications device would be classified into class I (general controls),

and would be exempted from the requirement of premarket notification when they do not use irreversible compression. The medical image digitizer, the medical image hardcopy device, and the picture archiving and communications system would be classified into class II (special controls). The agency is publishing in this document the recommendations of the Radiology Devices Panel regarding the classification of these devices. After considering public comments on the proposed classifications, FDA will publish a final regulation classifying these devices. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: Written comments must be submitted on or before March 3, 1997. FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after the date of its 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: Loren A. Zaremba, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. Classification of Medical Devices

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three classes of devices are class I (general controls), class II (special controls), and class III (premarket approval). Procedures for the original classification of devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), are set forth in section 513 of the act and in 21 CFR 860.84. In accordance with these procedures, devices are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device.

A device that is first offered in commercial distribution after May 28, 1976, and that FDA determines to be substantially equivalent to a device classified under this scheme is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807. A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed device is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking proceedings.

Section 513(d)(2)(A) of the act authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. If FDA has concerns only about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, FDA may exempt a device from the requirement of premarket notification except when a manufacturer intends to use a different material.

To date, FDA has classified a total of 70 generic types of radiology devices (see 53 FR 1554, January 20, 1988; 54 FR 5077, February 1, 1989; and 55 FR 48436, November 20, 1990). With the exception of the magnetic resonance diagnostic device (21 CFR 892.1000), all of these 70 generic devices are of a type that were on the market before the enactment of the 1976 amendments. Of the 70 generic types of radiology devices, FDA exempted 8 from the requirement of premarket notification (54 FR 13826, April 5, 1989, and 59 FR 63005, December 7, 1994); of the 8 exempt devices, FDA exempted 7 with no limitations. The nuclear scanning bed (21 CFR 892.1350), however, is exempt only when the device is labeled with the weight limit, is used with planar scanning only, and is not intended for diagnostic x-ray use.

B. Medical Image Management Devices

Developments in electronic data communications and storage technologies in recent years have led to the introduction of a number of radiological devices that are intended for use in the management of medical images after acquisition (Refs. 1 and 2). For digital modalities such as computed tomography (CT), magnetic resonance imaging (MRI), ultrasound, digital subtraction angiography, and computed radiography, the images are acquired in digital form and therefore lend themselves immediately to digital image management techniques. For analog devices such as conventional x-ray, devices have been developed to convert film images into a digital format.

A number of acronyms are used to describe medical image management devices, such as picture archiving and communications systems (PACS) and image management and communications systems (IMACS). The acronyms arise from the fact that the devices are principally utilized for the communication and storage of images. However, the digital format also facilitates the application of image processing and enhancement techniques, and these techniques are now available as features on many of these products.

The digital format utilized in medical image management devices provides a number of advantages, including the ability to transmit and receive images rapidly with high fidelity when used with digital communications technology. The devices, when utilized with electronic media such as random access memory (RAM), hard disks, and optical disks, also allow compact storage with rapid retrieval capability (Ref. 3).

However, image viewing is inherently an analog process. Presently, image display is performed using video monitors or hardcopy, and both are subject to limitations (Refs. 4, 5, and 6). Current video monitors do not provide brightness comparable to film/lightbox viewing, which limits the number of discernable grey levels. Also, the highest resolution video monitors presently available are 2048 x 2048 pixels, and the majority in clinical use are 1024 x 1024 pixels or less. Consequently, the number of addressable pixels on the video monitor can limit the available spatial resolution if that number is less than the matrix

size of the original image (which is always the case for an original x-ray film image). Laser and video printers are available for converting digital images to hardcopy, but this conversion process involves a sacrifice of the communication and storage advantages of the digital technology.

Many of the medical image management products included in this proposal did not exist when the radiological device classifications were first proposed in 1982. However, FDA has generally treated them as accessories to the imaging modalities (e.g., x-ray systems, CT scanners, and MRI systems) with which they are used, consistent with the identifications of these modalities. For example, the medical image digitizer and medical image hardcopy device (multiformat camera) have been considered to be accessories to the stationary x-ray system (21 CFR 892.1680) and computed tomography x-ray system (21 CFR 892.1750), respectively.

A significant expansion in the technical characteristics and functions of medical image management products has taken place in recent years so that the identification of many of these products as accessories to a specific radiological imaging modality is no longer entirely accurate. For example, medical image hardcopy devices, medical image storage devices, medical image communications devices, and picture archiving and communications systems are frequently intended for use with most or all imaging modalities. The classification action described in this proposal would establish independent classifications for medical image management products, consistent with their multimodality use.

FDA originally developed a guidance document for the submission of premarket notifications for PACS devices in 1991, which the agency updated in August 1993 (Ref. 7). This document outlines the suggested information for a premarket notification for PACS devices and related components. However, because no specific classifications have been established for these devices, uncertainty exists among manufacturers regarding whether medical image management products are medical devices and whether premarket notifications are required. The establishment of separate classifications for medical image management devices will help clarify the regulatory status of these devices. At the same time, the agency is proposing to exempt two of these devices from the requirement of premarket notification, with limitations. These exemptions will enable the agency to concentrate its resources on the evaluation of more critical products, and they will make it easier for manufacturers of the exempt devices to bring them to market.

It should be noted that the classifications will usually not apply to general purpose products, such as general purpose software, digital communications devices, and storage devices, that are not intended for medical use. These products are not considered to be medical devices. However, when they are intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, or prevention of disease, or are intended to affect the structure or any function of the body, they are devices within the meaning of section 201(h) of the act (21 U.S.C. 321(h)). Intended use may be revealed by how the product is labeled, or if it is included as a component of a system labeled for medical use.

II. Panel Recommendations

The Radiological Devices Panel (the Panel), an FDA advisory committee, met on August 29, 1994, to review the proposed classifications. The Panel concluded that the proposed identifications are adequate, clear, and sufficiently inclusive.

The Panel recommended that medical image storage devices and medical image communications devices be placed in Class I and that devices that do not use irreversible compression be exempted from the requirement of premarket notification. As its reason for this recommendation, the Panel stated its belief that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices. The Panel recommended that devices that do not use irreversible compression be exempted from the requirement of premarket notification because these products are transparent to the user and FDA review of premarket notifications are unnecessary for the protection of the public health.

The Panel recommended that medical image digitizers, medical image hardcopy devices, and picture archiving and communications systems be placed in Class II. The Panel stated as reasons for this recommendation the need for special controls, such as voluntary performance standards and testing guidelines, to ensure their safe and effective use. The Panel based its recommendations on its review of the studies cited in this document, premeeting briefing materials, and on the Panel members' personal knowledge of, and experience with, these devices. The Panel listed inadequate or inaccurate data leading to improper diagnosis as risks to health associated with the use of these devices. The Panel listed Digital Imaging and Communications in Medicine (DICOM), Joint Photographic Experts Group (JPEG), and Society of Motion Picture and Television Engineers (SMPTE) as relevant standards.

At the August 29, 1994, Panel meeting, representatives of the National Electrical Manufacturers Association (NEMA) stated opposition to the establishment of a separate classification for picture archiving and communications systems, recommending instead that FDA limit the classifications to components of such systems. However, the Panel dismissed this objection, noting that a manufacturer would have the option of obtaining marketing clearance for the entire system or for individual components. FDA believes that the establishment of a classification for PACS is needed because it is not feasible to establish separate classifications for all possible PACS components. The classification for PACS is intended to include those devices associated with medical image transmission, storage, processing, and display for which separate classifications have not been established. Also, the PACS classification will apply to the majority of premarket notifications for medical image management devices which are submitted for systems rather than for individual components. NEMA and other interested parties may submit alternative classification schemes in response to this proposal.

Summary minutes and a verbatim transcript of the Panel meeting have been placed in the Dockets Management Branch (address above).

III. Proposed Classifications

Based upon the types of equipment described in past and current premarket notifications, FDA has identified five generic types of radiology devices that provide functions relating to medical image management: The medical image communications device, the medical image storage device, the medical image digitizer, the medical image hardcopy device, and the picture archiving and communications system.

A. Medical Image Communications Devices and Medical Image Storage Devices

The two most basic types of medical image management devices are communications and storage products. A medical image communications device provides electronic transfer of

medical image data between medical devices. It includes the physical communications media (e.g., a twisted pair or fiber optic cable), modems, interfaces, and communications protocols that are marketed as part of the device. However, it does not include elements of the communications infrastructure, such as commercial telephone lines.

A medical image storage device is a device that provides electronic storage and retrieval functions for medical images. A medical image storage device may be comprised of microprocessors, interfaces, software, and one or more storage media. Examples of storage media include magnetic and optical discs, magnetic tape, and digital memory (e.g., RAM).

The safety and efficacy issues associated with these devices may be categorized as data integrity and device compatibility. An extremely high level of integrity has been achieved in electronic data transmission and storage through the use of modern error-checking methods, so that FDA does not consider data integrity to be a significant problem.

For a number of years device compatibility was a serious concern for image communications and storage devices because many manufacturers utilized proprietary image file formats. However, the American College of Radiology (ACR) and NEMA have developed a protocol for sharing digital images between medical devices called DICOM. This standard (Ref. 8) has been incorporated by a number of manufacturers into their new products and several companies are offering interfaces to convert the proprietary image formats utilized in older equipment to the DICOM format. Consequently, the compatibility issue is of decreasing concern.

However, in recent years there has been a marked increase in the number of devices that utilize data compression techniques to reduce image transmission time and data storage requirements (Ref. 9). The utilization of data compression has been accelerated by the development of the JPEG standard and the commercial availability of microprocessors for performing JPEG compression (Ref. 10). Data compression methods are of two types, reversible or irreversible. Reversible data compression methods are such that the original image data may be retrieved following the compression process. With irreversible data compression methods, portions of the original data are irretrievably lost. Irreversible data compression is generally done so as to sacrifice information that is least likely to be useful to the reader, e.g., higher spatial frequencies (fine detail).

The current version of the guidance document for the submission of premarket notifications for PACS devices suggests specific labeling for devices that use irreversible data compression. The guidance document suggests that video image displays and hardcopy images that have been subjected to irreversible compression should display a message stating that irreversible compression has been applied and should state the approximate compression ratio. This message is consistent with the *ACR Standard for Teleradiology* (Ref. 11), which requires that transmitting stations must have annotation capabilities that include the degree of compression.

FDA currently receives and evaluates a large number of premarket notifications for medical image communications and storage devices each year. Many of these devices are transparent to the user, i.e., the input and output data are identical. Consequently, FDA is proposing that they be placed in Class I and be exempted from the requirement of premarket notification. Granting these exemptions will allow the agency to make better use of its resources and thus better serve the public.

FDA is not proposing to exempt devices that perform irreversible compression from the requirement of premarket notification. At present there is a great deal of activity in the development and clinical evaluation of algorithms for the irreversible compression of medical image data. Review of premarket notifications for devices that use irreversible compression will provide FDA with the opportunity to evaluate these algorithms on an individual basis to ensure that their suitability for use in the medical application has been demonstrated.

B. Medical Image Digitizers and Hardcopy Devices

The medical image digitizer is a device that converts an analog medical image into a digital format. Most radiological examinations are still conducted with x-ray film as the image receptor and digitizers provide a means for converting the film information to digital form. Medical image hardcopy devices provide the opposite function, i.e., they convert an image from an electronic form to a visual printed record.

The principal types of digitizers currently in use are frame grabbers, charge coupled devices (CCD's), and laser scanners. Frame grabbers may be coupled to the video output of the imaging device, or to the output of a video camera placed over the film. CCD's may be linear scanners or arrays. The various types of digitizers differ in spatial resolution, range of film density that can be digitized, and grey level discrimination capability. A discussion of performance differences and appropriate testing and quality control procedures for various types of digitizers is in Ref. 12.

The most common examples of hardcopy devices are multiformat cameras and laser printers. Multiformat cameras produce copies by exposing film to an image on a video monitor. Laser printers produce copies by modulating a laser beam that is scanned over the film. Recently, FDA has granted marketing clearance to devices that produce reflective paper hardcopy by means of inkjet, laser/dry silver, and thermal processes. As with digitizers, the quality of the hardcopy that can be obtained depends on the design of the device. However, most of the standard measures of image quality are applicable to hardcopy devices, and recommendations have been made regarding appropriate testing and quality control procedures. A description of such procedures using the SMPTE test pattern is in Ref. 5. The use of this pattern is also recommended in the *ACR Standard for Teleradiology*.

The performance characteristics of both digitizers and hardcopy devices can have a significant influence on diagnostic capability and patient care. Also, adequate quality control procedures are needed to ensure their continued performance. FDA is working with voluntary standards groups to develop standardized specifications, test methods, and quality control procedures for digitizers and hardcopy devices. The attention that has been given to the problems associated with performance and quality control in the literature and by standards groups indicates that special controls (e.g., voluntary standards) are needed to ensure the safety and efficacy of these devices. Consequently, FDA is proposing that they be placed in Class II.

C. Picture Archiving and Communications System

A picture archiving and communications system is defined in this proposal as a device that provides one or more capabilities relating to the acceptance, transfer, display, storage, and processing of medical images. This classification is intended to include products that combine several functions and that are marketed as PACS systems. It would include systems ranging in

complexity from teleradiology products (small, portable devices that transmit images over phone lines and enable an on-call radiologist to review images in his/her home) to large fixed systems that utilize fiber optic networks and are capable of transmitting and storing images for an entire hospital or group of hospitals.

Another common example of this device is the medical image workstation, which is generally comprised of a computer, video monitor, and storage device. The computer generally utilizes software related to data communications, file management, and image processing. The classification is also intended to include devices which provide image-related capabilities, and for which there are no other specific classifications, such as image processing software and video monitors.

Software is an important component of a PACS device. It is generally responsible for data file organization and also may provide image processing functions such as filtering (e.g., edge enhancement), measurement (e.g., distance, area, and volume determinations), and special image displays (three dimensional surface and volume rendering). Stand-alone software marketed for use in PACS devices would be included in this classification unless it is general purpose software that is not intended for a medical use.

Video monitors are also an important component of PACS devices. Manufacturers have generally not submitted separate premarket notifications for monitors, but rather have included them in submissions for devices such as workstations. Some video monitors are general purpose consumer products. However, most monitors used in medical imaging are specialized devices with high brightness and spatial resolution (1,000 lines or greater). These monitors can take the place of film and their characteristics can have a significant effect on the ability of health professionals to make a diagnosis.

A discussion of the important performance characteristics of video monitors (e.g., luminance, dynamic range, distortion, resolution, and noise) and the need for standards is in Ref. 4. The National Information Display Laboratory is currently working with Committee JT–20 of the Electronic Industries Association (EIA) to develop standardized procedures for measuring the performance of cathode ray tube (video monitor) displays (Ref. 13). Also, Working Group XI of the ACR/NEMA Committee is currently developing a standard display function for video monitors (Ref. 14).

FDA is proposing to classify picture archiving and communication systems into Class II. FDA believes that special controls such as standardized performance specifications, measurement methods, and quality control procedures are necessary to assure the safety and efficacy of these devices. Documents addressing these subjects have been or are currently being developed by the ACR, NEMA, and EIA.

If a PACS device includes components that would otherwise be exempt from the requirement of premarket notification (e.g., general purpose, communication, or storage devices), the premarket notification for the system would not be required to include a demonstration of substantial equivalence for the exempt components.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''PACS, A NEMA Primer,'' published by the National Electrical Manufacturer's Association, compiled by the members of the MEDPACS Section of the Diagnostic Imaging and Therapy Systems Division, November 1988.

2. Choplin, R. H., J. M. Boehme, and C. D. Maynard, ''Picture Archiving and Communications Systems: An Overview,'' *Radiographics*, vol. 12, No. 1, 1992.

3. Frost, M. M., J. C. Honeyman, and E. V. Staab, ''Image Archival Technologies,'' *Radiographics*, vol. 12, No. 2, 1992.

4. Dwyer, S. J. et al., ''Performance Characteristics and Image Fidelity of Gray-Scale Monitors,'' *Radiographics*, vol. 12, No. 4, 1992.

5. Gray, J. E. et al., ''Multiformat Video and Laser Cameras: History, Design Considerations, Acceptance Testing and Quality Control,'' Report of AAPM Diagnostic X-ray Imaging Committee Task Group No. 1, *Medical Physics*, vol. 20, No. 2, Part 1, March/April 1993.

6. Kato, H., ''Hard- and Soft-Copy Image Quality,'' in ''Syllabus: A Categorical Course in Physics—Physical and Technical Aspects of Angiography and Interventional Radiology,'' edited by Stephen Balter and Thomas B. Shope, presented at the 81st Scientific Assembly and Annual Meeting of the Radiological Society of North America, November 26–December 1, 1995, RSNA Publications, Oak Brook, IL.

7. ''Guidance for Content and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices,'' Office of Device Evaluation, Center for Devices and Radiological Health, August 1993.

8. Bidgood, W. D., and S. C. Horii, ''Introduction to the ACR–NEMA DICOM Standard,'' *Radiographics*, vol. 12, No. 2, 1992.

9. Zaremba, L. A., and R. A. Phillips, ''Image Compression—Regulatory Issues and Policies,'' presented at the 35th Annual Meeting of the American Association of Physicists in Medicine, Washington, DC, August 8–12, 1993.

10. Wallace, G. K., ''The JPEG Still Picture Compression Standard,'' *Communications of the ACM*, vol. 34, No. 4, April 1991.

11. ''ACR Standard for Teleradiology,'' available from the American College of Radiology, Reston, VA.

12. Trueblood, J. H., S. E. Burch, K. Kearfott, and K. W. Brooks, ''Radiographic Film Digitization,'' in ''Digital Imaging, Medical Physics Monograph 22,'' edited by W. R. Hendee and J. H. Trueblood, Medical Physics Publishing, Madison, WI, 1993.

13. ''Display Monitor Measurement Methods Under Discussion by EIA (Electronic Industries Association) Committee JT–20,'' National Information Display Laboratory, Princeton, NJ.

14. Blume, H., S. Daly, and E. Juka, ''Presentation of Medical Images on CRT Displays: A Renewed Proposal for a Display Function Standard,'' Proceedings of the SPIE, vol. 1987, pp. 215–231, 1993.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) 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.

VI. Analysis of Impacts

FDA has examined the impact 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 therefore 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 the agency believes only a small number of firms will be affected by this rule when finalized, and because the burdens associated with the

classification of these devices into Class I and Class II, as proposed, is significantly less than those associated with the alternative classification into Class III, 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.

VII. Request for Comments

Interested persons may, on or before March 3, 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.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 892 be amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New §§ 892.2010, 892.2020, 892.2030, 892.2040, and 892.2050 are added to subpart B to read as follows:

§ 892.2010 Medical image storage device.

(a) *Identification*. A medical image storage device is a device that provides electronic storage and retrieval functions for medical images. Examples include devices employing magnetic and optical discs, magnetic tape, and digital memory.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device stores images without performing irreversible data compression.

§ 892.2020 Medical image communications device.

(a) *Identification*. A medical image communications device provides electronic transfer of medical image data between medical devices. It may include a physical communications medium, modems, interfaces, and a communications protocol.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device transfers images without performing irreversible data compression.

§ 892.2030 Medical image digitizer.

(a) *Identification*. A medical image digitizer is a device intended to convert an analog medical image into a digital format. Examples include systems employing video frame grabbers, and scanners which use lasers or charge-coupled devices.

(b) *Classification*. Class II.

§ 892.2040 Medical image hardcopy device.

(a) *Identification*. A medical image hardcopy device is a device that produces a visible printed record of a medical image and associated identification information. Examples include multiformat cameras and laser printers.

(b) *Classification*. Class II.

§ 892.2050 Picture archiving and communications system.

(a) *Identification*. A picture archiving and communications system is a device that provides one or more capabilities relating to the acceptance, transfer, display, storage, and digital processing of medical images. Its hardware components may include workstations, digitizers, communications devices, computers, video monitors, magnetic, optical disk, or other digital data storage devices, and hardcopy devices. The software components may provide functions for performing operations related to image manipulation, enhancement, compression, or quantification.

(b) *Classification*. Class II.

Dated: November 17, 1996.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96–30650 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket 96–237; FCC 96–456]

Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 22, 1996, the Commission adopted a *Notice of Proposed Rulemaking*, as part of the Commission's implementation of the Telecommunications Act of 1996 (the 1996 Act), to initiate a rulemaking proceeding to implement new Section 259 (Infrastructure Sharing) of the Communications Act of 1934 (the Act), as amended. Section 259 generally requires an incumbent local exchange carrier (incumbent LEC) to make available to a defined ''qualifying carrier,'' such ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' as the qualifying carrier may request, in service areas where the qualifying carrier has requested and obtained designation as an eligible carrier under Section 214(e). Section 259(a) directs the Commission to prescribe regulations that implement this requirement within one year after the date of enactment of the 1996 Act, *i.e.*, by February 8, 1997.

DATES: Comments are due on or before December 20, 1996. Reply comments are due on or before January 3, 1997. Written comments by the public on the proposed and/or modified information collections are due on or before December 20, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before January 31, 1997.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Suite 222, Washington, D.C. 20554, with a copy to Scott Bergmann of the Common Carrier Bureau, Federal Communications Commission, 2033 M Street, N.W., Suite 500, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to

filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952. For additional information concerning the information collections proposed in the *Notice of Proposed Rulemaking* contact Dorothy Conway, at (202) 418–0217, or via the Internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* adopted November 22, 1996 and released November 22, 1996 (FCC 96–456). The full text of this *Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, Washington, D.C. 20554. This *Notice of Proposed Rulemaking* contains proposed and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed and/or modified information collections contained in this proceeding. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Paperwork Reduction Act

This *Notice of Proposed Rulemaking* contains a proposed information collection subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections in this *Notice of Proposed Rulemaking.* Comments should address: (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 Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments by the public on the proposed and/or modified information collections are due December 20, 1996, and reply comments are due January 3, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. 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.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W. Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov

OMB Approval Number: None.

Title: Policy and Rules Concerning the Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket 96–237.

Form Number: Not Applicable.

Type of Review: New Collection.

Respondents: Business or other for profit, including small businesses.

Burden Estimate:

Section/Title	Respondents	Est. time per resp.	Frequency	Annual burden
(1) Section 259(b)(7) Filing of Tariffs, Contracts or Other Arrangements * * *.	75	1 hour	5 per year	375 hours.
(2) Section 259(c) Information Concerning Deployment of New Services and Equipment * * *.	75	2 hours	12 per year	1800 hours.

Total Annual Burden: 2175 total hours.

Estimated Costs Per Respondent: $0.00.

Needs and Uses: The information collections for which approval is sought are contained in new Section 259 (''Infrastructure Sharing'') of the Communications Act of 1934 (the Act), as amended. The information collections proposed pursuant to Section 259(c) in this *Notice of Proposed Rulemaking* will provide notice to third parties (qualifying carriers) of changes in the incumbent local exchange carrier's network that might affect the parties' ability to fully benefit from Section 259 agreements. In addition, the information collected pursuant to Section 259(b)(7) will make available for public inspection any tariffs, contracts or other arrangements showing the conditions under which the incumbent LEC is making available public switched network infrastructure and functions pursuant to Section 259. Failing to collect the information would violate the language and the intent of the 1996 Act to ensure that access to the evolving, advanced telecommunications infrastructure would be made broadly available in all regions of the nation at just, reasonable and affordable rates.

Summary of the Notice of Proposed Rulemaking

1. The Commission adopted the *Notice of Proposed Rulemaking (NPRM),* as part of its implementation of the Telecommunications Act of 1996 (the 1996 Act), to initiate a rulemaking proceeding to implement new Section 259 (''Infrastructure Sharing'') of the Communications Act of 1934 (the Act), as amended. Section 259 generally requires an incumbent local exchange carrier (incumbent LEC) to make available to a defined ''qualifying carrier,'' such ''public switched network infrastructure, technology, information, and telecommunications facilities and

functions'' as the qualifying carrier may request, in service areas where the qualifying carrier has requested and obtained designation as an eligible carrier under Section 214(e). Section 259(a) directs the Commission to prescribe regulations that implement this requirement within one year after the date of enactment of the 1996 Act, *i.e.*, by February 8, 1997.

2. The *NPRM* poses questions relating to the scope of required infrastructure sharing (Section 259(a)), and to the specific directives Congress has imposed on the Commission regarding the terms and conditions of implementing regulations (Section 259(b)), network service and equipment information sharing (Section 259(c)), and the definition of qualifying carriers (Section 259(d)). For example, the *NPRM* asks whether Section 259 was intended by Congress to provide opportunities for small carriers that lack an extensive infrastructure in order to promote the pro-competitive and universal service goals of the 1996 Act. The *NPRM* tentatively concludes that Section 259 is complementary to other Commission pro-competitive undertakings implementing Sections 251, 252 and 254 of the Act, and that implementing regulations for Section 259 should, accordingly, reflect and not contradict Commission decisions in the CC Docket 96–45 Universal Service proceeding.

3. Section 259(a) directs the Commission, within one year after the date of enactment of the 1996 Act, to prescribe regulations that require incumbent LECs to make certain ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' available to any qualifying carrier in the service area in which the qualifying carrier has requested and obtained designation as an eligible carrier under Section 214(e). Section 259(b) directs the Commission to refrain from requiring actions by incumbent LECs that are economically unreasonable or contrary to the public interest. The Commission may permit, but shall not require, joint ownership or operation of public switched network infrastructure and services, and must ensure that incumbent LECs are not treated as common carriers by virtue of exercising their Section 259 obligations. Section 259(b) further directs the Commission to establish guidelines implementing infrastructure sharing pursuant to just and reasonable terms and conditions that permit the qualifying carrier to ''fully benefit'' from the economies of scale and scope of the incumbent LEC. The Commission must establish conditions to promote cooperation between incumbent LECs and qualifying carriers. The Commission may not require incumbent LECs to make available ''services or access'' that would be provided to consumers by the qualifying carrier in the incumbent LEC's ''telephone exchange area.'' The Commission must also require the incumbent LEC to file with the Commission or state ''any tariffs, contracts, or other arrangements that show rates, terms, and conditions'' under which the incumbent LEC is making available ''public switched network infrastructure and functions'' pursuant to Section 259.

4. Section 259(c) requires incumbent local exchange carriers that have entered into infrastructure sharing agreements to ''provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.'' Section 259(d) defines a ''qualifying carrier'' as a telecommunications carrier that:

> (1) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and (2) offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under Section 214(e).

47 U.S.C. 259(d)(1), (d)(2). Section 214(e) provides that a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support and shall, throughout the service area for which designation is received, offer services that are supported by federal universal service support mechanisms promulgated under Section 254(c), either by using its own facilities or a combination of its own facilities and resale of another carrier's services. Section 214(e) also states how eligible telecommunications carriers shall be designated.

5. The *NPRM* contains a detailed set of questions to allow commenters to assist the Commission in interpreting these provisions. In some instances, the draft *NPRM* sets out tentative conclusions. For example, the *NPRM* tentatively concludes that it would be inappropriate to construe that part of the definition of qualifying carrier set out in Section 259(d)(2) because that determination depends upon the definition of universal service that will be decided by the Commission in the universal service proceeding (*i.e.*, after the Federal-State Joint Board proffers its recommendations in early November 1996). In other instances, however, no tentative conclusions are proffered. For example, in construing Section 259(b)(4) the Commission must determine how to ensure that qualifying carriers benefit from economies of scale and scope enjoyed by incumbent LECs. To achieve this, the *NPRM* asks whether Section 259 conveys to the Commission the power to establish pricing rules or guidelines for infrastructure, technology, information, and telecommunications facilities and functions.

Initial Regulatory Flexibility Act Analysis

6. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996 (*NPRM* or *Infrastructure Sharing NPRM).* Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in the *NPRM* but they must have a separate and distinct heading designating them as responses to this IRFA. The Secretary shall send a copy of this *Infrastructure Sharing NPRM* including the IRFA, set out below, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

7. Need for and Objectives of the Proposed Rules: The Commission is issuing this *NPRM* to implement the infrastructure sharing provisions in Section 259 of the 1934 Act, as added by the Telecommunications Act of 1996. Section 259 directs the Commission, within one year after the date of enactment of the 1996 Act, to prescribe regulations that require incumbent LECs to make certain ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' available to any qualifying carrier in the service area in which the qualifying carrier has requested and obtained designation as an eligible carrier under Section 214(e).

8. *Legal Basis for the Proposed Rules:* The legal basis for action as proposed in

the *NPRM* is Sections 1–5, 201–205, 218, and 259 of the Communications Act of 1934 as amended, 47 U.S.C. 151–155, 201–205, 218, and 259.

9. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:* For the purposes of this analysis, we examined the relevant definition of ''small entity'' or ''small business'' and applied this definition to identify those entities that may be affected by the rules proposed in this *NPRM*. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.

10. Section 259 of the 1934 Act, as added by the 1996 Act, establishes a variety of infrastructure sharing obligations. Many of the obligations proposed in the *Infrastructure Sharing NPRM* would apply solely to providing incumbent LECs. Also potentially affected by these proposed rules are the class of carriers designated as ''qualifying carriers'' under Section 259. Qualifying carriers will likely include small local exchange carriers and many of these carriers are likely to be small business concerns for the purposes of RFA analysis.

11. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of ''small entity'' and ''small business concerns'' for the purpose of this IRFA. We believe that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. However, out of an abundance of caution and prudence, in this IRFA we shall include a discussion of the number of small incumbent LECs affected by these proposed rules to remove any possible issue of RFA compliance. Therefore, we shall use the distinct term ''small incumbent LECs'' to refer to any incumbent LECs that conceivably might be defined by the SBA at a subsequent date as ''small business concerns'' despite our conclusions that they are dominant in their fields of operation. We seek comment on the conclusions above.

12. We are first required to estimate the number of small incumbent LECs that may be affected by the proposed decisions and rules. Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a non-radiotelephone company qualifies as a ''small entity'' when it employs fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as ''small business concerns'' under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and we seek comment on this conclusion.

13. Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service (TRS). This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated (prong 1 of the SBA definition of small business concerns as set out *supra*), or have more than 1,500 employees (prong 3), we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in this *NPRM*.

14. The proposals in this NPRM apply not only to the providing incumbent LECs that are required to enter into infrastructure sharing agreements pursuant to Section 259, but also to qualifying carriers. Qualifying carriers are telecommunications carriers that meet the two requirements set out in Section 259(d). Because Section 259(d)(1) limits qualifying carriers to those carriers that ''lack economies of scale or scope,'' it is likely that there will be small business concerns affected by the rules proposed in this *NPRM*. We note, however, that the definition of ''qualifying carriers'' is dependent on the Commission's decisions in the universal service proceeding. Until the Commission issues an order pursuant to the *Universal Service NPRM* that addresses Section 214(e) eligibility issues, it is not feasible to define the number of ''qualifying carriers'' that may be ''small business concerns.''

15. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*: As discussed in Part III. A. of the *NPRM*, incumbent LECs may be required to make available to defined qualifying carriers ''such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier[s].'' We believe that compliance with such requests may require the use of legal, engineering, technical, operational, and administrative skills. In addition, incumbent LECs are required to file with the Commission or state for public inspection any tariffs, contracts or other arrangements showing the conditions under which an incumbent LEC is making available public switched infrastructure and functions. Should a small incumbent LEC be subject to this requirement, we anticipate that it will require use of legal and administrative skills. The statute also requires incumbent LECs to provide ''timely information on the planned deployment of telecommunications services and equipment'' to any parties to infrastructure sharing agreements. Should a small incumbent LEC be subject to this requirement, we anticipate that it will require use of engineering, technical, operational, and administrative skills. We seek comment on the impact of these proposals on small entities. We seek comment on whether the entities subject to Section 259 will otherwise have the personnel or other resources to meet Section 259

requirements as a result of their efforts to comply with other provisions of the 1996 Act, *i.e.*, Section 251.

16. *Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives*: We anticipate that the impact of this proceeding should be beneficial to small businesses since they may be able to share infrastructure with larger incumbent LECs, in certain circumstances, enabling small carriers to provide telecommunication services or information services that they otherwise might not be able to provide without building or buying their own facilities. The *Infrastructure Sharing NPRM* contains a detailed set of questions to allow commenters to assist the Commission in interpreting Section 259, including the following significant provisions of Section 259 that may impact small entities.

17. Section 259(a) requires the Commission to adopt regulations to ensure that incumbent LECs make available, to defined qualifying carriers, ''public switched network infrastructure, technology, information, and telecommunications facilities and functions.'' Qualifying carriers are defined in Section 259(d) as carriers that lack economies of scale or scope and that request and obtain designation to receive universal service support pursuant to Section 214(e). As a result of this limitation on the carriers that qualify for Section 259 sharing arrangements, we ask whether, in fact, the purpose of Section 259 is to benefit small carriers. In addition, we ask whether there is a relationship between carrier size, however defined, and a determination that the carrier either has or lacks economies of scale or scope. Additionally, we ask whether certain incumbent LECs could lack economies of scale or scope, and, thus, meet the Section 259(d)(1) definition of qualifying carrier and, nevertheless, also be required to *provide* ''public switched network infrastructure, technology, information, and telecommunications facilities and functions'' to other qualifying carriers.

18. In addition, the statute directs the Commission to refrain from requiring actions by incumbent LECs that are economically unreasonable or contrary to the public interest. The Commission may permit, but may not require, joint ownership of infrastructure, and must provide that incumbent LECs are not treated as common carriers by virtue of their Section 259 obligations. In this *NPRM*, we seek comment on how to implement the above provisions. Section 259(b)(4) further directs the Commission to establish guidelines implementing infrastructure sharing on just and reasonable terms where qualifying carriers ''fully benefit'' from the economies of scale and scope enjoyed by incumbents, and to act so as to promote cooperation between LECs. In construing Section 259(b)(4), we ask whether Section 259 conveys to the Commission the power to establish pricing rules or guidelines for public switched network infrastructure, technology, information, and telecommunications facilities and functions. We also ask questions about how such pricing authority could be implemented.

19. Section 259(c) requires local exchange carriers that have entered into infrastructure sharing agreements to provide ''timely information on the planned deployment of telecommunications services and equipment . . . .'' In the *NPRM*, we seek comment on how the Commission both can implement Section 259(c) and promote the goal shared by Congress and the Commission of reducing duplicative administrative requirements.

20. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*: The *NPRM* tentatively concludes that the implementation of Section 259 should be complementary to the implementation of other sections of the 1996 Act and asks questions designed to explore that complementary relationship. The *NPRM*, for example, addresses the relationship between the infrastructure sharing requirements in Section 259 and the competitive access requirements in Sections 251 and 252.

Ordering Clauses

Accordingly, *It is ordered* that pursuant to Sections 1–5, 201–205, 218 and 259 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 151–155, 201–205, 218 and 259, a Notice of Proposed Rulemaking is hereby adopted.

It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–30661 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Chapter I

[CC Docket No. 96–45: FCC 96J–3]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Recommended decision.

SUMMARY: On November 7, 1996, the Federal-State Joint Board adopted a Recommended Decision, as required by section 254 of the Telecommunications Act of 1996 (''1996 Act''), regarding universal service. In the decision, the Joint Board made numerous recommendations on universal service issues including, for example, issues relating to: universal service principles; services eligible for support; support mechanisms for rural, insular, and high cost areas; support for low income consumers; affordability; support for schools, libraries, and health care providers; administration of support mechanisms; and common line cost recovery. The Commission seeks comment on the Recommended Decision.

DATES: Comments should be filed on or before December 16, 1996 and Reply Comments on or before January 10, 1997.

ADDRESSES: Interested parties must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Comments should reference CC Docket No. 96–45. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Room 140, 2100 M Street, N.W., Washington, D.C. 20037. Parties must also serve copies of their comments on the individuals identified in the attached service list. After filing, comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Parties are also asked to submit comments on diskette. Diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, and date

of submission. The diskette should be accompanied by a cover letter.

FOR FURTHER INFORMATION CONTACT: Sheryl Todd at 202–530–6040.

SUPPLEMENTARY INFORMATION: The Joint Board recommended that the Commission specifically seek additional information and comment on a number of topics, including, for example:

Principles. How should the additional principle of competitive neutrality be defined and applied within the context of universal service?

Low-Income. What baseline amount of support should be provided to low-income consumers? Is the $5.25 baseline amount suggested in the Recommended Decision likely to be adequate? How can the FCC avoid the unintended consequence that the increased federal support amount has no direct effect on Lifeline subscribers' rates in many populous states with Lifeline programs, and instead results only in a larger percentage of total support being generated from federal sources?

Schools/Libraries. What methods should the Commission use for identifying high cost areas for purposes of providing a greater discount to schools and libraries located in high cost areas? What measures of economic advantage may be readily available to identify economically disadvantaged non-public schools and economically disadvantaged libraries or, if none is readily available, what information could be required that would be minimally burdensome?

Health Care. What is the exact scope of services that should be included in the list of additional services ''necessary for the provision of health care'' in a state? In responding, commenters should address the telecommunications needs of rural health care providers and the most cost-effective ways to provide these services to rural areas. What would be the relative costs and benefits of supporting technologies and services that require bandwidth higher than 1.544 Mbps? How rapidly is local access to Internet Service Providers (ISPs) expanding in rural areas of the country, and what are the costs likely to be incurred in providing toll-free access to ISPs for health care providers in rural areas? What are the probable costs that would be incurred in eliminating distance-based charges and/or charges on traffic between Local Access and Transport Areas (LATAs) (interLATA traffic), where such charges are in excess of those paid by customers in the nearest urban areas of the state? Do insular areas experience a disparity in telecommunications rates between urbanized and non-urbanized areas? Commenters should supply information on the size of cities and other demographic information pertaining to insular areas that might be used to establish the urban rate and rural rate in each of those areas. What costs would be incurred in supporting upgrades to the public switched network necessary to provide services to rural health care providers? To what extent, and on what schedule, might ongoing network modernization, as is currently going forward under private initiative or according to state-sponsored modernization plans, make universal service support for such upgrades unnecessary? What are the probable costs, and the advantages and disadvantages, of supporting upgrades to public switched or backbone networks where such upgrades can be shown to be necessary to deliver eligible services to rural health care providers?

Administration. Should contributions for high cost and low-income support mechanisms be based on the intrastate and interstate revenues of carriers that provide interstate telecommunications services, based on the factors enumerated in the Recommended Decision? Should the intrastate nature of the services supported by the high cost and low-income programs have a bearing on the revenue base for assessing funds? Should contributing carriers' abilities to identify separately intrastate and interstate revenues in an evolving telecommunications market and carriers' incentives to shift revenues between jurisdictions to avoid contributions have a bearing on this question?

We ask parties to address the effects that the Joint Board's recommendations to the Commission are likely to have on small entities and what measures the Commission should undertake to avoid significant economic impact on small business entities as defined by Section 601(3) of the Regulatory Flexibility Act. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Recommended Decision, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

The Commission invites interested parties to file comments on the Joint Board's recommendations and on the Commission's legal authority to implement such recommendations. Copies of the Recommended Decision can be obtained from (1) the International Transcription Service (ITS), Room 140, 2100 M Street, N.W., Washington, D.C. 20037 or (2) the FCC World Wide Web Home Page: http://www.fcc.gov.

Summary of Recommended Decision

1. Principles. We recommend that policy on universal service should be a fair and reasonable balance of all of those principles identified in section 254(b) and the additional principle we identify in this section. We recognize, however, that our primary responsibility on this matter is to ensure that consumers throughout the Nation are not harmed and are benefited under our recommendation. To this end, we recommend that promotion of any one goal or principle in this proceeding should be tempered by a commitment to ensure quality services at just, reasonable, and affordable rates in all areas of the Nation, for those services that meet the section 254(c)(1) criteria.

2. We recommend that the Commission also establish ''competitive neutrality'' as an additional principle upon which it shall base policies for the preservation and advancement of universal service, pursuant to section 254(b)(7). We ask that the Commission define the principle in the context of determining universal service support, as:

''COMPETITIVE NEUTRALITY—Universal service support mechanisms and rules should be applied in a competitively neutral manner.''

3. We believe that the principle of competitive neutrality encompasses the concept of technological neutrality by allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services. In recognizing the concept of technological neutrality, we are not guaranteeing the success of any technology for all purposes supported through universal service support mechanisms but merely stating that universal service support should not be biased toward any particular technologies. We further believe that the principle of competitive neutrality should be applied to each and every recipient and contributor to the universal service support mechanisms, regardless of size, status or geographic location.

4. Given the provisions elsewhere in the law that require access to telecommunications equipment and services by people with disabilities, we recommend that the Commission not adopt specific principles related to telecommunications users with disabilities in this universal service proceeding. With respect to the requests for additional principles designed to promote the welfare of other specific groups such as subscribers in rural areas and customers with low incomes, we do

not recommend the establishment of any additional principles.

5. Finally, although this Joint Board supports the concept of administrative simplicity, we do not recommend that the Commission formally adopt this concept as a principle. Section 254(b)(5) provides that support mechanisms should be ''[s]pecific and *predictable*.'' We find that this principle encompasses administrative simplicity. In addition, we decline to recommend that access to the particular services commenters have proposed become guiding principles for the Commission's universal service policies. Instead, we consider whether these services, consistent with the principles of the 1996 Act, should be included in the definition of universal service.

6. Definition of Universal Service: What Services to Support. The 1996 Act defines ''telecommunications services'' as ''the offering of telecommunications for a fee directly to the public * * * regardless of the facilities used.'' With the exception of single-party service and touch-tone dialing, the core services proposed in the Notice of Proposed Rulemaking and Order Establishing a Joint Board (NPRM) represent functionalities or applications associated with the provision of access to the public network, rather than tariffed services. The Joint Board concludes that defining telecommunications services in a functional sense, rather than on the basis of tariffed services alone, is consistent with the intent of section 254(c)(1).

7. Based on the overwhelming support in the record, the Joint Board recommends that the services proposed in the NPRM should be included in the general definition of services supported under section 254(c)(1). We reject the arguments of commenters that a service must meet all of the statutory criteria of section 254(c)(1)(A)–(D) before it may be included within the definition of universal service. Instead, we conclude that while the Joint Board must consider all four criteria before determining that a service or functionality should be included, we need not find that a particular service meets each of the four criteria. Accordingly, we recommend that the services proposed in the NPRM, namely, single-party service, voice grade access to the public switched telephone network (PTSN), DTMF or its functional digital equivalent, access to emergency services and access to operator services be designated for universal service support pursuant to section 254(c)(1).

8. The Joint Board recommends that single-party service should receive universal service support. We further find that single-party service means that only one customer will be served by each subscriber loop or access line, although carriers may offer consumers the choice of multi-party service in addition to single-party service and remain eligible for universal service support. In addition, to the extent that wireless providers use spectrum shared among users to provide service, we find that wireless carriers provide the equivalent of single-party service since users are given a dedicated channel for each transmission. (Wireless carriers are not, however, required to provide a single channel dedicated to a particular user at all times; a wireless carrier provides the equivalent of single-party service when it provides a dedicated message path for the length of a user's particular transmission.) Moreover, we recommend permitting a transition period for carriers to make upgrades to provide single-party service, but only to the extent carriers can meet a heavy burden that such a transition period is necessary and in the public interest. Since state commissions will be responsible for designating carriers as eligible for purpose of receiving federal universal service support, we recommend that states make the determination as to the need for a transition period for a particular carrier.

9. We find that the record provides ample support for our conclusion that voice grade access, an essential element to telephone service, is subscribed to by a substantial majority of residential customers and is being deployed in public telecommunications networks by telecommunications carriers. In addition, we find that voice grade access should occur in the frequency range between approximately 500 Hertz and 4,000 Hertz, for a bandwidth of approximately 3,500 Hertz. Voice grade access should also include the ability to place calls, including the ability to signal the network that the caller wishes to place a call, and the ability to receive calls, including the ability to signal the called party that there is an incoming call. (We explicitly do not include call waiting within this definition.)

10. Based on strong support in the record, we also recommend including a local usage component within the definition of voice grade access. We conclude that the states are best positioned to determine the local usage component that represents affordable service within their jurisdictions. Nonetheless, for purposes of determining the amount of federal universal service support, we recommend that the Commission determine a level of local usage.

11. We agree with commenters who argue that ''touch-tone'' is more appropriately termed DTMF signaling. DTMF facilitates the transportation of signaling through the network. DTMF also accelerates call set-up time. As noted in the NPRM, other methods of signaling, such as digital signaling, can provide network benefits equivalent to that of DTMF. Therefore, we recommend that DTMF or its functional digital equivalent (hereinafter referred to as ''DTMF'') be supported under section 254(c)(1).

12. Like the other core services, access to emergency service is a functionality that is widely deployed and subscribed to by a majority of residential subscribers. Further, access to emergency service is widely recognized as ''essential to * * * public safety.'' In defining access, the record supports the inclusion of access to 911 (but not for Public Safety Answering Points, which local public safety officials provide). Nearly 90 percent of lines today have access to 911 capability. In addition, we recommend access to E911 service, where the locality has chosen to implement that service, be included in the definition of universal service. We do not recommend providing universal service support, however, for E911 service. We recommend not including E911 service within the definition of services to be supported at this time, but may recommend its consideration when the definition is revisited, as anticipated by section 254(c)(2).

13. In supporting access to operator service, we recommend that the Commission adopt the definition of operator services it implemented for purposes of section 251(b)(3), namely, ''any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.''

14. In addition to the services proposed to be included within the general definition of universal service by the NPRM, the Joint Board recommends that access to interexchange service be included. The Joint Board, however, recommends that access to interexchange service should not be defined, at this time, to include equal access to interexchange carriers.

15. The Joint Board also recommends including access to directory assistance, specifically, the ability to place a call to directory assistance, in the definition of universal service. Like access to interexchange service, access to directory service is a functionality of the loop. We recommend that support be provided for access to directory assistance, not the service itself. Therefore, we will refer to voice grade

access to the public switched network, DTMF or touch-tone, single-party service, access to emergency service, access to operator service, access to interexchange service, and access to directory assistance as the ''designated'' or ''core'' services for section 254(c)(1) universal service purposes .

16. We generally agree with those commenters that argue that carriers designated as eligible telecommunications service providers must provide each of the services designated for support subject to certain exemptions as discussed below. We recommend that telecommunications carriers that are unable to provide one or more of these services should not receive universal service support unless exceptional circumstances exist. We recommend that states have the discretion to provide for a transition period, for good cause, to allow carriers to make upgrades to provide single-party service.

17. In addition to our general conclusion that carriers must provide each of the designated services in order to receive support, we find that universal service support should be available in limited instances where a carrier is unable to provide a few specific services. For example, based on our analysis of E911, discussed above, we conclude that access to E911 should be among those services supported by universal service mechanisms because, for example, it is ''essential to * * * public safety'' consistent with section 254(c)(1)(A). We realize, however, that not all carriers are currently capable of providing access to E911 and, in fact, not all communities have the facilities in place to provide E911 service. Nevertheless, we conclude that access to E911 should be supported to the extent that carriers are providing such access. Similarly, as discussed below, we find that toll blocking or control services should be supported when provided to qualifying low-income consumers, to the extent that eligible carriers are technically capable of providing these services. Thus, we recommend that eligible carriers be required to provide all of those services we characterize as ''designated'' services, but we also recommend that the Commission support additional services such as E911 and toll limitation, to the extent eligible carriers are providing these important services.

18. Finally, we conclude that waivers should not be generally available to carriers that do not provide one or more of the designated services. Nevertheless, the record supports the contention that some carriers may currently be unable to offer single-party service. Because section 214(e) requires eligible carriers to ''offer the services that are supported by Federal universal service support mechanisms under section 254,'' we are unwilling to recommend that telecommunications providers be permitted to receive broad waivers from the requirement to provide the services we recommend designating for universal service support. As discussed above, however, we recommend that state commission be permitted to grant a request for a transition to carriers that cannot currently provide single-party service if the circumstances warrant such a transition period.

19. We find that support for designated services provided to residential customers should be limited to those services carried on a single connection to a subscriber's principal residence. (In light of our recommended principle of competitive neutrality, we will hereinafter refer to ''connections'' rather than ''lines.'') We conclude that support for a single residential connection will permit a household complete access to telecommunications and information services. The Joint Board, however, declines at this time to provide support for other residential connections beyond the primary residential connection. Support for a second connection is not necessary for a household to have the required ''access'' to telecommunications and information services. We are unpersuaded that universal service support should be extended to second residences in high cost areas. We conclude that the consumer benefits that result from support should not be extended to second homes. Such residences may not be occupied at all times, and their occupants presumably can afford to pay rates that accurately reflect the cost of service.

20. We find that designated services carried to single-connection businesses in rural, insular and other high cost areas should be supported by universal service mechanisms, although we find that a reduced level of support may be appropriate. We find general similarities between residential and single-line business customers. Both single-line business and residential subscribers require access for health, safety and employment reasons. We recommend making universal service support available for designated services carried to single-connection businesses in high cost areas.

21. We conclude, however, that designated services carried to businesses subscribing to only one connection should not receive the full amount of support designated for residential connections in high cost areas. We recommend that, for business connections, a standard different from that applied to residential connections for determining support should be established. We recommend initially supporting the designated services carried on business connections in a high cost area at a lower level than that provided for residential connections in the same area. As discussed, below, we recommend that the Commission use a benchmark based on the revenue generated per line to determine the amount of support carriers should receive. Under this recommended approach, eligible carriers would receive less support for serving single-connection businesses than they would for residential service because business rates are higher than residential rates. As discussed in greater detail below, we recommend that the amount of support be derived from calculating the difference between the cost of providing service and the benchmark amount.

22. The 1996 Act enunciates the principle that ''quality services'' should be available. We refrain from recommending that the Commission require that eligible carriers meet specific, Commission-established technical standards as a condition to receiving universal service support. We recommend that the Commission, to the extent possible, rely on existing data to monitor service quality. Because many states already have adopted service quality requirements, we do not recommend that the Commission undertake efforts to collect quality of service data in addition to those already in place with respect to price cap LECs. In many cases, additional requirements by the Commission would duplicate the states' efforts. Instead, we recommend that state commissions submit to the Commission the service quality data provided to them by carriers. We further recommend that the Commission not impose data collection requirements on carriers at this time. Therefore, we conclude that the Commission should rely on service quality data collected at the state level in making its determination that ''quality services'' are available, consistent with section 254(b)(1).

23. We recommend that the Commission convene a Joint Board no later than January 1, 2001, to revisit the definition of universal service. In addition, the Commission may institute a review at any time upon its own motion or in response to petitions by interested parties. We note that, in complying with the statutory mandate of section 706(b) of the 1996 Act, the Commission may take additional steps to determine whether advanced

telecommunications capability is being deployed to all Americans.

24. We find the record to be insufficient at this time to support our recommending that the Commission adopt reporting requirements in order to collect data that may assist the Commission in reevaluating the definition of universal service. We recommend that the Commission base future analyses of the definition of universal service on data derived from the Commission's existing data collection mechanisms such as those collected through ARMIS.

25. Affordability. In the 1996 Act, Congress not only reaffirmed the continued applicability of the principle of ''just and reasonable'' rates, but also introduced the concept of ''affordability.'' Although we believe an increasingly refined understanding of the term affordability will evolve over time, we find that the Webster Dictionary definition is instructive in determining how to interpret the concept for purposes of crafting universal service policies consistent with the congressional intent underlying section 254. The definition of affordable contains both an absolute component (''to have enough or the means for'') and a relative component (''to bear the cost of without serious detriment''). Therefore, we conclude that both the absolute and relative components must be considered in making the affordability determination required under the statute. We find that an evaluation that considers price alone does not effectively address either component of affordability. In general, we find that factors other than rates, such as local calling area size, income levels, cost of living, population density, and other socio-economic indicators may affect affordability. (The specific needs of low-income consumers are addressed below.)

26. Although subscribership levels can be influenced by many factors (such as the level of toll charges or service connection charges), we agree with the many commenters that argue that a general correlation exists between subscribership level and affordability. We find monitoring subscribership to be a tool in evaluating the affordability of rates. It should not, however, be the exclusive tool in measuring affordability. Subscribership levels do not address the second component of the definition of affordability, namely, whether paying the rates charged for services imposes a hardship on those who subscribe.

27. We also find that the scope of the local calling area directly and significantly affects affordability. Therefore, the Joint Board concludes that the scope of the local calling area should be considered as another factor to be weighed when determining the affordability of rates. In addition, we find that in considering this last factor, examining the number of subscribers to which one has access for local service in a local calling area alone is not sufficient. A determination should be made that the calling area reflects the pertinent ''community of interest,'' allowing subscribers to call hospitals, schools, and other essential services without incurring a toll charge.

28. Customer income level also is a factor that should be examined when addressing affordability. While a specific rate may be affordable to most customers in an affluent area, the same rate may not be affordable to lower income customers. We agree with the conclusions of many commenters regarding the nexus between income level and ability to afford telephone service. We conclude that per capita income of a local or regional area, and not a national median, should be considered in determining affordability. In addition to income level, we conclude that the cost of living in an area may affect the affordability of a given rate.

29. We also recognize that many variations in a state's rates reflect ''legitimate local variations in rate design.'' Such variations include the proportion of fixed costs allocated between local services and intrastate toll services; proportions of local service revenue derived from per-minute charges and monthly recurring charges; and the imposition of mileage charges to recover additional revenues from customers located a significant distance from the wire center. We find that these factors too should be considered in making the determination of affordability of rates.

30. In light of our conclusions regarding the importance of the particular factors other than rates identified in the preceding paragraphs, we recommend that the states exercise primary responsibility, consistent with the standard enumerated above, for determining the affordability of rates. To the extent that consumers wish to challenge whether a rate is truly ''affordable,'' we find the state commissions, in light of their rate-setting roles, are the appropriate forums for raising such issues. Additionally, we conclude that the Commission should continue to oversee the development of the concept of affordability, and may take action to ensure rates are affordable, where necessary and appropriate.

31. Although we recommend that the states should make the primary determination of rate affordability, we recognize that Congress, through the 1996 Act, gave the Commission a role in ensuring universal service affordability. Subscribership levels, while not dispositive on the issue of affordability, provide an objective criterion to assess the overall success of state and federal universal service policies in maintaining affordable rates. Therefore, we recommend that, to the extent that subscribership levels fall from the current levels on a statewide basis, the Commission and affected state should work together informally to determine the cause of the decrease and the implications for rate affordability in that state. If necessary and appropriate, the Commission may open a formal inquiry on such matters and, in concert with the affected state, take such action as is necessary to fulfill the requirements of section 254. We find that this proposed dual approach in which both the states and the Commission play roles in ensuring affordable rates is consistent with the statutory mandate embodied in section 254(i).

32. Carriers Eligible for Universal Service Support. We recommend that the Commission adopt, without further elaboration, the statutory criteria contained in section 214(e)(1) as the rules for determining whether a telecommunications carrier is eligible to receive universal service support. Pursuant to these criteria, a telecommunications carrier would be eligible to receive universal service support if the carrier is a common carrier and if, throughout the service area for which the carrier is designated by the state commission as an eligible carrier, the carrier: (1) offers all of the services that are supported by federal universal service support mechanisms under section 254(c) (we recommend, however, that carriers that lack the technical capability to offer toll-limitation services to qualifying low-income consumers not be required to offer such services, as otherwise provided below); (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier; and (3) advertises the availability of and charges for such services using media of general distribution. We agree with the majority of commenters who argue that any carrier that meets these criteria is eligible to receive federal universal service support, regardless of the technology used by that carrier.

33. In addition, we recommend that companies subject to price cap regulation be eligible to receive universal service support. We agree with those commenters that argue that price cap regulation is an important tool to smooth the transition to competition and that its use should not foreclose price cap companies from receiving universal service support. Having recommended against the exclusion of price cap companies, we conclude that we need not address how to define precisely which carriers are subject to price cap regulation.

34. Section 214(e)(1) requires that, in order to be eligible for universal service support, a common carrier must offer universal service throughout the state-designated service area either using its own facilities or a combination of its own facilities and the resale of another carrier's services, including those of another eligible carrier. We find that the plain meaning of this provision is that a carrier would be eligible for universal service support if it offers all of the specified services throughout the service area using its own facilities or using its own facilities in combination with the resale of the specified services purchased from another carrier, including the incumbent LEC or any other carrier. We do not recommend that a carrier that offers universal service solely through reselling another carrier's universal service package should be eligible for universal service support. Similarly, we do not recommend that only those telecommunications carriers that offer universal service wholly over their own facilities should be eligible for universal service.

35. The NPRM sought comment on various other issues related to eligibility. Specifically, it sought comment on whether rules should be developed to: (1) ensure that universal service support be used as intended (i.e., for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended''); (2) ensure that only eligible carriers receive support; and (3) set guidelines for advertising. Because relatively few commenters addressed these issues, there are few detailed proposals in the record on how to resolve them. For the first of these issues, developing rules to ensure that universal service support is used as intended, we believe that concerns about misuse of funds would largely be alleviated once competition arrives. We find that a competitive market would minimize the incentives and opportunities to misuse funds. In the absence of competition, we find that the optimal approach to minimizing misuse of funds is to adopt a mechanism that will set universal support at levels that reflect the costs of providing universal service efficiently. Should additional measures be necessary, we recommend that the Commission, to the extent that states monitor carriers to ensure the provision of the supported services, rely on the states' monitoring. Where necessary (for example, if the state has insufficient resources to support such monitoring programs) we recommend that the Commission conduct periodic reviews to ensure that universal service is being provided. On the question of ensuring that only eligible carriers receive support, we agree with commenters that additional rules are unnecessary because only carriers found eligible by the states will receive funding. We recommend no additional rules at this time.

36. We recommend that the Commission not adopt, at this time, any national guidelines relating to the requirement that carriers advertise throughout the service area the availability of and rates for universal service using media of general distribution. We recommend that states should, in the first instance, establish guidelines, if needed, to govern such advertising.

37. We recommend that the Commission retain the current study areas of rural telephone companies as the service areas for such companies. Section 214(e)(5) provides that for an area served by a rural telephone company, the term ''service area'' means such company's study area ''unless or until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.''

38. We find that sections 214(e)(2) and 214(e)(5) grant to the state commissions the authority and responsibility to designate the area throughout which a carrier must provide the defined core services in order to be eligible for universal service support. We further conclude that, while this authority is explicitly delegated to the state commissions, states should exercise this authority in a manner that promotes the pro-competitive goals of the 1996 Act as well as the universal service principles of section 254. The Joint Board thus recommends that the Commission urge the states to designate service areas for non-rural telephone company areas that are of sufficiently small geographic scope to permit efficient targeting of high cost support and to facilitate entry by competing carriers. We recommend that the Commission encourage states, where appropriate to foster competition, to designate service areas that do not disadvantage new entrants. Consequently, we recommend that the geographic size of the state designated service areas should not be unreasonably large.

39. Even if the state commission were to designate a large service area, however, we believe that it would be consistent with the 1996 Act to base the actual level of support, if any, that non-rural telephone company carriers would receive for the service area on the costs to provide service in sub-units of that area. We recommend that the Commission, where necessary to permit efficient targeting of universal support, establish the level of universal service support based on areas that may be smaller than the service area designated by the state. The service area designated by the state is the geographic area used for ''the purpose of determining universal support obligations and support mechanisms.'' We find that this language refers to the designation of the area throughout which a carrier is obligated to offer and advertise universal service. It defines the overall area for which the carrier will receive support from the ''specific, predictable, and sufficient mechanism established by the Commission to preserve and advance universal service.'' We conclude that this language would not bar the Commission from disaggregating the state-designated service area into smaller areas in order to: (1) Identify high cost areas within the service area; and (2) determine the level of support payments that a carrier would receive for the overall service area based on the sum of the support levels as determined by the costs of serving each of the disaggregated areas. Other than the requirements contained in section 214(e)(3), we recommend that the Commission not adopt any particular rules to govern how carriers for unserved areas are designated.

40. High Cost Support. We believe that a properly crafted proxy model can be used to calculate the forward-looking economic costs for specific geographic areas, and be used as the cost input in determining the level of support a carrier may need to serve a high cost area. We cannot recommend, however, that any of the proxy models submitted in this proceeding thus far—the BCM, the BCM2, the CPM, and the Hatfield model—should be used to determine universal service support levels. While the proxy models continue to evolve and improve, none of those submitted in this proceeding are sufficiently

developed to allow us to recommend a specific model at this time. The Joint Board therefore recommends that the Commission continue to work with the state commissions to develop an adequate proxy model that can be used to determine the cost of providing supported services in a particular geographic area, and in calculating what support, if any, a carrier should receive for providing services designated for universal service support. We recommend that a proxy model be developed such that it can be adopted by the Commission by May 8, 1997, the statutory deadline for the Commission to implement our recommendations in this proceeding.

41. We find that forward-looking economic costs should be used to determine the cost of providing universal service. Those costs best approximate the costs that would be incurred by an efficient competitor entering that market. We believe that support should be based on the cost of an efficient carrier and should not be used to offset the costs of inefficient provision of service, or costs associated with services that are not included in our definition of supported services, such as private lines, interexchange services, and video services. The actual level of support that a carrier receives from federal universal service support mechanisms, if any, would be based on the difference between the cost of service as determined by a proxy model and the benchmark amount.

42. The Joint Board recommends that the forward-looking economic cost of providing supported services should include all of the costs of the telephone network elements that are used to provide supported services. We acknowledge that the loop is essential for the provision of all services, not just those supported by the federal universal service mechanisms. We note, however, that supported services include not only local service but also access to interexchange service. The cost of loop can vary depending on the type of services provided. We recognize that the provision of ISDN and video services could increase the cost of the loop, but the additional loop costs incurred to provide these services should be excluded from costs considered here. In the proxy models, the fiber-copper cross-over point determines the relative share of fiber in the loop plant. We believe that the reasonable cross-over point should reflect the least cost provision of the supported services rather than the provision of video or advanced services.

43. We recommend that the Commission consider the following criteria in order to evaluate the reasonableness of any proxy model that it would use to estimate the forward-looking economic cost of providing the supported services:

(1) Technology assumed in the model should be the least-cost, most efficient and reasonable technology for providing the supported services that is currently available for purchase, with the understanding that the models will use the incumbent LECs' wire centers as the center of the loop network for the reasonably foreseeable future.

(2) Any network function or element, such as loop, switching, transport, or signaling, necessary to produce supported services must have an associated cost.

(3) Only forward-looking costs should be included. The costs should not be the embedded cost of the facilities, functions or elements.

(4) The model should measure the long-run costs of providing service by including a forward-looking cost of capital and the recovery of capital through economic depreciation expenses. The long run period used should be a period long enough that all costs are treated as variable and avoidable.

(5) The model should estimate the cost of providing service for all businesses and households within a geographic region. This includes the provision of multi-line business services. Such inclusion allows the models to reflect the economies of scale associated with the provision of these services.

(6) A reasonable allocation of joint and common costs should be assigned to the cost of supported services. This allocation will ensure that the forward-looking costs of providing the supported services do not include an unreasonable share of the joint and common costs incurred in the provision of both supported and non-supported services, e.g., multi-line business and toll services.

(7) The model and all underlying data, formulae, computations, and software associated with the model should be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible.

(8) The model should include the capability to examine and modify the critical assumptions and engineering principles. These assumptions and principles include, but are not limited to, the cost of capital, depreciation rates, fill factors, input costs, overhead adjustments, retail costs, structure sharing percentages, fiber-copper cross-over points, and terrain factors. The models should also allow for different costs of capital, depreciation, and expenses for different facilities, functions or elements.

44. The parties have brought three models to our attention in this proceeding. While the models hold much promise, at this time, we cannot endorse a specific model as the tool the Commission should use for calculating costs of supported services.

45. We therefore urge the Commission to conduct a series of workshops at which federal and state staff can work with industry participants to refine the models so that it could become possible to select or create a proxy model that could then be used in calculating universal service support. We recommend that these workshops begin no later than January 1997.

46. The state members of the Joint Board will submit a report to the Commission on the use of proxy models and the application of such models in this proceeding for funding universal service. The report of the state members will be filed prior to a Commission decision in this proceeding on proxy models. The Commission and state members should continue to work cooperatively and remain integrally involved in the development of an acceptable proxy model.

47. While we recommend using forward-looking economic costs calculated through the use of a proxy model to determine high cost support for all carriers, we are concerned that moving small, rural carriers to a proxy model too quickly may result in large changes in the support that they receive. Since rural carriers generally serve fewer subscribers compared to the large incumbent LECs, serve more sparsely-populated areas, and do not generally benefit from economies of scale and scope as much as non-rural carriers, they often cannot respond to changing operating circumstances as quickly as large carriers. We therefore recommend that those carriers not move immediately to a proxy model, but transition to a proxy over six years. For three years, starting on January 1, 1998, high cost assistance, DEM weighting and LTS benefits for rural carriers will be frozen based on historical per line amounts. Rural carriers would then transition over a three year period to a mechanism for calculating support based on a proxy model. Prior to that transition, however, we recommend that the Commission, working with the state commissions, review the proxy model to ensure that it takes into consideration the unique situations of rural carriers. We emphasize our recommendation that, after the transition, the calculation of support for rural telephone companies should be based on a proxy model, although we recognize that alternative support mechanisms, such as competitive bidding, may also promote efficient service provision. Further, we recommend that, on request, any rural carrier should be permitted to elect to use a proxy model to determine its support level, and that any carriers electing to use the proxy model not be allowed to use the embedded cost approach thereafter.

48. The Joint Board recommends, however, that rural carriers be able to move to a proxy-based system earlier if they choose to do so. We recommend that the Commission define ''rural'' as those carriers that meet the statutory definition of a ''rural telephone company.'' See 47 U.S.C. 153(37). In order for the administrator to know which carriers are to receive support payments based on the proxy model or their embedded costs, we recommend that carriers notify the Commission and the state commissions that for purposes on universal service support determinations they meet the definition of a ''rural telephone company.'' Carriers should make such a notification each year prior to the beginning of the payout period for that year. The carriers may also use that notification as the means by which to let the Commission, the state commissions, and the administrator know if they have chosen to voluntarily move to a proxy model before the end of the transition period.

49. We also find that LTS payments constitute a universal service support mechanism. As the Commission noted in the NPRM, LTS payments serve to equalize LECs' access charges by raising some carriers' charges and lowering others'. While some commenters have noted the beneficial purposes currently served by LTS, no commenter argued that LTS was not a support flow.

50. We therefore recommend that beginning in 1998 and continuing to the end of the year 2000, support payments for high cost assistance, DEM weighting and Long Term Support, be frozen for each carrier at the same amounts paid on a per line basis to qualifying carriers. High cost support would be based on the assistance received in 1997, and DEM weighting and LTS benefits received during calendar year 1996. Beginning in the year 2001, and through the year 2003, we recommend that support be gradually shifted to a proxy-based methodology. In the year 2001, support would be based on 75 percent frozen levels and 25 percent proxy; in 2002 support will be based on 50 percent frozen levels and 50 percent proxy; in 2003 support will be based on 25 percent frozen levels and 75 percent proxy. Beginning in 2004 support will be 100 percent based on a proxy methodology. The total period for transition for rural carriers to a proxy based system is six years.

51. Freezing support will encourage rural carriers to operate efficiently because no additional support will be provided for increased costs. We recognize that the number of subscribers served by rural carriers could increase and associated with such increases is an increase in costs. Therefore, we recommend that support not be frozen at a total dollar amount, but instead, at a per line amount. Rural carriers would receive additional support at the same amount per line as the number of subscribers increase. A frozen level of high cost support will prepare these LECs for both their move to a proxy model and the advent of a more competitive marketplace.

52. High cost assistance to carriers with high loop costs that will be paid during 1997 are based on those carriers' 1995 embedded costs. Additionally, loop counts to determine the 1995 average costs per loop for each carrier are based on year-end 1995 loop counts. To determine the amount of frozen high cost support per line for carriers with high loop costs, we recommend that the total amount paid to each carrier during 1997, based on 1995 embedded costs, be divided by the number of loops served at the end of 1995. The amount of high cost assistance to be paid in 1998 will then be the same per line amount paid in 1997 multiplied by the year end loop count for 1996. Calculation of payments would continue in this manner throughout the transition period.

53. Currently, DEM weighting assistance is an implicit support mechanism that is recovered through the switched access rates charged to interexchange carriers by those carriers serving less than 50,000 lines. In order to calculate the per-line DEM weighting benefit, we recommend that the amount of additional revenues collected by each carrier above what would be collected without DEM weighting, be calculated for the calendar year 1996. That amount, divided by the number of loops served at the year-end 1996 would be the basis for the frozen per line support to be paid beginning in 1998. Until December 31, 1997, DEM weighting benefits would continue under the present rules. Although we could have recommended the calendar year 1997 as the basis for determining the frozen per-line amount for DEM weighting benefits during the transition period, we find that sufficient time will be needed for the fund administrator to gather the data and calculate payments before frozen DEM weighting benefits begin in 1998. We chose to use year-end 1996 loop counts because this calculation would have already been made for loop high cost assistance purposes. For 1999, the amount of frozen DEM weighting support would be based on the frozen per line amount multiplied by the number of lines served for the year-end 1997. Calculation of payments would continue in this manner throughout the transition period.

54. LTS payments are currently determined by comparing the amount pool members will receive in SLCs and CCL charges to the pool's projected revenues requirement. In order to determine the frozen LTS payment for the Common Line pool members, we recommend that each member be allocated a percentage of the total LTS contribution from the non-pooling LECs. We recommend that the allocation be made on the basis of each member's common line revenue requirement relative to the total common line pool revenue requirement. We recommend that the frozen LTS payments to pool members during the year ending 1996 and the loop counts at year-end 1996 be used as the historical basis for computing the frozen per line LTS payment beginning in 1998. For 1999, the amount of frozen LTS payments would be based on the frozen per line amount multiplied by the number of lines served for the year-end 1997. Calculation of payments would continue in this manner throughout the transition period.

55. We recommend that the Commission make frozen support payments portable. A CLEC should be allowed to receive support payments to the extent that it is able to capture subscribers formerly served by carriers eligible for frozen support payments or to add new customers in the ILEC's study area. Because we have recommended that frozen support payments be computed on the basis of working loops, ILECs will, under our recommendation, automatically lose frozen support payments for loops serving subscribers lost to a competitor. We find that competition would best be served if the frozen support payment attributable to that line were paid instead to the CLEC that won the subscriber. Likewise, a CLEC should receive support for new customers that it serves in the ILECs study area. Since rural ILECs have the option at any time to convert their support basis to a proxy methodology, we find that a CLEC should also have the opportunity to choose proxy-based support when it enters a rural ILEC's study area.

56. We propose that rural carriers in Alaska and in insular areas not be required to shift to a support system in which support levels are calculated based on a proxy model at this time. While we believe that proxy models may provide an appropriate determination of costs on which to base high cost support, we are less certain that they may do so for rural carriers in Alaska and insular areas. Consequently, we recommend that rural carriers serving Alaska and insular areas should

be able to continue to use embedded costs to determine their costs of offering universal service. We further recommend that this system for rural carriers in Alaska and insular areas be revisited in the future to determine whether changes in proxy models allow them to be utilized effectively in Alaska and insular areas.

57. We recommend that the Commission establish a benchmark to calculate the support that eligible telecommunications providers will receive when a proxy model is used to calculate the costs of providing services designated for support from universal service mechanisms. We believe it is desirable that the benchmark be based on the amount the carrier would expect to recover from other services to cover the cost of providing supported services in rural, insular, and high cost areas, but final determination of the methodology for selecting the benchmark must also consider the revenue base for universal service contributions. Those eligible telecommunications providers for which the cost of providing supported services exceeds the benchmark would be permitted to receive universal service support.

58. We believe that it is desirable for the Commission to set a nationwide benchmark to use in calculating the amount of support eligible telecommunications providers will receive. Final determination of this issue, however, must also take into consideration the contribution base for the federal universal service mechanisms. We recommend that the benchmark the Commission adopts should be easy to administer and should be set to minimize the probability that residential rates would increase while the new support mechanisms are being implemented. The carrier's draw from the federal universal service support mechanism for serving a customer would be based on the difference between the costs of serving a subscriber calculated using a proxy model and the benchmark. A carrier could draw from the fund for providing supported services to a subscriber only if the cost of serving the subscriber, as calculated by a proxy model, exceeds the benchmark.

59. There are essentially three approaches to setting such a nationwide benchmark to be used with the proxy model for calculating support. In setting a benchmark, the Commission could use average revenues per line, average rates, or relative cost. We recommend that the Commission adopt a benchmark based on the nationwide average revenue-per-line. We recommend that the Commission review the benchmark on a periodic basis, and consider the need to make appropriate adjustments.

60. We find that it is advisable to construct two benchmarks, one for residential service and a second for single-line business service, since we are recommending that primary residential and single business lines be supported. The residential benchmark, if ultimately adopted by the Commission, should be set equal to the sum of the revenue generated by local, discretionary, and access services provided to residential subscribers divided by the number of residential lines. The single-line business benchmark should be set equal to the sum of the revenue generated by local, discretionary, and access services provided to single- line business subscribers divided by the number of single-line business lines.

61. Although we recognize that competitive bidding may provide a market-based method for determining support levels, we recommend that the Commission not adopt at this time any specific plan for using competitive bidding to set support levels in rural, insular, and high cost areas. While the record in this proceeding persuades us that a properly structured competitive bidding system could have significant advantages over other mechanisms used to determine the level of universal service support for high cost areas, we find that the information contained in the record does not support adoption of any particular competitive bidding proposal at this time. We recommend that the Commission, together with the state commissions, continue to explore the possibility of using competitive bidding for determining the level of federal universal support.

62. We find that sections 254 and 214(e) and the record developed in this proceeding provide some guidance about how any potential competitive bidding should be structured. We recommend that any competitive bidding system be competitively neutral and not favor either the incumbent or new entrants. Any carrier that meets the eligibility criteria for universal service support should be permitted to participate in the auction. Any competitive bidding proposal must be consistent with the goals and requirements of the 1996 Act, including that universal service support be ''specific, predictable and sufficient.'' Any competitive bidding system adopted should minimize the ability of bidders to collude. Various commenters, for example, urge the Commission to establish and enforce stiff penalties against collusion, while others suggest that the Commission rely on its experience with spectrum auctions to devise protections against collusion. We recommend that any final competitive system be designed to minimize the incentives to collude and that any colluding carrier be subject to stiff penalties.

63. The Joint Board recommends that the Commission set an effective date of January 1, 1998, for the new universal service support mechanism for rural, insular, and high cost areas that we have recommended in this section of the Recommended Decision take effect beginning January 1, 1998. The current universal service support mechanisms operate on a calendar year, and January 1, 1998, will be the beginning of the first calendar year after the Commission adopts rules establishing the new support mechanisms. Starting at that date, carriers other than rural telephone companies would begin to receive support based upon the proxy model.

64. Support for Low-income Consumers. Congress included section 254(j), which provides that ''[n]othing in [section 254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission.'' Yet the current Lifeline program is not competitively neutral, nor is it available in all regions of the nation. We find that the provisions of section 254(j) can be reconciled with other portions of section of 254 regarding competitive neutrality and support for low-income consumers in all regions of the nation. As an initial matter, we believe that Congress did not intend for section 254(j) to codify the existing Lifeline program. Had Congress intended for section 254(j) to have that effect, it would have chosen clearer, less equivocal language. Instead, Congress simply provided that nothing in section 254 should affect the collection, distribution, or administration of the program. We therefore conclude that Congress intended, in section 254(j), to give the Joint Board and the Commission permission to leave the Lifeline program in place without modification, despite its inconsistencies with other provisions of section 254 and the 1996 Act generally. We further conclude that a necessary corollary to this interpretation of section 254(j) is that this Joint Board has the authority to recommend, and the Commission has the authority to adopt, changes to the Lifeline program to make it more consistent with Congress's mandates in section 254 if such changes would serve the public interest.

65. We find no statutory basis to recommend continuing to fund the federal Lifeline program in a manner

that places some IXCs at a competitive disadvantage, or that provides no support for low-income consumers in several portions of the nation. We conclude that our recommendations would make universal service support mechanisms for low-income individuals more consistent with Congress's express goals without fundamentally changing the basic nature of the existing Lifeline program. Moreover, this approach is consistent with Congress's expression of approval for the current Lifeline program in section 254(j).

66. The Joint Board agrees with the vast majority of commenters and recommends that, through universal service support mechanisms, low-income consumers should have access to the same services designated for support for rural, insular, and high cost areas. We further recommend that the designated services should be made part of the modified Lifeline Assistance program that we recommend adopting in section. Thus, low-income consumers eligible for Lifeline Assistance would receive, at a minimum, the designated services.

67. The Joint Board recommends that the Lifeline Assistance program for eligible low-income consumers include support for voluntary toll limitation (by which we mean both toll blocking service and toll control service), in addition to the services mentioned above. We recommend, however, that only carriers that currently possess the capability of providing these services be required to provide them to Lifeline-eligible consumers and receive universal service support for such services. Eligible telecommunications carriers that are technically incapable of providing any toll-limitation services should not be required to provide either service, and such an incapability should not affect their designation as eligible telecommunications carriers. We recommend, however, that eligible telecommunications carriers not currently capable of providing these services be required to add the capability to provide at least toll blocking in any switch upgrades (but we do not recommend that universal service support be provided for such switch upgrades). We further recommend that carriers offering voluntary toll-limitation services receive support based on the incremental cost of providing those services.

68. Further, the Joint Board recommends that the Commission prohibit carriers receiving universal service support for providing Lifeline service from disconnecting such service for non-payment of toll charges. This recommendation should not be construed to affect the ability of the states to implement a policy prohibiting disconnection of local service for non-payment of toll charges for non-Lifeline customers.

69. We further recommend, however, that the Commission provide state utilities regulators with the authority to grant carriers a limited waiver of this requirement if the carrier can establish that: (1) it would incur substantial costs in complying with such a requirement; (2) it offers toll-limitation services to its Lifeline subscribers at no charge; and (3) telephone subscribership among low-income consumers in the carrier's service area is at least as high as the national subscribership level for low-income consumers. We recommend that this waiver be extremely limited and that a carrier should be required to meet a very heavy burden to obtain a waiver. Furthermore, we recommend that the waiver would terminate after two years, at which time carriers could reapply for the waiver.

70. The Joint Board recommends modifying the federal Lifeline program to reach low-income consumers in every state. (Hereinafter, ''states'' will refer to all states, territories, and commonwealths within the jurisdiction of the United States.) We further recommend that, in order to be eligible for support from the new national universal service support mechanism pursuant to section 214(e)(1), carriers must offer Lifeline assistance to eligible low-income customers. We are reluctant, however, to recommend mandatory participation by states or carriers in a program that requires states to generate support from the intrastate jurisdiction.

71. In order to reconcile our finding that Lifeline support should be extended to all states with our desire to maximize states' incentives to generate matching intrastate support for the program, we recommend that the Commission eliminate the state matching requirement and provide for a baseline level of federal support that would be available to low-income consumers in all states. In order to ensure adequate Lifeline support in states that choose not to generate intrastate matching funds, we believe this baseline federal support level should exceed the current $3.50. To maximize matching incentives, however, we believe the baseline support level should be less than $7.00. We therefore propose a baseline federal level halfway between the two figures at $5.25, and recommend that the Commission seek additional information on this issue before establishing a precise baseline level. To create further incentives for matching, we recommend that the Commission provide for additional federal support equal to one half of any support generated from the intrastate jurisdiction, up to a maximum of $7.00 in federal support.

72. Although we believe this recommendation will best reconcile our competing objectives of providing adequate nationwide support and maximizing state matching incentives, we are concerned that the implementation of this recommendation could have no direct effect on Lifeline subscribers' rates in many populous states with existing Lifeline programs, and could instead result only in a larger percentage of the total support being generated from federal sources. Therefore we recommend that the Commission seek additional information on ways to avoid this unintended consequence before implementing this recommendation.

73. We also find it essential that the state members of the Joint Board maintain a continuing role in refining specific aspects of the Lifeline program. The state members of the Joint Board will submit a report to the Commission on Lifeline issues. The report of the state members will be filed prior to the Commission's decision on the Lifeline program in this proceeding. Thereafter, the Commission and the state members should continue to work cooperatively and remain integrally involved in refining the Lifeline program.

74. To make the Commission's Lifeline program competitively neutral, the Joint Board recommends that support for eligible low-income consumers no longer be achieved through charges levied on only IXCs. We recommend that the programs be supported by a fund to which all telecommunications carriers that provide interstate service contribute on an equitable and nondiscriminatory basis as a function of their revenues, consistent with sections 254(d) and (e). Thus, for example, LECs, wireless carriers, and other interstate telecommunications service providers would contribute. De-linking Lifeline from the Commission's Part 69 rules would promote competitive neutrality by allowing the participation of carriers who do not charge SLCs, such as CLECs and wireless providers. We conclude that the new funding mechanism that we recommend will be more competitively neutral than the current system, which passes the entire federal burden of low-income support to IXCs, without sacrificing the targeting that has characterized the current program. We also conclude that low-income

consumers will continue to benefit directly under our recommendation.

75. In addition to changing the contribution method for the Lifeline program, we recommend amending the program to enable all eligible telecommunications carriers, not just LECs, to be eligible to receive support for serving qualified low-income consumers. Currently, only ILECs serving eligible low-income consumers can receive support. We find, however, that eligible telecommunications carriers other than ILECs should have the ability to compete to serve low-income consumers and in turn receive Lifeline support in a manner similar to the current program. We recommend that in order to participate, a carrier must demonstrate to the public utility commission of the state in which it operates that it offers a Lifeline rate to qualified individuals. We recommend that the Lifeline rate be the carrier's lowest comparable non-Lifeline rate reduced by at least the $5.25 amount of federal support. We further recommend that support be provided directly to carriers based on the number of eligible consumers they serve under administrative procedures determined by the fund administrator.

76. Currently, state agencies or telephone companies administer customer eligibility determinations pursuant to narrowly-targeted programs approved by the Commission. We recommend that the Commission maintain this basic framework for administering Lifeline eligibility in states that provide matching support for the Lifeline program. We also recommend that the Commission require states that provide matching funds to base eligibility criteria solely on income or factors directly related to income (such as participation in a low-income assistance program). We further recommend that the Commission adopt specific means-tested eligibility standards to apply in states that choose not to provide matching support from the intrastate jurisdiction. Specifically, we recommend that low-income consumers participating in a state-administered, low-income welfare program (and who are not considered dependents for federal income tax purposes, with the exception of dependents over the age of 60) would be eligible for Lifeline assistance.

77. The Joint Board recommends that the Commission adopt the changes to the Link Up program's funding mechanism proposed in the NPRM. We recommend that the Link Up funding mechanism be removed from the jurisdictional separations rules, and that the program be funded through equitable and non-discriminatory contributions from all interstate telecommunications carriers. Funding the program through contributions from all interstate carriers will allow for an explicit and competitively neutral funding mechanism consistent with sections 254 (d) and (e).

78. We recommend that the Commission amend its Link Up rules to make the present level of Link Up support available to qualifying low-income consumers requesting service from any telecommunications carrier providing local exchange service. Support would be available only for the primary residential connection. As amended, the Link Up rules should thus provide that any eligible telecommunications carrier may draw support from the new Link Up funding mechanism described above if that carrier offers to eligible customers a reduction of its service connection charges equal to one half of the carrier's customary connection charge or $30.00, whichever is less. Where the carrier offers eligible customers a deferred payment plan for connection charges, we recommend that the Commission provide support to reimburse carriers for waiving interest on the deferred charges for eligible subscribers as Link Up currently provides for incumbent LECs' charges. To ensure that the opportunity for carrier participation is competitively neutral, we recommend that the Commission's rules be amended to eliminate the requirement that the commencement-of-service charges eligible for support be filed in a state tariff. In the absence of evidence that increasing the level of Link Up support for connecting each eligible customer would significantly further universal service goals, however, we recommend that the level of support for Link Up not be increased.

79. With respect to subscribers' eligibility to participate in the Link Up program, the Joint Board recommends that the same modifications be made to the Link Up program that we have recommended for the Lifeline program. That is, we encourage states to set means-tested eligibility criteria, and we recommend that a federal eligibility ''floor'' be established that would serve as eligibility criteria in states that choose not to define means-tested eligibility criteria of their own. Consistent with some commenters' proposals, we also recommend that the Commission prohibit states from restricting the number of service connections per year for which low-income consumers who relocate can receive Link Up support.

80. We recommend that the Commission implement a national rule prohibiting telecommunications carriers from requiring Lifeline-participating subscribers to pay service deposits in order to initiate service if the subscriber voluntarily elects to receive toll blocking.

81. Issues Unique to Insular Areas. We recognize the special circumstances faced by carriers and consumers in the insular areas of the United States, particularly the Pacific Island territories. We note at the outset that carriers in these areas, like all other carriers, will be eligible for universal service support if they serve high cost areas. We recommend that rural carriers serving high cost insular areas, as well as rural carriers serving high cost areas in Alaska, should continue to receive universal service support based on their embedded costs.

82. We recommend that the Commission take no specific action regarding cost support for toll service to the Northern Mariana Islands at this time, but revisit this issue at a later date. Guam and the Northern Mariana Islands will be included in the North American Numbering Plan by July 1, 1997. To implement section 254(g), the Commission will require interstate carriers serving the Pacific Island territories to integrate their rates with the rates for services that they provide to other states no later than August 1, 1997. (An interexchange carrier must establish rates for services provided to the Northern Mariana Islands and Guam consistent with the rate methodology that it employs for services it provides to other states. Carriers can choose among several ways to integrate the rates for services to these islands, including expanding mileage bands, adding mileage bands or offering postalized rates. A carrier must also offer optional calling plans, contract tariffs, discounts, promotions, and private line services using the same rate methodology and structure that it uses in offering those services to subscribers on the mainland.

83. Once those carriers integrate their rates, the residents of Guam and the Northern Mariana Islands will be able to make 1+ calls to the mainland United States at domestic instead of international rates. Residents of Guam and the Northern Mariana Islands will also have direct access to toll-free (e.g., 800, 888) services. The decision whether to provide toll-free services to a specific area, such as the Pacific Island territories, is a business decision of the carrier's business customer, weighing the cost of toll charges to the islands against the economic benefit of

providing toll free access. Businesses currently make that same determination in deciding in which areas to provide toll free access within the fifty states, and, for business reasons, some of them choose to limit access to certain areas. Similarly, information service providers make the same type of business decision as to whether to locate in a certain area or provide toll-free access to an area. Until the islands join the NANP and are included in carriers' rate averaging, it is difficult for businesses to make such judgments as to whether, and how, to serve the islands.

84. We are concerned that residents of Guam and the Northern Mariana Islands have access to toll free service and information services. We therefore recommend that the Commission revisit the question of comparable access and rates for toll-free and information services at some time after the Pacific Island territories have been included in the NANP and have integrated rates to determine whether there is any need to support these services.

85. Support for Schools and Libraries. We recommend that the Commission adopt a rule that provides schools and libraries with the maximum flexibility to apply their universal service discount to whatever package of telecommunications services they believe will meet their telecommunications service needs most effectively and efficiently.

86. We recommend that the Commission also provide eligible schools and libraries with discounts for Internet access pursuant to section 254(h)(2). These discounts would apply to basic conduit, i.e., non-content, access from the school or library to the backbone Internet network. This access would include the communications link to the ISP, whether through dial-up access or via a leased line, and the subscription fee paid to the ISP, if applicable. The discount would also apply to electronic mail, but any charges for such services would not be subject to the discount discussed herein. Schools and libraries would be permitted to apply the discount to the entire ''basic'' charge by an ISP that bundled access to some minimal amount of content, but only under those circumstances in which the ISP basic subscription charge represented the most cost-effective method for the school or library to secure non-content conduit access to the Internet.

87. We also do not recommend that a discount mechanism for other information services be established at this time.

88. We recommend that the Commission expressly acknowledge that schools and libraries may receive discounts on charges for internal connections. We find that Congress recognized that such connections are a critical element for achieving the congressional purpose of section 254(h), and thus contemplated that schools and libraries receive universal service support for internal connections.

89. Consistent with our recommendation to establish a competitively neutral program for discounting all telecommunications services and Internet access under section 254(h)(2)(A), we recommend that internal connections within schools and libraries, which may include such items as routers, hubs, network file servers, and wireless LANs, but specifically excluding personal computers, be included within the section 254(h) discount program.

90. We recommend that schools and libraries be required to seek competitive bids for all services eligible for section 254(h) discounts. We recommend that schools and libraries be required to submit their requests for services to the fund administrator, who would post the descriptions of services sought on a web site for potential providers to see. The posting of a school or library's description of services would satisfy the competitive bid requirement. We recommend that the lowest corresponding price, defined as the lowest price charged to similarly situated non-residential customers for similar services, constitute the ceiling for the competitively bid pre-discount price. In areas in which there is no competition, we recommend that the lowest corresponding price constitute the pre-discount price. In both cases, the carrier would be required to self-certify that the price offered to schools and libraries is equal to or lower than the lowest corresponding price. We further recommend that schools, libraries, and carriers be permitted to appeal to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they believe that the lowest corresponding price is unfairly high or low.

91. We recommend that the Commission adopt a rule which provides support to schools and libraries through a percentage discount mechanism. The mechanism would be adjusted for schools and libraries that are defined as economically disadvantaged and those schools and libraries located in high cost areas. In particular, we recommend that the Commission adopt a matrix that provides discounts from 20 percent to 90 percent, to apply to all telecommunications services, Internet access, and internal connections, with the range of discounts correlated to the indicators of economic disadvantage and high cost for schools and libraries. We decline, however, to recommend a 100 percent discount for any category of schools or libraries.

92. We recommend that the following matrix of percentage discounts be applied in the schools and libraries programs. The matrix represents an example of an appropriate distribution of schools across the five discount levels, according to the specified metric for determining the wealth of a school. If a different metric for determining the wealth of a school is ultimately chosen for the purposes of this program, we would expect that a similar distribution of schools across the discount range would be reflected. The principles in determining the final matrix should ensure that the greatest discounts go to the most disadvantaged schools and libraries, while an equitable progression of discounts should be applied to the other categories, keeping within the parameters of 20 percent to 90 percent discounts.

Discount matrix		Cost of service (estimated percent in category)		
		low cost (67%)	mid-cost (26%)	highest cost (7%)
How disadvantaged? based on percent of students in the national school lunch program (estimated percent in category).	< 1 (3%)	20	20	25
	1–19 (30.7%)	40	45	50
	20–34 (19%)	50	55	60
	35–49 (15%)	60	65	70
	50–74 (16%)	80	80	80
	75–100 (16.3%)	90	90	90

93. In addition, we recommend that the Commission set an annual cap on spending of $2.25 billion per year. In addition, any funds that are not disbursed in a given year may be carried forward and may be disbursed in subsequent years without regard to the cap. We further recommend that the Commission establish a trigger mechanism, so that if expenditures in any year reach $2 billion, rules of priority would come into effect. Under the rules of priority, only those schools and libraries that are most economically disadvantaged and had not yet received discounts from the universal service mechanism in the previous year would be granted guaranteed funds, until the cap was reached. Other economically disadvantaged schools and libraries would have second priority for support if additional funds were available at the end of the year. Finally, all other eligible schools and libraries would be granted funding contingent on availability after economically disadvantaged schools and libraries had requested funding. We also recommend that the Joint Board, as part of its review in the year 2001, revisit the effectiveness of the schools and libraries program.

94. We recommend that the statutory definition of ''affordable'' must take into account the cost of service in an area. Thus, we recommend that the Commission take into account the cost of providing services when setting discounts for schools and libraries. To achieve this, we recommend that the Commission consider a ''step'' approach that would calibrate the cost of service in some reasonable, practical, and minimally burdensome manner. Other methods for determining high cost may also be appropriate, and we encourage the Commission to seek additional information and parties' comments on this issue prior to adopting rules.

95. To minimize any additional recordkeeping or data gathering obligations, we seek the least burdensome manner to determine the degree to which a school or library is economically disadvantaged. We recommend that the Commission seek additional information and parties' comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged non-public schools or, if not readily available, what information could be required that would be minimally burdensome.

96. The national school lunch program reflects the level of economic disadvantage for children enrolled in school. While using a model that measures the wealth of an entire school district may better reflect per-pupil expenditures in that district, we conclude that a model measuring the wealth of students enrolled in school will more accurately reflect the level of economic disadvantage in all of the schools and libraries eligible for universal service support under section 254, including both public and non-public schools. We find, therefore, that using the national school lunch program to determine eligibility for a greater discount appears to fulfill more accurately the statutory requirement to ensure affordable access to and use of telecommunications and other covered services for schools and libraries.

97. If it decides to use the national school lunch program as the model for determining eligibility for a greater discount, we recommend that the Commission require the entity responsible for ordering telecommunications services or other covered services for schools to certify to the administrator and to the service provider the percentage of its students eligible for the national school lunch program when ordering telecommunications and other covered services from its service providers. For schools ordering telecommunications and other covered services at the individual school level, which should include primarily non-public schools, the person ordering such services should certify to the administrator and to the service provider the percentage of students eligible in that school for the national school lunch program. Each school's level of discount will then be calculated by the administrator based on the percentage of students eligible for the national school lunch program.

98. For schools ordering telecommunications and other covered services at the school district level, we seek to target the level of discount based on each school's percentage of students eligible for the national school lunch program, if the national school lunch program is selected as the appropriate measure of economic disadvantage. At the same time, we seek to minimize the administrative burden on school districts. Therefore, we recommend that the district office certify to the administrator and to the service provider the number of students in each of its schools who are eligible for the national school lunch program. We recommend that the district office may decide to compute the discounts on an individual school basis or it may decide to compute an average discount. We further recommend that the school district assure that each school receive the full benefit of the discount to which it is entitled.

99. We recommend that schools or districts do not have to participate in the national school lunch program in order to demonstrate their level of economic disadvantage. Schools or districts that do not participate in the national school lunch program need only certify the percentage of their students who would be eligible for the program, if the school or district did participate. Since libraries do not participate in the national school lunch program, we recommend that they be eligible for greater discounts based on their location in a school district serving economically disadvantaged students. That is, the administrator would average the percentage of students eligible for the national school lunch program in all eligible schools, both public and non-public, within the school district in which a library was located. The library would then receive the level of discount representing the average discount offered to the school district in which it was located. We find that this is a reasonable method of calculation because libraries are likely to draw patrons from an entire school district and this method does not impose an unnecessary administrative burden on libraries. We recommend that the Commission seek additional information and parties' comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged libraries or, if not readily available, what information could be required that would be minimally burdensome.

100. We also recommend that the Commission adopt a step approach for calculating the level of greater discount available to economically disadvantaged schools and libraries. A step approach would provide multiple levels of discount based on the percentage of students eligible for the national school lunch program.

101. We also recommend that the Commission establish a separate category for the least economically disadvantaged schools, those with less than one percent of their students eligible for the national school lunch program. Those schools should have comparatively sufficient resources within their existing budgets so that they may secure affordable access to services at lower discounted rates. In our effort not to duplicate research already conducted and to tailor greater discounts based on level of economic disadvantage more accurately, we recommend using the Department of Education's five-step breakdown to calculate the greater discounts on telecommunications and other covered

services for economically disadvantaged schools.

102. To the extent that a state desires to supplement the discount financed through the federal universal service fund by permitting its schools and libraries to apply the discount to the special low rates, its actions would be consistent with sections 254(h) and 254(f). Furthermore, we believe that it would also be permissible for states to choose not to supplement the federal program and thus prohibit its schools and libraries from purchasing services at special state-supported rates if they intend to secure federal-supported discounts.

103. We recommend that the Commission not require any schools or libraries that had secured a low price on service to relinquish that rate simply to secure a slightly lower price produced by including a large amount of federal support. No discount would apply, however, to charges for any usage of telecommunications or information services prior to the effective date of rules promulgated pursuant to this proceeding.

104. We recommend that the Commission recognize that it can provide for federal universal service support to fund intrastate discounts. We also recommend that the Commission adopt rules that provide federal funding for discounts for schools and libraries on both interstate and intrastate services to the levels discussed above, and that establishment of intrastate discounts at least equal to the discounts on interstate services be a condition of federal universal service support for schools and libraries in that state. If a state wishes to provide an intrastate discount less than the federal discount, then it may seek a waiver of this requirement.

105. On careful review, we conclude that, despite the difficulties of allocating costs and preventing abuses, the benefits from permitting schools and libraries to join in consortia with other customers in their community outweigh the danger that such aggregations will lead to significant abuse of the prohibition against resale. We recommend that state commissions undertake measures to enable consortia of eligible and ineligible entities to aggregate their purchases of telecommunications services and other services being supported through the discount mechanism, in accordance with the requirements set forth in section 254(h).

106. We recommend that the Commission interpret section 254(h)(3) to restrict any resale whatsoever of services purchased pursuant to a section 254 discount.

107. Section 254(h)(3)'s prohibition on resale, however, would not prohibit either computer lab fees for students or fees for Internet classes. Because these are not services that schools or libraries purchased at a discount under the 1996 Act, they are not subject to the resale ban. Therefore, we recommend that schools and libraries be expected to comply with three bona fide request requirements.

108. First, we find that it would not be unduly burdensome to expect schools and libraries to certify that they have ''done their homework'' in terms of adopting a plan for securing access to all of the necessary supporting technologies needed to use the services purchased under section 254(h) effectively.

109. Second, we recommend that schools and libraries be required to send a description of the services they desire to the fund administrator or other entity designated by the Commission. They can use the same description they use to meet the requirement that most generally face to solicit competitive bids for all major purchases above some dollar amount. The fund administrator or this other entity could then post a description of the services sought on a web site for all potential competing service providers to see and respond to as if they were requests for proposals.

110. Third, we recommend that, to ensure compliance with section 254, every school or library that requests services eligible for universal service support be required to submit to the service provider a written request for services. We recommend that the request should be signed by the person authorized to order telecommunications and other covered services for the school or library, certifying the following under oath: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library.

111. We recommend that schools and libraries, as well as carriers, be required to maintain for their purchases of telecommunications and other covered services at discounted rates the kinds of procurement records that they already keep for other purchases. We expect schools and libraries to be able to produce such records at the request of any auditor appointed by a state education department, the fund administrator, or any other state or federal agency with jurisdiction that might, for example, suspect fraud or other illegal conduct. We recommend that schools and libraries also be subject to random compliance audits to evaluate what services they are purchasing and how such services are being used. Such information would permit the Commission to determine whether universal service support policies require adjustment. The fund administrator should also develop appropriate reporting information for the schools and libraries to advise on their progress in obtaining access to telecommunications and other information services.

112. Section 254(h)(1)(B) requires that telecommunications carriers providing services to schools and libraries shall either apply the amount of the discount afforded to schools and libraries as an offset to its universal service contribution obligations or shall be reimbursed for that amount from universal service support mechanisms. We conclude that section 254(h)(1)(B) requires that telecommunications carriers be permitted to choose either reimbursement or offset. Because non-telecommunications carriers are not obligated to contribute to universal service support mechanisms, they would not be entitled to an offset. Non-telecommunications carriers providing eligible services to schools and libraries, therefore, would be entitled only to reimbursement from universal service support mechanisms.

113. We recommend that the Commission adopt rules that will permit schools and libraries to begin using discounted services ordered pursuant to section 254(h) at the start of the 1997 - 1998 school year. We anticipate that they may begin complying with the self-certification requirements as soon as the Commission's rules become effective.

114. Support for Health Care Providers. We find that the record is insufficient to support a recommendation on the exact scope of services, in addition to designated services, that should be supported for rural health care providers. We therefore recommend that the Commission solicit additional information and expert assessment of the exact scope of services that should be included in the list of those additional services ''necessary for the provision of health care in a state.'' We recommend that the Commission seek information on the telecommunications needs of rural health care providers and on the most cost-effective ways to provide these services to rural America. Finally, we recommend that the Commission take

this information and these assessments into account in deciding what services to include as services eligible for universal service support.

115. In reaching its decision on the scope of services to support, we recommend that the Commission include terminating as well as originating services for universal service support in cases where the eligible health care provider would pay for terminating as well as originating services, such as in the case of cellular air time charges.

116. Further, we recommend that the Commission initially designate only telecommunications services as eligible for support as expressly provided under the terms of sections 254(c)(1) and 254(h)(1)(A). We do not, at this time, recommend that the Commission find that customer premises equipment should be eligible for support.

117. After the Commission designates those services eligible for support for rural health care providers, we recommend that the Commission's list of supported telecommunications services be revisited in 2001, when the Commission is scheduled to reconvene a Joint Board on universal service.

118. On the question of determining the urban rate, we recommend that, for each telecommunications service delivered to a qualified health care provider as provided in section 254(h)(1)(A), the Commission should designate as the rate ''reasonably comparable to rates charged for similar services in urban areas in that state'' (the ''urban rate''), the highest tariffed or publicly available rate actually being charged to commercial customers within the jurisdictional boundary of the nearest large city in the state (measured by airline miles from the health care provider's location to the closest city boundary point). We do not recommend an exact definition of the size of population a city must have to qualify as ''large'' for purposes of calculating the urban rate. We leave that determination to the Commission.

119. Because we are recommending that the highest tariffed or publicly available urban rate be used to set the urban rate charged to the health care provider, we think it is important to use for this purpose an urban boundary smaller than a county boundary so as to minimize the possibility of inadvertently including distance-based or lower-density-based surcharges within the comparable urban rate. We also believe that using larger cities for this purpose will increase the likelihood that the rates in those cities will reflect to the greatest extent possible, reductions in rates based on large-volume, high-density factors that affect telecommunications rates. Because we see nothing in the 1996 Act or its legislative history that would prohibit using different definitions of urban for different purposes in section 254, we recommend using, for purposes of determining the ''urban rate in the closest urban area,'' the jurisdictional boundaries of larger cities. We further recommend that the Commission designate by regulation the exact city population size to define the term ''large city,'' that it finds will best balance the factors described in this paragraph.

120. We recommend that the Commission seek additional information on the rate of expansion of local access coverage of ISPs in rural areas of the country and the costs likely to be incurred in providing toll-free access to ISPs for health care providers in rural areas. We also recommend that the Commission take this information into account in deciding what services to include as services eligible for universal service support.

121. We encourage the Commission to solicit additional information on the probable costs that would be incurred in eliminating distance-based and LATA crossing (InterLATA) charges for rural health care providers where such charges are in excess of those paid by customers in the nearest urban areas of the state. We recommend that the Commission take this information into account in deciding whether to include these charges in the list of charges eligible for universal service support.

122. We further recommend that the Commission solicit further information on these topics and make appropriate provision for equalizing any disparities between urban and rural telecommunications rates to health care providers in insular areas.

123. On the question of determining the rural rate, mindful of the Commission's obligation to craft a mechanism that is ''specific, predictable and sufficient,'' we recommend that the rural rate be determined to be the average of the rates actually being charged to customers, other than eligible health care providers, for identical or technically similar services provided by the carrier providing the service, to commercial customers in the rural county in which the health care provider is located. For all purposes associated with determining the rural rate, we recommend that the term ''rural county'' be defined as any ''non-metro'' county as defined by the Office of Management and Budget Metropolitan Statistical Areas (OMB MSA) list, along with the non-urban areas of those metro counties identified in the Goldsmith Modification used by the Office of Rural Health Policy of the Department of Health and Human Services (ORHP/HHS). We also recommend that the rates averaged to calculate the rural rate not include any rates reduced by universal service programs and paid by schools, libraries or rural health care providers.

124. We further recommend that, where the carrier is providing no identical or technically similar services in that rural county, the rural rate should be determined by taking the average of the tariffed and other publicly-available rates charged for the same or similar services in that rural county by other carriers. If no such services have been charged or are publicly available, or if the carrier deems the method described here, as it would be applied to the carrier, to be unfair for any reason, the carrier should be allowed, in the first instance, to submit for the state commission's approval a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner. Where state commission review is not available, the carrier should be allowed to submit the proposed rate to the Commission for its approval. The proposed rate should be supported, justified, reviewed and approved, in the initial submission and periodically thereafter, according to procedures and requirements similar to those used for establishing tariffed rates for telecommunications services in that state.

125. In cases where there are no similar services being provided in the rural county, either by the carrier or by others, and thus no comparable rates to average, or where the carrier concludes that rates derived from this formula are unfair, we find the availability of a cost-based rate application procedure becomes an important backstop. We intend that this procedure will ensure greater fairness to the carrier and further ensure that the support mechanism is more likely to be ''sufficient'' as required by section 254. We note, however, that the record is inadequate on this issue and, accordingly, we recommend that the Commission request additional information prior to adopting final rules, on the costs that would be incurred in supporting necessary upgrades to the public switched network. We also recommend that the Commission seek additional information as to what extent ongoing network modernization, as is currently going forward under private initiatives or according to state-sponsored modernization plans, might make universal service support of this element unnecessary. We further

recommend that the Commission take this information into account in deciding whether to include network upgrades in the list of services eligible for universal service support.

126. We recommend that there be no separate funding mechanism for eligible health care providers and schools and libraries. We further recommend that separate accounting and allocation systems be maintained for the funds collected for the two groups.

127. We recommend that to define ''rural areas'' the Commission use non-metro counties (or county equivalents), as identified by the OMB MSA list of metro and non-metro counties, together with rural areas in metro counties identified in the most currently available ''Goldsmith Modification'' of the MSA list used by the ORHP/HHS. To the extent that the Commission can improve upon these definitions prior to its statutory deadline, by identifying other rural areas in metro counties not identified in the current version of the Goldsmith Modification, we encourage the Commission to do so.

128. We conclude that where all rural areas are entitled to a rate no higher than the highest rate in the closest city, there is no need to make additional provisions for frontier areas, or areas with extra-low population density, as some parties suggest.

129. We recommend creating a mechanism that makes eligible the largest reasonably practicable number of health care providers that primarily serve rural residents and that, due to their location, are prevented from obtaining telecommunications services at rates available to urban customers. We agree, therefore, with the commenters that urge that eligibility to obtain telecommunications services at rates reasonably comparable to rates in the state's urban areas be limited to providers that are physically located in rural areas.

130. We recommend that the Commission attempt no further clarification of the definition of the term ''health care provider.'' We find that section 254(h)(5)(B) adequately describes those entities intended by Congress to be eligible for universal service support. Therefore, we decline to recommend expanding or broadening those categories.

131. We recommend that the Commission allow telecommunications carriers providing services to health care providers at reasonably comparable rates under the provisions of section 254(h)(1)(A), to treat the amount eligible for support, calculated as recommended herein, as an offset toward the carrier's universal service support obligation. We recommend that the Commission disallow the option of direct reimbursement although we recognize that this alternative is within the Commission's authority. We also recommend that carriers be allowed to carry offset balances forward to future years so that the full amounts eligible to be treated as a credit may be applied to reduce their universal service obligation.

132. We recommend that every health care provider that makes a request for universal service support for telecommunications services be required to submit to the carrier a written request, signed by an authorized officer of the health care provider, certifying under oath the following information:

(1) Which definition of health care provider in section 254(h)(5)(B) the requester falls under;

(2) That the requester is physically located in a rural area OMB defined non-metro county or Goldsmith-define rural section of an OMB metro county);

(3) That the services requested will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law of the state in which they are provided;

(4) That the services will not be sold, resold or transferred in consideration of money or any other thing of value;

(5) If the services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the services being purchased by the health care provider.

The certification should be renewed annually.

133. We recommend that the Commission require the universal service fund administrator to establish and administer a monitoring and evaluation program to oversee the use of universal-service-supported services by health care providers, and the pricing of those services by carriers.

134. We also recommend that the Commission encourage carriers across the country to notify eligible health care providers in their service areas of the availability of lower rates resulting from universal service support so that the goals of universal service to rural health care providers will be more rapidly fulfilled.

135. We recommend that health care providers be encouraged to enter into aggregate purchasing and maintenance agreements for telecommunications services with other public and private entities and individuals, provided however, that the entities and individuals not eligible for universal service support pay full rates for their portion of the services. In addition, in these arrangements, we recommend that the Commission's order make clear that the qualified health care provider can be eligible for reduced rates, and the telecommunications carrier can be eligible for support, only for that portion of the services purchased and used by the health care provider.

136. The Commission's adoption of rules providing universal service support under section 254(h)(1) will significantly increase the availability and deployment of telecommunications services for rural health care providers. Furthermore, we conclude that the additional action the Commission will undertake, as discussed above, will be sufficient to ensure the enhancement of access to advanced telecommunications and information services for these and other health care providers.

137. We propose that the Commission establish rules governing the implementation of the support mechanisms recommended above. We anticipate that the fund administrator will begin receiving and processing telecommunications service requests on or about June 1, 1997. Therefore, we recommend that the Commission advise eligible health care providers that they may begin submitting requests to carriers for supported services as soon as practicable after the Commission adopts final rules.

138. The rules should provide that the telecommunications carrier may begin to deploy the requested service as soon as practicable after it has received (1) a written request for an eligible telecommunications service, (2) a properly completed signed and sworn certification as provided in paragraph 92 of this section, (3) approval, if necessary, from the appropriate agency of the rate to be charged for the requested service, and (4) satisfactory payment or payment arrangements for the portion of the rate charged that is the responsibility of the health care provider.

139. Interstate Subscriber Line Charges and Carrier Common Line Charges. We recommend that the Commission adopt the tentative conclusion reached in the NPRM that LTS payments constitute a universal service support mechanism. As the Commission noted in the NPRM, LTS payments serve to equalize LECs' access charges by raising some carriers' charges and lowering others.

140. We recommend that the LTS system no longer be supported via the access charge regime. We recommend that rural LECs continue to receive payments comparable to LTS from the

new universal service support mechanism. Such payments would be computed on a per-line basis for each ILEC currently receiving LTS, based on the LTS payments that carrier has received over a historical period prior to the release of this Recommended Decision. In the interest of competitive neutrality, such payment would also be portable, on a per-line basis, to competitors that win the ILEC's subscribers. To this extent, we recommend that the Commission adopt the position of those commenters favoring the reformation of the LTS mechanism to make it consistent with the 1996 Act. We make this recommendation because we find that LTS payments currently serve the important public interest function of reducing the amount of loop cost that high cost LECs must seek to recover from IXCs through interstate access charges, and thereby facilitating interexchange service in high cost areas.

141. The Joint Board concludes that the current $3.50 SLC cap for primary residential and single-line business lines should not be increased. In the event that the Commission implements a rule assessing carriers' universal service contributions based on all telecommunications revenues regardless of jurisdictional classification, we recommend that the benefits from these CCL reductions be apportioned equally between primary residential and single-line-business subscribers to local exchange service, on the one hand, through a reduction in the SLC cap for those lines, and interstate toll users, on the other hand, through lower CCL charges.

142. Currently, ILECs are required to recover through traffic-sensitive CCL charges those interstate-allocated loop costs not recovered through SLCs and LTS payments. In the NPRM, the Commission referred to the Joint Board questions related to the recovery of these loop costs, and suggested that the current mechanism may constitute a universal service support flow. The Joint Board reaches no conclusion on this question. We believe, however, that it would be desirable for the Commission in the very near future to consider revising the current CCL charge structure so that LECs are no longer required to recover the NTS cost of the loop from IXCs on a traffic-sensitive basis.

143. Administration of Support Mechanisms. We recommend to the Commission that the statutory requirement that ''all carriers that provide interstate telecommunications services'' must contribute to support mechanisms be construed broadly. A broad base of funding will ensure that competing firms make ''equitable and nondiscriminatory contributions'' and will reduce the burden on any particular class of carrier. In order to interpret the term ''telecommunications carrier'' as broadly as possible, we recommend providing a non-exclusive, illustrative list of ''interstate telecommunications.'' We recommend requiring any entity that provides any interstate telecommunications for a fee to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, to contribute to the fund.

144. Thus, for the purposes of identifying which entities must contribute to universal service support mechanisms, the Joint Board recommends that the Commission adopt a definition of ''interstate telecommunications'' that is similar to the one used for determining TRS support. We recommend that ''interstate telecommunications'' include, but not be limited to, the interstate portion of the following:

cellular telephone and paging, mobile radio, operator services, PCS, access (including SLCs), alternative access and special access, packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services

Generally, telecommunications are ''interstate'' when the communication or transmission originates in one state, territory, possession or the District of Columbia and terminates in another state, territory, possession or the District of Columbia. In addition, under the Commission's rules, if over ten percent of the traffic over a private or WATS line is interstate, then the revenues and costs generated by the entire line are allocated to the interstate jurisdiction.

145. We recommend adoption of the TRS approach, because carriers and the Commission are already familiar with this approach. Contributions to the TRS fund are based on gross interstate telecommunications revenues. We do not recommend that the Commission base contributions to the support mechanism in this manner. We find no reason to exempt from contribution CMRS, satellite operators, resellers, paging companies, utility companies or carriers that serve rural or high cost areas that provide interstate telecommunications services, because the 1996 Act requires ''every telecommunications carrier that provides interstate telecommunications services'' to contribute to support mechanisms. Thus, to the extent that these entities are considered ''telecommunications carriers'' providing ''interstate telecommunications services,'' they must contribute to universal service support mechanisms.

146. We recommend that ''wholesale'' carriers, carriers that provide services to other carriers, should be required to contribute, because such carriers' activities are included in the phrase ''to such classes of eligible users as to be effectively available to a substantial portion of the public.'' The Commission has interpreted this phrase to mean ''systems not dedicated exclusively to internal use,'' or systems that provide service to users other than significantly restricted classes. We recommend adopting the same definition for universal service purposes. Thus, for example, to the extent PMRS MSS providers lease capacity to other carriers, they would be considered carriers that provide interstate telecommunications services.

147. We do not find any reason to define ''for a fee'' as ''for profit'' and recommend that the Commission interpret the phrase ''for a fee'' as meaning services rendered in exchange for something of value or a monetary payment. The Joint Board concludes that the requirement that ''every telecommunications carrier'' contribute towards the support of universal service, requires all interstate telecommunications carriers, including wholesalers and non-profit organizations, to contribute to support mechanisms. Thus, we recommend that the Commission require any entity that provides any of the listed interstate telecommunications services on a wholesale, resale or retail basis to contribute to support mechanisms to the extent that it provides interstate telecommunications services.

148. We recommend that information service providers and enhanced service providers not be required to contribute to support mechanisms. We note, however, that if information or enhanced service providers provide any of the listed interstate telecommunications to the public for a fee, they would be required to contribute to support mechanisms based on the revenues derived from telecommunications services. We also recommend that the Commission re-evaluate which services qualify as information services in the near future to take into account changes in technology and the regulatory environment.

149. With respect to the issue of whether CMRS providers should contribute to state universal service support mechanisms, we find that section 332(c)(3) does not preclude

states from requiring CMRS providers to contribute to state support mechanisms. In addition, section 254(f) requires that all contributions to state support mechanisms be equitable and nondiscriminatory.

150. We recommend that the Commission not require ''other providers of telecommunications'' to contribute to support mechanisms at this time.

151. The Joint Explanatory Statement states that the *de minimis* exemption applies only to those carriers for which the cost of collection exceeds the amount of contribution. Thus, we recommend that the Commission interpret the *de minimis* exemption in this manner. We find that the legislative history of section 254(d) indicates Congress' intent that this exemption be narrowly construed.

152. We recommend that, once it determines the administrator's cost of collection, the Commission exempt carriers for which the contribution would be less than the cost of collection. We suggest that such carriers be exempt from contribution and reporting requirements. We also recommend that the Commission re-evaluate administrative costs periodically once the contribution mechanisms are implemented. We reject requiring flat minimum payments for carriers qualifying for the *de minimis* exemption, because it would be impractical to require a payment that would result in a net loss to the support mechanism.

153. We recommend that contributions be based on a carrier's gross telecommunications revenues net of payments to other carriers.

154. The Joint Board acknowledges that some ILECs may not be free to adjust rates to account for the amount of their contributions to universal service support. We therefore recommend clarifying that, under the Commission's section 251 rules, ILECs are prohibited from incorporating universal service support into rates for unbundled network elements. We note, however, that carriers are permitted under section 254 to pass through to users of unbundled elements an equitable and nondiscriminatory portion of their universal service obligation.

155. We recommend that the Commission clarify that contributions to support mechanisms may be made in cash or through the provision of ''in-kind'' services at ''comparable'' or ''discounted'' rates.

156. The Joint Board recommends that universal service support mechanisms for schools and libraries and rural health care providers be funded by assessing both the intrastate and interstate revenues of providers of interstate telecommunications services. The Joint Board makes no recommendation concerning the appropriate funding base for the modified high cost and low income assistance programs, but does request that the Commission seek additional information and parties' comment, particularly the states, regarding the assessment method for these programs.

157. The 1996 Act reflects the continued partnership between the states and the FCC in preserving and advancing universal service. Together, sections 254(d) and 254(f) contemplate continued complementary state and federal programs for advancing universal service. The Joint Board finds that state universal service programs should continue to play an important role in ensuring universal service to all consumers.

158. While section 254(d) prescribes that every telecommunications carrier that provides interstate communications services shall contribute on an equitable and nondiscriminatory basis to the specific, predictable and sufficient universal service support mechanisms established by the Commission, the statute does not expressly identify the assessment base for the calculation. We recognize that the universal service mechanism established in this proceeding to address the needs of rural, insular and high cost areas will be combined with the existing high cost assistance, DEM weighting, Linkup, Lifeline and Long Term Support funding mechanisms.

159. The appropriate revenue base for collecting support for the high cost and low income programs must be considered in tandem with the distribution of these funds. The current federal high cost and low income programs are supplemented by existing state programs. As we have discussed, the development and composition of a universal service support mechanism based on a proxy model has been deferred for decision at this time, pending the convening of staff workshop sessions. We have also deferred decision on the appropriate revenue benchmark to compute the level of federal universal service support. Similarly, the modifications to the Lifeline program have been tentatively identified and set forth in this Recommended Decision for further comment. We find that it would be premature at this time to conclude how the high cost assistance fund and low income assistance programs should be funded, i.e., whether interstate telecommunications carriers' contributions should be confined to interstate revenues or whether they should include a combination of interstate and intrastate revenues.

160. The Joint Board recommends that the Commission seek further information and parties' comments on the issue of whether both intrastate and interstate revenues of carriers that provide interstate telecommunications should be assessed to fund the Commission's high cost and low income support mechanisms. The role of complementary state and federal universal service mechanisms requires further reflection. An additional consideration is whether the states have the ability to assess the interstate revenues of providers of intrastate telecommunications services to fund state universal service programs and whether that assessment capability would affect the funding base for federal universal service programs. In addition, we recommend that the Commission seek additional information and parties' comment on whether the intrastate nature of the services supported by the high cost and low income assistance programs should have a bearing on the revenue base for assessing funds. We also recommend that commenting parties address the ability to separately identify intrastate and interstate revenues in the evolving telecommunications market where services typically associated with particular jurisdictions are likely to be packaged together. Finally, we ask that parties comment on whether carriers will have an incentive to shift revenues between jurisdictions to avoid universal service contributions.

161. The state members of the Joint Board will include a discussion of the appropriate funding mechanism for the new high cost fund and low income programs as part of the report(s) on each of those programs discussed above. These reports by the state members will be filed prior to the Commission's decision in this proceeding on the high cost and low income funds.

162. With respect to administration of the new federal universal service fund, we recommend, based on the record in this proceeding, that the Commission appoint a universal service advisory board to designate a neutral, third-party administrator. Administration by a central administrator, as opposed to individual state PUCs, would be more efficient and would ensure uniform decisions and rules.

163. Although we do not recommend direct administration by state PUCs, we recommend creating a universal service advisory board, pursuant to the Federal Advisory Committees Act, including

state and Commission representatives, to select, oversee, and provide guidance to the chosen administrator. To expedite the formation of the advisory board and its selection of a permanent administrator, we encourage the Commission to limit the number of advisory board members as much as possible. To ensure that administrative costs are kept to a minimum, we recommend that the universal service advisory board select an administrator through a competitive bidding process. The chosen administrator, including its Board of Directors, must: (1) Be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission. As several commenters note, any candidate must also have the ability to process large amounts of data and to bill large numbers of carriers. We recommend that the advisory board fund the administrator's costs through the support mechanism.

164. The Joint Board strongly advises the Commission to create a universal service advisory board as quickly as possible because it will be responsible for selecting an administrator. The board, in turn, should quickly select an administrator because implementation of the new universal service support mechanisms is of utmost importance to the nation. The Joint Board recommends that the universal service advisory board appoint a neutral, third-party administrator through competitive bidding no later than six months after the board is created. We also recommend that the Commission and the advisory board require the administrator to implement the new support mechanisms no later than six months after its appointment.

165. We recommend that NECA be appointed the temporary administrator of support mechanisms for schools, libraries and health care providers. Prior to appointment as the temporary administrator, we recommend, however, that the Commission permit NECA to add significant, meaningful representation for non-incumbent LEC carrier interests to the NECA Board of Directors. NECA could begin collecting carrier contributions and processing requests for services soon after adoption of the Commission's rules and would continue to do so until the permanent administrator is ready to begin operations. We recommend that, in addition to operating the new support mechanisms for schools, libraries and health care providers, NECA would continue to administer the existing high cost and low income support mechanisms until the permanent administrator is prepared to implement the new high cost and low income support mechanisms.

166. Conclusion. The 1996 Act instructs the Joint Board and the Commission to adopt a new set of universal service support mechanisms that are explicit and sufficient to preserve and advance universal service. We believe that the recommendations, discussed above, will achieve Congress's goals and will ensure quality telecommunications services at affordable rates to all consumers, in all regions of the Nation.

Initial Regulatory Flexibility Analysis

167. As required by section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) that expands on the IRFA prepared for the NPRM of the expected significant economic impact on small entities by the recommendations made by the Federal-State Joint Board in the Recommended Decision (CC Docket No. 96–45). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments that are set forth above. The Secretary shall send a copy of this Recommended Decision including the IRFA set out below to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the RFA.

168. Need for and Objectives of the Recommended Decision: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. Issues related to universal service were referred to a Federal-State Joint Board for recommended decision, pursuant to section 254 of the Communications Act of 1934, as amended by the 1996 Act. On November 8, 1996, the Joint Board released the Recommended Decision that is summarized above and made recommendations on universal service issues including, for example, universal service principles, services eligible for support, support mechanisms for rural, insular, and high cost areas, support for low-income consumers, affordability, support for schools and libraries, health care providers, administration of support mechanisms and common line recovery.

169. The Joint Board's recommendations were intended to assist and counsel the Commission in the creation of an effective universal service support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. The Joint Board also sought to develop recommendations that could be interpreted easily and readily applicable and, whenever, possible, minimize the regulatory burden on affected parties. The objective of the Public Notice, released by the Commission's Common Carrier Bureau on November 18, 1996, was to provide an opportunity for public comment and to provide a record for a Commission decision on the issues addressed and the recommendations made by the Joint Board in the Recommended Decision.

170. Legal Basis: The Joint Board, in compliance with section 254(a)(1) and section 410(c) of the Communications Act of 1934, as amended by the 1996 Act, adopted the Recommended Decision (CC Docket No. 96–45) to ensure the prompt implementation of section 254, which contains the universal service provisions.

171. Description and Estimate of the Number of Small Entities Affected: For the purposes of an IRFA, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. This IRFA first discusses generally the total number of small telephone companies falling within both of those SIC categories. Then, it discusses total numbers of other small entities potentially affected and attempts to refine those estimates.

172. Consistent with the Commission's prior practice, small incumbent LECs are excluded from the definition of a small entity for purposes of this IRFA. We note that the Commission has consistently certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. Incumbent LECs do not

qualify as small businesses since they are dominant in their field of operation and hence exempt from treatment as a small business under prong (2) of the SBA test set out *supra*. Accordingly, the use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' We will however, out of an abundance of caution and prudence, include small incumbent LECs in this IRFA to eliminate any possible issue of RFA compliance. We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' In addition, the Commission will take appropriate steps to ensure that the special circumstances of smaller incumbent LECs are carefully considered.

1. Telephone Companies (SIC 4813)

173. *Total Number of Telephone Companies Affected.* Many of the recommendations of the Joint Board, if adopted by the Commission, may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms would qualify as small entity telephone service firms or small incumbent LECs, as defined above, that may be affected by the Recommended Decision.

174. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the Recommended Decision.

175. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the Recommended Decision.

176. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that the Commission collects annually in connection with TRS. According to the most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the Recommended Decision.

177. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 30 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 30 small entity CAPs that may be affected by the Recommended Decision.

178. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 29 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, this IRFA is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 29 small entity operator service providers

that may be affected by the Recommended Decision.

179. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 197 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 197 small entity pay telephone operators that may be affected by the Recommended Decision.

180. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the Recommended Decision.

181. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 789 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the Recommended Decision.

182. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the Recommended Decision.

183. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the Recommended Decision includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

184. At present, licenses are being awarded for Blocks D, E, and F of broadband PCS spectrum. A total of 1,479 licenses will ultimately be awarded in the D, E, and F Block broadband PCS auctions, which began on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate, however, the number of these licenses that will be won by small entities, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, for purposes of this IRFA, we assume that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities that may be affected by the Recommended Decision.

185. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The Recommended Decision may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. For purposes of this IRFA, we assume that all of the extended implementation authorizations may be held by small entities that may be affected by the Recommended Decision.

186. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the Recommended Decision includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses.

Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, for purposes of this IRFA, we assume that all of the licenses may be awarded to small entities that may be affected by the Recommended Decision.

187. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS. According to the most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the Recommended Decision.

2. Cable System Operators (SIC 4841)

188. SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

189. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on the Commission's most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,468 small entity cable system operators that may be affected by the Recommended Decision.

190. The Communications Act defines a small cable system operator, as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than one percent (631,960) of subscribers. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

3. Rural Health Care Providers

191. Neither the Commission nor SBA has developed a definition of small, rural health care providers. According to the SBA's regulations, hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. There are approximately 3856 hospital firms in the nation, of which 294 have gross annual receipts of $5 million or less (SIC 8060).

192. We recognize that the potential class of health care providers that may be affected by the Recommended Decision is at the same time broader and more refined than the class of providers identified in these SBA figures. On the one hand, the potential class of health care providers that may be affected by the Recommended Decision includes additional categories of providers other than small hospital firms. Additional categories of providers not encompassed within the SBA's figures would include, for example, rural community colleges, medical schools with rural programs, community health centers or health centers providing health care to migrants, local health departments or agencies, community mental health centers, and rural health clinics. On the other hand, the potential class of health care providers that may be affected by the Recommended Decision is more refined than the class of providers identified in the SBA figures to the extent that the former class is comprised only of rural health care providers. Given that it is not yet practicable to identify all rural health care providers that potentially may be impacted by the Recommended Decision, 5 U.S.C. 607, we ask commenters to submit detailed information to assist the Commission in identifying and estimating the number of small entities that may be impacted.

4. Schools and Libraries

193. SBA has defined small elementary and secondary schools (SIC 8211) and small libraries (SIC 8231) as those with under $5 million in annual revenues. The most reliable source of information regarding the total number of kindergarten through 12th grade (K–12) schools and libraries nationwide of which we are aware appears to be data collected by the National Center for Educational Statistics. Based on that information, it appears that there are approximately 112,314 public and private K–12 schools in the United States. It further appears that there are approximately 15,904 libraries, including branches, in the United States. Although it seems certain that not all of these schools and libraries would qualify as small entities under SBA's definition, we are unable at this time to estimate with greater precision the number of small schools and libraries that would qualify as small entities under the definition. Consequently, we estimate that there are fewer than 112,314 public and private schools and fewer than 15,904 libraries that may be affected by the Recommended Decision.

194. Due to the number and complexity of the issues involved in the Recommended Decision, it is not yet practicable or reliable for the Commission to identify all entities potentially impacted by the Recommended Decision. 5 U.S.C. 607. Accordingly, we seek comment on any additional entities that potentially may be affected by the Recommended Decision. Additionally, we seek comment on the general proposals set forth in the IRFA and any other comments concerning the potential impact of the Joint Board's recommendations on small entities.

195. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives to

Recommended Decisions That Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives:

196. *Structure of the Analysis.* In this section of the IRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that might apply to small entities and small incumbent LECs if the recommendations made by the Joint Board pursuant to the Recommended Decision are adopted by the Commission. This section also includes a discussion of some of the types of skills that might be needed to meet the recommended requirements. We also describe the steps taken by the Joint Board to minimize the economic impact of its recommendations on small entities and small incumbent LECs, including the significant alternatives considered and rejected. The following analysis is organized under individual section headings that correspond to the sections of the Recommended Decision.

197. Any references to the Recommended Decision contained in this IRFA are intended to provide context for the analysis performed in this IRFA. To the extent that any statement contained in this IRFA is perceived as creating ambiguity with respect to any statement or recommendation made in the Recommended Decision, the statement or recommendation made in the Recommended Decision shall be controlling.

Summary Analysis of Section III

Principles

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

198. The Joint Board recommended no reporting or other compliance requirements relating directly to the six principles enumerated in section 254(b) or relating directly to the additional principle of competitive neutrality, as considered by the Joint Board pursuant to section 254(b)(7).

Significant Alternatives to Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

199. The Joint Board concluded in section III of the Recommended Decision that consumers and businesses would benefit from competitively neutral application of the universal service rules. While a few commenters contended that competition alone would not fulfill the goals of section 254, the Joint Board concluded that competitive neutrality would favorably impact business entities, including smaller entities, by providing for access to quality and advanced services at just, reasonable, and affordable rates. By recommending that the Commission adopt the additional principle of competitive neutrality, the Joint Board sought to ensure a level playing field for all carriers, including smaller entities, insofar as contributions to the universal service fund and disbursements from it would not be biased either in favor of or against one category of carriers over another.

Summary Analysis of Section IV

Definition of Universal Service

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

200. The Joint Board recommended no reporting or recordkeeping requirements in this section. All eligible carriers would be required, however, to provide each of the services designated for universal service support in order to receive such support, subject to certain enumerated exceptions.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

201. The Joint Board recommended providing universal service support for all eligible carriers that provide each of the designated services. This recommendation would permit cellular and other wireless carriers and non-incumbent providers, many of which may be small businesses, to compete in high cost areas. The Joint Board specifically did not recommend that the Commission withhold universal service support for cellular providers based on its finding that this approach would impede the competitive entry of certain types of carriers, many of which may be small entities, and, therefore, was inconsistent with the pro-competitive goals of the 1996 Act.

202. The Joint Board made a number of recommendations in this section that were designed to minimize the burdens on smaller entities wishing to become eligible to receive universal service support. For example, state commissions would be permitted to approve transition periods for eligible carriers that would permit carriers, many of which might be smaller entities, that are not currently providing single-party service to make the upgrades necessary to do so. The recommendation would allow certain small, rural carriers to continue to receive universal service support during the time they are making the upgrades that are needed in order to provide single-party service. In making this recommendation, the Joint Board sought to strike a reasonable balance between the need for single-party service in a modern telecommunications network and the recognition that exceptional circumstances may prevent some carriers from initially offering single-party service.

203. The Joint Board also would not require telecommunications providers to provide access to E911 service in order to receive universal service support, but recommended that such access would be supported in high cost areas if a carrier does provide it. Specifically, the Joint Board determined that immediately requiring all eligible carriers to provide access to E911 service effectively would exclude certain wireless carriers, whose networks would require significant technical upgrades. To the extent that this class of cellular and other wireless carriers includes smaller carriers, this recommendation would permit those carriers to receive universal service support notwithstanding their inability to provide access to E911 service.

204. Although other services were suggested by commenters for inclusion in the definition of universal service, the Joint Board declined to expand the definition to include those services at this time. The Joint Board determined that an expansion of the definition to include additional services would have precluded certain carriers that were unable to provide those services from receiving universal service support. The Joint Board concluded that an overly-broad definition of universal service might have the unintended effect of creating a barrier to entry for some carriers, many of which may be small entities, because they would be technically unable to provide all of the designated services.

205. The Joint Board recommended that designated services carried to single-connection businesses in high cost areas also be supported at a reduced rate. Recognizing that the majority of single-connection businesses in high cost areas may be presumed to be small businesses, this recommendation specifically was intended to benefit those small businesses. The Joint Board rejected arguments opposing any support for business connections. The Joint Board also rejected suggestions to extend universal service benefits to multiple-line businesses, recognizing that the cost of service would be more likely to be prohibitive to small, single-connected businesses in high cost areas,

as opposed to larger businesses, without universal service support.

206. The Joint Board declined to recommend the implementation of additional quality of service standards. Rather, the Joint Board recommended that the Commission, to the extent possible, rely on existing data, including the ARMIS data filed by price-cap LECs, to monitor service quality. By avoiding the creation of additional standards, this recommendation would have the effect of minimizing the reporting burden of affected carriers, including that of smaller carriers.

Summary Analysis of Section V

Affordability

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

207. The 1996 Act does not require and the Joint Board did not recommend any new reporting, recordkeeping or other compliance requirements in this section.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

208. This section includes recommendations that would directly impact small entities only to the extent that the Joint Board recommended that the states be given primary responsibility for monitoring the affordability of telephone service rates and, in concert with the Commission, ensuring the affordability of such rates. Ensuring the affordability of telephone service rates clearly would have a positive economic impact on small businesses and other small entities.

Summary Analysis of Section VI

Eligibility for Universal Service Support

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

209. The 1996 Act provides that, after the effective date of the Commission's regulations implementing section 254, only carriers designated as eligible carriers pursuant to section 214(e) shall be eligible for specific federal universal service support. Thus, any carrier, including incumbent carriers, that wish to receive universal service support must request to be designated as an eligible carrier by the applicable state commission. Section 214(e) establishes criteria that carriers must meet to be designated as an eligible carrier. The Joint Board recommended in section VI.B that the Commission adopt these statutory criteria, without further elaboration, as the rules for determining whether a telecommunications carrier is eligible to receive universal service support. These statutory criteria require that a telecommunications carrier be a common carrier and offer, throughout a service area designated by the state commission, all of the services supported by federal universal service support either using its own facilities or a combination of its own facilities and resale of another carrier's services. A carrier must also advertise the availability of and charges for these services throughout its service area. Compliance with these statutory requirements may require administrative and legal skills.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

210. The Joint Board recommended minimal national rules for eligibility, requiring only that carriers meet the eligibility criteria established by Congress in the 1996 Act. As discussed in section VI.B, the Joint Board rejected arguments calling for more stringent eligibility rules, such as requiring new entrants to comply with any state rules applicable to the incumbent carrier, which could have imposed additional burdens on new entrants, many of which may be small businesses. Additionally, the Joint Board recommended that eligibility rules be technologically neutral, in order to ensure that all telecommunications carriers, regardless of the technology used, could potentially qualify for federal universal service support. The Joint Board also recommended that, for rural telephone companies, the designated service area throughout which they must offer and advertise supported services be the areas in which they currently operate. Finally, where states are responsible for designating a carrier's service area, the Joint Board recommended that the Commission encourage states to designate service areas that do not disadvantage new entrants. The Joint Board concluded that these provisions would minimize reporting requirements and other burdens on small entities.

Summary Analysis of Section VII

High Cost Support

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

211. Small, rural carriers comprise the specific class of small entities that are subject to high cost reporting requirements. The Joint Board recommended that the Commission define ''rural'' as those carriers that meet the statutory definition of a ''rural telephone company,'' pursuant to 47 U.S.C. 153(37). These reporting and recordkeeping requirements would utilize accounting and legal skills.

212. Currently, a LEC is eligible for support if its embedded loop costs, as reported annually, exceed 115 percent of the national average loop cost. The Joint Board recommended that a proxy model for calculating a carrier's costs be adopted by the Commission by May 8, 1997. Thus, beginning January 1, 1998, non-rural carriers would receive support based on the difference between the cost of service as determined by a proxy model and a benchmark amount. However, to minimize the financial impact of this rule change on small entities, the Joint Board recommended that, beginning January 1, 1998, small, rural carriers receive high cost support on a frozen per-line amount based on previous years' reported costs, for years, 1998, 1999, and 2000. Furthermore, small, rural carriers would gradually transition to a proxy model during a three year period, for the years 2001, 2002, and 2003. (Small, rural carriers serving high cost areas in Alaska and insular areas would not transition to proxy models at that time, but rather would continue to receive support based on the frozen per-line amount until further review.) This six-year transition period for small, rural carriers would enable small carriers to adjust their operations in preparation for the use of proxy models. In order for small, rural carriers to receive high cost support based on their frozen embedded costs, they would be required to report the number of lines they serve at the end of each year.

213. Since the new support mechanism for small, rural carriers would be based on previous years' frozen embedded costs, the carriers would no longer have to report each year's embedded costs. Thus, the Recommended Decision would require less reporting and recordkeeping for small, rural carriers. Accordingly, the Joint Board anticipated that those entities' cost of compliance with reporting and recordkeeping requirements would be less than what they currently incur. Since large entities also would have to report the number of lines they serve in order to receive support under a proxy model, these requirements would not affect small entities disproportionately.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

214. Commenters offered a number of alternative methodologies, including continuing the current embedded cost methodology, providing support based on combined loop and switching costs, limiting allowable costs, eliminating *de minimis* support lowering payout percentages, readjusting study areas, and capping support levels. Although these small, rural carriers may receive more support under the current embedded cost methodology, the Joint Board rejected that proposal as a long-term solution based on its finding that the current system promotes economic inefficiencies and is inconsistent with the principles of the 1996 Act. The remaining alternatives, however, would result in even lower support levels than the methodology recommended by the Joint Board. By transitioning small, rural carriers to a proxy model over a six year period, the Recommended Decision's proposed methodology for calculating support for small, rural carriers would minimize the adverse effects of an immediate, unplanned shift to a proxy model.

Summary Analysis of Section VIII

Support for Low-Income Consumers

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

215. The Joint Board recommended that, in order to participate in the Lifeline program, carriers would have to demonstrate or, in some cases, continue to demonstrate, to the public utility commission of the state in which they operate that they offer a Lifeline rate to qualified individuals. In addition, carriers participating in Lifeline would be required to submit certification applications to the new federal fund administrator. State agencies and carriers participating in Lifeline would administer customer eligibility determinations. These recommended reporting and recordkeeping requirements may require clerical and administrative skills.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

216. The Joint Board recommended that all eligible telecommunications carriers now participate in Lifeline. To participate in the Lifeline program, carriers would be required to keep track of the number of their Lifeline customers and to file information with the federal fund administrator. Based on the Commission's prior experience administering Lifeline, the Joint Board believed that such a requirement would not impose a significant burden on small carriers due to the insubstantial amount and general accessibility of the information. Accordingly, the Joint board did not anticipate that this recommendation would impose a significant burden on small carriers.

Summary Analysis of Section IX

Insular Areas

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

217. The 1996 Act does not require and the Joint Board did not recommend any new reporting, recordkeeping or other compliance requirements in this section.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

218. The Joint Board did not make any recommendations at this time which uniquely impact small entities in insular areas. The Joint Board recommendations in other areas, such as high cost support and support for schools and libraries, would apply to insular areas as well as to the mainland, however. We therefore tentatively conclude that this section of the Recommended Decision on issues unique to insular areas will not have a significant economic impact on a substantial number of small entities.

Summary Analysis of Section X

Schools and Libraries

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

219. The Joint Board recommended requiring service providers to self-certify, to the fund administrator, that the price offered to schools and libraries would be no more than the lowest price charged to similarly situated non-residential customers for similar services. This requirement was designed to ensure that schools and libraries would receive the lowest pre-discounted price available in the marketplace for someone with their needs. The Joint Board also recommended requiring service providers to keep and retain careful records of how they have allocated the costs of shared facilities used by consortia to ensure that only eligible schools and libraries derive the benefits of section 254(h) discounts and that no prohibited resale occurs.

220. The Joint Board recommended that, for schools ordering telecommunications services, the person ordering such services for the individual school or school district should self-certify to the fund administrator and to the service provider the number of students in each of its schools who are eligible for the national school lunch program or other comparable indicator of economic disadvantage ultimately selected by the Commission. This requirement arises in the context of determining which schools are eligible for the greater discounts to meet the statutory requirement that ''affordable'' access be provided.

221. The Joint Board also recommended that schools and libraries self-certify, to the fund administrator, that they will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use the services ordered pursuant to section 254(h). This requirement would help ensure that schools and libraries avoid the waste that might arise if schools and libraries ordered inexpensive services before they realized what other resources they needed to be able to use those services effectively.

222. The Joint Board recommended requiring schools and libraries to send a description of the services they desire to the fund administrator or other entity designated by the Commission. The fund administrator or other entity would then post a description of the services sought on an Internet website or some similar location for all potential competing service providers to review. The Joint Board concluded that this requirement would help achieve Congress's desire that schools and libraries take advantage of the potential for competitive bids and, therefore, would satisfy the competitive bid requirement the Joint Board recommended imposing on schools and libraries.

223. The Joint Board recommended that, to ensure compliance with section 254, every school and library that requests services eligible for universal service support should be required to submit to the service provider a written request for services. The Joint Board recommended that the request should be signed by the person authorized to order telecommunications and other covered services for the school and library, self-certifying the following under oath: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-

purchasers and the portion of the services being purchased by the school or library.

224. The Joint Board recommended requiring schools and libraries, as well as carriers, to maintain records for their purchases of telecommunications and other covered services at discounted rates, similar to the kinds of procurement records that they already keep for other purchases. The Joint Board expected that schools and libraries should be able to produce such records at the request of any auditor appointed by a state education department, the fund administrator, or any other state or federal agency with jurisdiction to review such records for possible misuse. The Joint Board believed that these reporting and recordkeeping requirements would be necessary to ensure that schools and libraries receive the discounted telecommunications services for the purposes intended by Congress.

225. Similarly, the Joint Board recommended that schools and libraries that desire additional support due to their location in a high cost area be permitted to demonstrate this by providing the necessary information to show that they meet the Commission's high cost standards.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

226. Although service providers would be required to self-certify to the fund administrator that the prices they charged to eligible schools and libraries were no more than the lowest price charged to similarly situated non-residential customers for similar services, this requirement should be minimally burdensome, given that service providers could be expected to review the prices they charged to similarly situated customers when they set the price for schools and libraries. The Joint Board expressly rejected suggestions that it require all carriers to offer services at total service long-run incremental cost levels, due to the burdens it would have created. Similarly, given that schools and libraries that form consortia with non-eligible entities would need to inform the service provider of what portion of shared facilities purchased by the consortia should be charged to eligible schools and libraries (and discounted by the appropriate amounts), it should not be burdensome for carriers to maintain records of those allocations for some appropriate amount of time.

227. With respect to service providers, the Joint Board specifically rejected a suggestion to interpret ''geographic area'' to mean the entire state in which a service provider served. This could have forced service providers to serve areas of a state that they were not previously serving, thereby unreasonably burdening small carriers that were only prepared to serve some small segment of a state. The Joint Board also rejected requirements that carriers notify customers of the availability of discounts, recommending that the Commission only recommend that carriers provide such notification, rather than requiring them to do so.

228. Schools and libraries should not be significantly burdened by the requirement that they certify that (1) they are eligible for support under section 254(h)(4); (2) the services requested are used for educational services; and (3) that such services will not be resold. Assuming that schools and libraries would need to inform carriers about what discount they are eligible for to receive that discount, there should be no significant burden imposed by requiring them to self-certify that they would satisfy the statutory requirements that Congress imposed. While the requirement that they disclose how shared facilities are used by the members of a consortia, if they form one, may be somewhat complicated, the Joint Board found that the members of the consortia would need to allocate such costs to determine which party was responsible for what portion of the bill, even without any discount. Given that such allocations would be undertaken for that reason, the Joint Board concluded that it would not be burdensome to require schools and libraries to disclose those allocations when submitting their certification of eligibility. In fact, schools that found such reporting to be burdensome could avoid such consortia, but the Joint Board found it desirable, however, to provide small schools and libraries to join with other customers, including large commercial customers, to enable them to enjoy discounts comparable to other larger customers.

229. A requirement that schools and libraries submit a description of the services and facilities they desire to purchase at a discount to the administrator or other designated entity should also be minimally burdensome. The Joint Board's understanding was that school and library boards generally already require schools and libraries to seek competitive bids for substantial purchases and this forces them to create a description of their purchase needs. The Joint Board found that it would be only minimally burdensome to require schools and libraries to submit a copy of that description to the fund administrator. It further found that this requirement would be much less burdensome than requiring schools and libraries to submit a description of their requests to all telecommunications carriers in their state, as proposed by one commenter. It also would be less burdensome than a requirement that they demonstrate that schools and libraries have employed a competitive bidding process.

230. The Joint Board concluded that it would not be burdensome to require schools and libraries to self-certify that they have a plan for deploying any necessary resources to be able to use their discounted services and facilities effectively. It anticipated that few schools or libraries would propose to spend their own money for discounted services until they believed that they could use the services effectively. Therefore, simply requiring them to certify that they had done such planning would be the least burdensome way to ensure that schools and libraries were aware of the other resources they would need to procure before ordering discounted telecommunications services and facilities. The Joint Board anticipated that the burden here would be particularly light, given the development of clearinghouses of information for schools and libraries on the Internet. The Joint Board found this alternative significantly less burdensome than the proposed requirement that schools and libraries secure outside approval of their technology plans from a government entity before they could receive any support.

231. The Joint Board also tentatively concluded that the least burdensome manner for schools and libraries to demonstrate that they are disadvantaged would be to self-certify to the fund administrator and to the service provider the portion of students in their school eligible for the national student lunch program, although the Joint Board remained open to other comparable indicators of economic disadvantage that might be less burdensome or sufficiently more precise as to justify any additional burden. The Joint Board found that the national student lunch program appears to be the most widely known and easily applied mechanism for achieving the goal of identifying disadvantaged schools and libraries, despite its flaws, and anticipated that the burden it would create for schools and libraries that did not otherwise participate in the national student lunch program would be minimal. Schools and libraries that preferred not to provide information about how

disadvantaged they were would still qualify for a recommended 20% discount on eligible purchases.

232. The Joint Board also found it reasonable to expect schools and libraries that desire additional support due to their location in a high cost area to demonstrate this by providing the necessary information to show that they meet the Commission's high cost standards. Finally, the Joint Board found that requiring schools and libraries to retain records of their purchases of services and facilities under this program for an appropriate amount of time would not be unreasonable.

Summary Analysis of Section XI

Health Care Providers

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

233. The 1996 Act provides in section 254(h)(1)(A) that a telecommunications carrier providing service shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a state and the rates for similar services provided to other customers in comparable rural areas in that state treated as a service obligation as part of its obligation to participate in the mechanisms to preserve and advance universal service. The Joint Board recommended that every health care provider, including small entities, that makes a request for universal service support for telecommunications services be required to submit to the carrier a written request, signed by an authorized officer of the health care provider, certifying certain information. The Joint Board recommended that this certification be renewed annually.

234. In formulating a recommendation as to the method for ensuring that requests are bona fide, the Joint Board was mindful of choosing a method that minimizes, to the extent consistent with section 254, the administrative burden on health care providers. Therefore, the Joint Board sought to recommend the least burdensome certification plan that would provide safeguards that are adequate to ensure that the supported services would be used lawfully and for their intended purpose.

235. The Joint Board recommended that the Commission require the universal service fund administrator to establish and administer a monitoring and evaluation program to oversee the use of universal service support to health care providers and the pricing of those services by carriers. This compliance program would be necessary to ensure that services are being used for their intended purpose, that requesters are complying with certification requirements, that requesters are otherwise eligible to receive universal service support, that rates charged comply with the statute and regulations and that prohibitions against resale or transfer for profit are strictly enforced.

236. The Joint Board recommended that the Commission encourage carriers across the country to notify eligible health care providers in their service areas of the availability of lower rates resulting from universal service support so that the goals of universal service to rural health care providers would be more rapidly fulfilled.

237. The Joint Board recommended using rates publicly filed or obtained in the ordinary course of Commission proceedings to determine the rural as well as the urban rate. The Joint Board specifically rejected any suggestion that rates not publicly available should be required to be disclosed in order to implement a universal service mechanism because it found this method to be excessively burdensome.

238. The Joint Board recommended that a sufficient audit program be established to monitor and evaluate the use of supported services in aggregated purchase arrangements. The Joint Board emphasized that the qualified health care provider could be eligible for reduced rates, and the telecommunications carrier could be eligible for support, only on that portion of the services purchased and used by the health care provider. Accordingly, the carrier would have to keep appropriate records.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

239. The Joint Board considered several certification plans suggested by commenters. It sought to recommend the least burdensome certification plan that would provide adequate safeguards to ensure that the supported services are being used for their intended purpose. The Joint Board rejected a five-component plan because it was too expensive and burdensome. It also rejected a suggestion that certification include verification of the existence of a technology plan and a checklist of other information helpful in tracking universal service. Although such plans might be useful in a discount plan where disincentives to overpurchasing are needed, the Joint Board found that such a requirement would be unnecessarily burdensome where health care providers would be required to invest substantial resources in order to pay urban rates for these services. The Joint Board also rejected suggestions that health care providers be required to certify that hardware, wiring, on-site networking and training would be deployed simultaneously with the service. Finally, the Board rejected a proposal that the financial officers of health care provider organizations be required to attest under oath that funds have been used as intended by the 1996 Act, because it found that the pre-expenditure affidavit described above, which would be submitted to the carrier along with the request for services, would be sufficient under these circumstances.

240. The 1996 Act provides that a telecommunications carrier shall provide telecommunications services to any public or non-profit health care provider at rates that are reasonably comparable to rates charged for similar services in urban areas in that state. In the NPRM, the Commission stated its intention to minimize, to the extent consistent with section 254, the administrative burden on regulators and carriers. Thus, the Joint Board recommended that the urban/rural rate differential be based on the rates charged for similar services in the urban area closest to the health care provider's location. The Joint Board believed that this method would be easy to use and understand. Thus, it complies with the Joint Board's guidelines that implementation of universal service support mechanisms be fashioned to minimize administrative burdens. Because it would involve a one-step process, this method would be less administratively burdensome than a competitive bidding system or a process based on the current Lifeline assistance program. This method also was deemed preferable to plans that would require obtaining information about private contract rates, which are proprietary and not obtainable without elaborate confidentiality safeguards.

241. The Joint Board recommended using the Office of Management and Budget's Metropolitan Statistical Area method of designating rural areas along with the Goldsmith Modification because it would meet the ''ease of administration'' criterion. Since lists of MSA counties and Goldsmith-identified census blocks and tracts already exist, updated to 1995, any health care provider could easily determine if it were located in a rural area and, therefore, whether it would meet the test of eligibility for support.

Summary Analysis of Section XII

Subscriber Line Charges and Carrier Common Line Charges

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

242. The Joint Board's recommendations regarding the interstate subscriber line charge and carrier common line charges would not impose any additional reporting requirements on any entities, including small entities. These charges currently exist. Although the Joint Board recommended changes in the amounts of the charges, the recommended changes would have no impact on the information collection requirement, and would not extend the charges to additional carriers.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

243. Because the SLC and CCL charges would recover ILECs' costs for portions of their network, reporting requirements were deemed necessary to track the costs and allow for their recovery. No alternatives were presented that would have eliminated or substantially reduced those reporting requirements. The Joint Board's recommendation has no impact on the information collection requirement, and would not extend the charges to any additional carriers.

Summary Analysis of Section XIII

Administration

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

244. Section 254(d) states ''[t]hat all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions'' toward the preservation and advancement of universal service. The Recommended Decision would require all telecommunications carriers that provide interstate telecommunications services to contribute to the universal service support mechanism. In order to compute carrier contributions, carriers must submit an annual universal service worksheet. The worksheet would require all carriers to submit information relating to revenues derived from telecommunications services and their payments made to other telecommunications carriers for telecommunications services to the administrator of the support mechanism. After receiving the worksheet, the administrator would calculate each carriers' contribution and bill each carrier. Carriers that provide services to schools, libraries and health care providers might be eligible to receive a credit against their contribution. Carriers seeking a credit would have to submit additional information on a monthly basis regarding the services provided at less than cost to the administrator in order to receive the credit. Approximately 3,500 telecommunications carriers would be required to submit revenue and payment information. The estimated burden on the respondent for filling out the worksheet would be 4 hours and for those submitting monthly information regarding the schools, libraries, and health care providers, 1 hour. These tasks may require some legal and accounting skills.

245. The Joint Board recommended that certain carriers be exempted from the contribution requirement when their contribution is determined to be *de minimis* under section 254(d). The Board concluded that the *de minimis* exemption should apply where the administrator's cost of collecting the contribution exceeds the carrier's contribution. Exempt carriers would not be required to submit an annual worksheet. The Joint Board anticipated that this recommendation would provide relief to many small entities qualifying under the *de minimis* exemption. The Joint Board sought to limit the information requirements to the minimum necessary for evaluating and processing the application and to deter against possible abuse of the process.

Significant Alternatives To Recommended Decisions Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.

246. The Joint Board determined that small carriers should not be given preferential treatment in the determination of contributions to the universal service support mechanism solely on that status given section 254(d)'s explicit directive that every telecommunications carrier that provides interstate telecommunications services shall contribute to the preservation and advancement of universal service. The Joint Board considered the suggestions of commenters regarding various graduated contribution schemes that would favor small entities. It rejected these suggestions based on the language of the statute, legislative history and the regulatory burdens that such graduated schemes would entail. The Joint Board further considered commenter suggestions that small carriers be exempted from contribution on the basis of the *de minimis* provision of section 254(d). It rejected these suggestions on the basis of the legislative history surrounding section 254(d) which provides that the *de minimis* exemption should be limited to those carriers for whom the cost of collecting the contribution exceeds the amount of the contribution. The Joint Board concluded that expansion of the definition of *de minimis* to include ''small'' carriers would violate the pro-competitive intent of the 1996 Act and require complex administration and regulation to determine and monitor eligibility for the exemption. The Joint Board believed that small entities would benefit under the *de minimis* exemption as interpreted in the Recommended Decision without an explicit exemption for all small entities.

247. Federal rules that may duplicate, overlap, or conflict with the Recommended Decision. None.

Recommending Clauses

248. For the reasons discussed in this Recommended Decision, this Federal-State Joint Board, pursuant to section 254(a)(1) and section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 254(a)(1), 410(c), recommends that the Federal Communications Commission adopt the proposals, as described above, implementing new section 254 of the Telecommunications Act of 1934, as amended, 47 U.S.C. 254.

249. The Joint Board further recommends that parties submitting any comments or additional information in this docket be required to serve each member of the Federal-State Joint Board and the Joint Board staff. These submissions should be served in accordance with the service list attached.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix I—Analysis of Proxy Models

1. We have briefly discussed the criteria that the Commission should consider in evaluating the reasonableness of using a proxy model to determine the level of universal service support a carrier should receive for a particular geographic area. In this Appendix, we highlight some of the issues raised by commenters, differences between the models, and the results each model produces. At the workshops that we have recommended that the Commission conduct, we expect that model proponents would be prepared to discuss the relative merits of each model, the criticisms raised by commenters, and the major causes of the substantial differences between the size of

the high cost assistance support derived by the models.

2. As we have discussed, the proxy model must rely on the forward-looking economic cost of developing and operating the network facility and functions used to provide services supported under Section 254(c)(1). Costs for providing universal service should be based on the most efficient technology that can be deployed using the incumbent local exchange carrier's (LEC) current wire-center locations. For the most part, we believe that the useful aspects of ''forward-looking'' approach are captured by the least cost concept. To the extent that reliable new technologies represent the least cost method for providing the supported services, they should be incorporated in the model. Firms in a competitive market may well choose to place facilities with the capability of providing a number of competitive services beyond the supported services. To the extent that this is true, the network we are modelling may depart from that which a firm may choose to install. However, to the extent that new technologies are necessary to provide a platform for a number of other competitive services, they should not be included in the model. The model should be sufficiently flexible to incorporate new technologies as the cost of these facilities falls such that they become the most efficient way to provide the supported services. In addition, the model must be sufficiently flexible to include the functionalities necessary to provide an evolving set of supported services.

3. *Model Assumptions and Results—Demand.* We agree that the models should reflect the impact on costs of the number and distribution of residential and business lines. The models start with an assignment of one residential line to each household in every census block group (CBG) reported in the 1990 Census. The Hatfield model uses recent Census estimates to update the 1990 Census values. Because not all households have telephone service and some households have more than one line, the models are calibrated to match state and study area residential demand totals. Currently, the models use data on employees per CBG to assign the relative number of business lines per CBG. Because the ratio of business telephones to employees is not constant across all industries, a model used for calculating universal service support would need to include a better indicator of business lines per CBG. Numerous commenters have reported unexplained variations between model line demand and expected line demand. The models should attempt to simulate the actual location of households and the placement of facilities to reach those households through a technically feasible route.

4. *Loop Investments.* Loop investments, i.e., outside plant, include the investments in cable and wire from an end user's home or business to the telephone company central office. They also include the investment in structures that support the cable and wire, such as poles and conduits, and the cost of placing the cable and wire. The models provide different estimates of loop investment because of different assumptions regarding fill factors, terrain impacts, structure sharing and the fiber/copper cross-over point. For the reasons set forth below, we believe that these inconsistencies must be resolved in order for the models to provide reasonable estimates of loop investments. Furthermore, the models should more accurately reflect the network topography necessary to serve an area. For example, many rural areas are extremely high cost regions which the models currently may not adequately represent. If the model does not accurately account for extreme geographic or climatic conditions, it may underestimate support necessary to serve these ares and may put continued service at risk.

5. A fill factor represents the percentage of the loop facility that is being used. Fill factors must be below 100 percent because it is necessary to have reserve capacity to replace damaged facilities and serve new demand. Because it is cheaper to build plant in discrete increments rather than adding one loop at a time, fill factors are generally lower if there is an anticipation of growth. In residential markets, telephone companies traditionally place additional or spare distribution plant so customers could purchase more than one line. In business markets, many telephone companies may increase loop investment as part of a strategy to provide Centrex service. These practices lower the fill factors. The original BCM uses fill factors lower than those in the Hatfield model. BCM2, however, uses fill factors that are very similar to the Hatfield estimates. In response to the Common Carrier Bureau's information request, the models' proponents indicate that the fill factors that are calculated as ratio of demand divided by the number of loops constructed by the models are less than the input fill factors. This occurs because cable can be purchased only in increments, such as 100 pair cable, and therefore, will always exceed the required demand.

6. Terrain impacts refer to the effect of soil composition, the level of the water table and slope characteristics. BCM2 develops unique factors for 54 different combinations of terrain impacts. It appears that changes in terrain impacts are responsible, in part, for the increase in BCM2 investment relative to the BCM investment. The Hatfield model incorporates adverse terrain conditions by increasing the loop length by 20 percent rather than estimating the impacts of each terrain characteristic. Detailed documentation to support the terrain-impact-input analysis is essential to an evaluation of the reasonableness of these assumptions.

7. Structure sharing refers to the practice of sharing investments with other utilities in poles, trenches and conduits. The Hatfield model assumes that structures are shared equally by telephone, electric and cable companies; this assumption reduces the assumed investment in structures to one third of their estimated cost. In contrast, BCM2 assumes that the telephone company is responsible for 100 percent of the structure costs. The difference in the sharing assumption accounts for approximately 13 to 15 percent of the difference in the model's forward-looking cost estimate for high cost areas. We are unconvinced that sharing exists to the extent the Hatfield model presumes, but we do not conclude, as do the proponents of the BCM2, that the cost of structures is never shared among the utilities. The model proponents should be prepared to supplement their current filings with documentation that supports their position regarding this issue as well as the related issue of whether the percentage of sharing is a function of the type of structure, e.g., is there more sharing of poles than conduit?

8. The fiber-copper cross-over point refers to choice of using copper or fiber in the feeder plant. Each model specifies a default loop length. It then assumes that, if the loop is greater than the default length, the feeder plant will be fiber and if the loop is less than the default length, the feeder plant will be copper. The cross-over point should be based on engineering practice. Neither model proponent submits studies to support the engineering practice it assumed. Commenters show that assumptions about this practice can lead to different costs. We note that an examination of both model results shows that over 50 percent of the lines will be served by digital loop carrier connected to central offices by fiber, while currently less than five percent of lines use that type of facility. We believe that our forward looking cost principles would require a determination of whether either of the engineering practices posited in the models is the least-cost method of placing loop facilities.

10. *Switching Investment.* Switching investments include the cost of the switch, distribution frame, power expenses and the wire center building. The models use only digital switches. The BCM2 proponents allege that they have placed host, stand alone, and remote switches in wire centers according to the current placement of such switches. The Hatfield model uses only host switches. Commenters claim that these assignments do not reflect the forward-looking cost of switching. We share the commenters' concern regarding which type of switch, host, stand-alone or remote is assigned to each wire center and suggest that further work by interested parties would clarify this issue. We also have concerns regarding whether switches are included in the models that accurately reflect switching needs, particularly in sparsely populated areas. These concerns should be addressed.

11. Obtaining non-proprietary estimates of the cost of switches is difficult. The proponents of the Hatfield model and the BCM2 obtained switch cost estimates from several sources. The BCM2 switch input costs are lower than those in BCM and now approach the switch cost used by the Hatfield model.

Moreover, the switching costs reported in the information requests for each of the three study areas, PacTel of California, GTE of Arkansas, and Southwestern Bell of Texas, are very similar.

12. The Hatfield model assigns over 80 percent of the switch cost to supported universal services and BCM2 assigns over 90 percent of the switch to services that are supported. These percentages are greater than the ratio of local usage to total usage. These assignments are higher than the usage ratio because certain switch components, such as the processor, are allocated solely to the provision of supported universal services. We suggest that assignment of switch costs be reviewed to determine whether a more accurate assessment of costs be allocated to universal support mechanisms.

13. *Depreciation*. Depreciation rates determine the level of expenses associated with the use of investments. Commenters disagree on whether depreciation rates used in the proxy models are too high or too low. Their positions reflect opinions regarding the impact of competition on depreciation rates and the extent to which the cost of supported services should be affected by competitive pressures. We believe that proxy models should use depreciation rates that reflect economic costs and should be flexible enough to permit depreciation rates set by regulators.

14. *Annual Charge Factors.* Annual charge factors or expense factors determine the level of expenses. In the BCM2 and Hatfield proxy models, plant-specific annual charge factors are determined as the ratio of ARMIS expenses to investment. Several commenters express concern that use of the ARMIS data conflicts with the desire to develop forward-looking costs because the ARMIS data are embedded cost statistics. The proxy models do not rely on the ARMIS expenses, but rather on the ratios of expenses to investment. The ARMIS expense to investment ratio is a ratio of current year expenses to investments purchased over many years. We recommend that the level of expenses be based on an analysis that calculates forward-looking expenses. If the Commission concludes that the ARMIS expense ratios are a reasonable starting position for determining forward-looking expenses, then we recommend that these ratios be modified to reflect changes in the expenses required to support and maintain forward-looking investments. For example, because the models only use digital switches, switch maintenance expenses should not include maintenance expenses associated with analog stored program or electromechanical switches. Expenses used in the models should be accurately reflected.

15. *Joint and Common Costs.* In its *Local Competition Order*, the Commission defined common costs as ''costs that are incurred in connection with the production of multiple products or services, and remain unchanged as the relative proportion of those products or services varies (e.g., the salaries of corporate managers).'' With regard to the proxy models used for the purpose of establishing universal service support the Commission must determine how to allocate common costs among the services supported by the universal service mechanism and all other services.

16. The Hatfield model estimates the common cost of corporate operations by multiplying all other expenses by 10 percent. This procedure generates corporate operations expenses that are between 25 and 50 percent of the corporate operations expenses reported in ARMIS. The BCM2 divides ARMIS total corporate operations expenses for all reporting companies by the total number of lines served by these companies. It assigns 75 percent of this per-line value to the cost of providing the supported services. These differences explain approximately 11 percent of the difference between the average monthly forward-looking costs estimated by the Hatfield and BCM2 models. Further investigation is required before it would be possible to conclude that either of the proposed approaches or some other approach to the estimation is a reasonable level of corporate operations expenses to be included in calculation of the cost of providing the supported services.

17. *Retail Costs.* Retail costs are the costs associated with billing and collection, product management, sales, and advertising and other customer service expenses. The Hatfield model excludes product management, sales, and advertising expenses. It includes billing and collection costs and other customer services expenses. Because of these assumptions, the Hatfield model includes only 21 to 25 percent of ARMIS customer operations expenses in its cost estimates. The BCM2 model incorporates 75 percent of the ARMIS customer operations expenses in its cost estimates. The differences in the treatment of customer operations accounts for 19 percent of the difference between the average monthly forward-looking costs estimated by the Hatfield and BCM2 models.

18. NCTA's ETI report asserts that regulators should rigorously evaluate the ARMIS data before accepting them as a basis for forward-looking costs. Its investigation of a Massachusetts cost study reveals that a significant proportion of product management expenses are related to market management and planning for business customers. NCTA argues that close examination of sales and advertising expenses reveals that these expenses are not related to the provision of basic residential service. It concludes that only four percent of marketing expenses should be assigned to the cost of providing the supported services. We agree that rigorous evaluation of the ARMIS data, to the extent ARMIS data are used, is necessary. We are not willing, however, to conclude that ARMIS data are the only data that should be used to determine retail costs. Therefore, we are not prepared to recommend what would be the reasonable amount of retail costs.

19. *Model results.* The model results produce significantly different estimates of the nationwide total amount of support required to maintain the provision of the supported services in high costs areas. For example, at a $20.00 benchmark, using the model's default settings, the Hatfield model indicates that the universal service support would be $5.3 billion, which is the sum of $3.4 billion for large LECs and $1.9 billion for non-Tier1 LECs. The BCM2, at a $20.00 benchmark, indicates that support would be $14.6 billion. The remaining difference, $9.5 billion, is a function of the model input costs and engineering design principles.

20. Another means of evaluating the models is to compare their results to the results generated by embedded-cost studies. Because forward-looking and embedded costs rely on different input costs and technologies, the results from these studies are likely to differ. We are concerned, however, about large changes in the relative position of the states when comparing our embedded cost results to the results generated by the proxy models. The state characteristics, such as population density and terrain factors, that cause telephone companies in a state to exhibit high forward-looking costs in the models, do not cause those telephone companies to exhibit relatively high embedded costs. Alternatively, the change in position could be caused by specific management or accounting practices that affect embedded costs but that would not be reflected in forward-looking costs. A state's relative position can be measured by its rank, where the

state with the lowest cost has a rank of one and the state with the highest cost would have a rank of 51. A change in the rank order is the difference between the rank order estimated by a model and the rank order according to the current high cost assistance mechanism, which ranks states by embedded loop costs. For example, the change in rank order for California is three because it is the third lowest cost state according the BCM2 and it is the sixth lowest cost state according to the High Cost Fund. There are fifteen states for which the change in rank order is greater than ten. (For those fifteen states, the change in cost per line per month ranged from $3.06 to $24.41, with an average change of $10.47.) We believe it is necessary to determine why these large changes occur, and to ensure that the change in rank order does not threaten the provision of the supported services in these states.

21. *Measure of support.* The two models on the record calculate support required for the provision of the supported services as the product of the number of lines in a geographic area and the difference between a cost estimate and a uniform benchmark amount. BCM2 uses the CBG as the geographic area to measure the line count and cost estimate. BCM2 sums the support across all CBGs in a state to determine the state-wide support level. Calculation of support at either the wire center, study area, or density zone level is not a standard output of the model. Further manipulation of the BCM2 input sheets is required to obtain these results. The Hatfield model estimates the cost per CBG. The model average CBG cost estimates across six density zones. It uses the difference between the density zone average and the benchmark to determine the per-line support per density zone. It multiplies the per-line support by the number of lines per density zone to estimate the density zone support and then sums across all density zones to determine the support for the study area. Calculation of support at either the CBG or wire center level is not a standard output of the model. Further manipulation of the Hatfield model input sheets is required to obtain these results.

22. Any proxy model used to calculate universal support levels should be able to provide estimates of support at various geographic levels with a state, such as on a study area, wire center, density zone, or CBG basis. These estimates would enable the Commission and state commissions to compare alternative decisions regarding support areas, and it is necessary so that we will be able to establish a specific, predictable and sufficient mechanism to preserve and advance universal service.

Appendix II—Service List

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission, 1919 M Street, NW, Room 814, Washington, DC 20554
The Honorable Rachelle B. Chong, Commissioner
Federal Communications Commission, 1919 M Street, NW, Room 844, Washington, DC 20554
The Honorable Susan Ness, Commissioner
Federal Communications Commission, 1919 M Street, NW, Room 832, Washington, DC 20554
The Honorable Julia Johnson, Commissioner
Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Building, Tallahassee, FL 32399–0850
The Honorable Kenneth McClure, Commissioner
Missouri Public Service Commission, 301 W. High Street, Suite 530, Jefferson City, MO 65101
The Honorable Sharon L. Nelson, Chairman
Washington Utilities and Transportation Commission, PO Box 47250, Olympia, WA 98504–7250
The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission, State Capitol, 500 E. Capitol Street, Pierre, SD 57501–5070
Martha S. Hogerty
Public Counsel for the State of Missouri, PO Box 7800, Jefferson City, MO 65102
Anna Gomez, Federal Staff Chair
Federal Communications Commission, 2100 M Street, NW, Room 8617, Washington, DC 20036
Paul E. Pederson, State Staff Chair
Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102
Lisa Boehley
Federal Communications Commission, 2100 M Street, NW, Room 8605, Washington, DC 20554
Charles Bolle
South Dakota Public Utilities Commission, State Capitol, 500 E. Capitol Street, Pierre, SD 57501–5070
Deonne Bruning
Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, PO Box 94927, Lincoln, NE 68509–492
James Casserly, Senior Legal Advisor
Office of Commissioner Susan Ness, Federal Communications Commission, 1919 M Street, Room 832, Washington, DC 20554
John Clark
Federal Communications Commission, 2100 M Street, NW, Room 8619, Washington, DC 20554
Bryan Clopton
Federal Communications Commission, 2100 M Street, NW, Room 8615, Washington, DC 20554
Irene Flannery
Federal Communications Commission, 2100 M Street, NW, Room 8922, Washington, DC 20554
Daniel Gonzalez, Legal Advisor
Office of Commissioner Rachelle B. Chong, Federal Communications Commission, 1919 M Street, NW, Room 844, Washington, DC 20554
Emily Hoffnar
Federal Communications Commission, 2100 M Street, NW, Room 8623, Washington, DC 20554
L. Charles Keller
Federal Communications Commission, 2100 M Street, NW, Room 8918, Washington, DC 20554
Lori Kenyon
Alaska Public Utilities Commission, 1016 West Sixth Avenue, Suite 400, Anchorage, AK 99501
David Krech
Federal Communications Commission, 2025 M Street, NW, Room 7130, Washington, DC 20554
Debra M. Kriete
Pennsylvania Public Utilities Commission, PO Box 3265, Harrisburg, PA 17105–3265
Diane Law
Federal Communications Commission, 2100 M Street, NW, Room 8920, Washington, DC 20554
Mark Long
Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Building, Tallahassee, FL 32399
Robert Loube
Federal Communications Commission, 2100 M Street, NW, Room 8914, Washington, DC 20554
Samuel Loudenslager
Arkansas Public Service Commission, PO Box 400, Little Rock, AR 72203–0400
Sandra Makeeff
Iowa Utilities Board, Lucas State Office Building, Des Moines, IA 50319
Philip F. McClelland
Pennsylvania Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, Pennsylvania 17120
Michael A. McRae
D.C. Office of the People's Counsel, 1133 15th Street, NW.—Suite 500, Washington, DC 20005
Tejal Mehta
Federal Communications Commission, 2100 M Street, NW., Room 8625, Washington, DC 20554
Terry Monroe
New York Public Service Commission, 3 Empire Plaza, Albany, NY 12223
John Morabito, Deputy Chief, Accounting and Audits Division
Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., Suite 812, Washington, DC 20554
Mark Nadel
Federal Communications Commission, 2100 M Street, NW., Room 8916, Washington, DC 20554
John Nakahata, Senior Legal Advisor
Office of Chairman Reed E. Hundt, Federal Communications Commission, 1919 M Street, NW., Room 814 Washington, DC 20554
Lee Palagyi
Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive SW., Olympia, WA 98504
Kimberly Parker

Federal Communications Commission, 2100 M Street, NW., Room 8609, Washington, DC 20554
Barry Payne
Indiana Office of the Consumer Counsel, 100 North Senate Avenue, Room N501, Indianapolis, IN 46204–2208
Jeanine Poltronieri
Federal Communications Commission, 2100 M Street, NW., Room 8924, Washington, DC 20554
Michael Pryor
Federal Communications Commission, 2100 M Street, NW., Room 8905, Washington, DC 20554
James Bradford Ramsay
National Association of Regulatory Utility Commissioners, PO Box 684, Washington, DC 20044–0684
Brian Roberts
California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102
Gary Seigel
Federal Communications Commission, 2000 L Street, NW., Suite 812, Washington, DC 2055
2100 M Street, NW., Room 8605, Washington, DC 20554
Pamela Szymczak
Federal Communications Commission, 2100 M Street, NW., Room 8912, Washington, DC 20554
Lori Wright
Federal Communications Commission, 2100 M Street, NW., Room 8603, Washington, DC 20554

[FR Doc. 96–30381 Filed 11–29–96; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–236, RM–8907]

Radio Broadcasting Services; Wake Village, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Phillip W. O'Bryan proposing the allotment of Channel 223A at Wake Village, Texas, as the community's first local aural transmission service. Channel 223A can be allotted to Wake Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) northeast to avoid a short-spacing conflict with an application for Channel 224C2 at Blossom, Texas. The coordinates for Channel 223A at Wake Village are 33–25–09 and 94–04–18.

DATES: Comments must be filed on or before January 13, 1997 and reply comments on or before January 28, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Phillip W. O'Bryan, 804 Clear Creek Drive, Texarkana, Texas 75503 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–236, adopted November 15, 1996, and released November 22, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30587 Filed 11–29–96; 8:45 am]
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47 CFR Part 73

[MM Docket No. 96–231, RM–8903]

Radio Broadcasting Services; Redwood, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Dominant Communications Corporation proposing the allotment of Channel 288A at Redwood, Mississippi, as the community's first local aural transmission service. Channel 288A can be allotted to Redwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) south in order to avoid a short-spacing conflict with the licensed site of Station WNLA(FM), Channel 288A, Indianola, Mississippi. The coordinates for Channel 288A at Redwood are 32–27–13 and 90–48–42.

DATES: Comments must be filed on or before January 6, 1997, and reply comments on or before January 21, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl Haynes, President, Dominant Communications Corporation, P.O. Box 31235, Jackson, Mississippi, 39286–1235.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–231, adopted November 8, 1996, and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30585 Filed 11–29–96; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–233; RM–8908]

Radio Broadcasting Services; Cle Elum, Washington

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Brian J. Lord proposing the allotment of Channel 229A at Cle Elum, Washington, as the community's first local aural transmission service. Channel 229A can be allotted to Cle Elum in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.4 miles) southeast to avoid a short-spacing to the licensed site of Station KMPS–FM, Channel 231C, Seattle, Washington. The coordinates for Channel 229A at Cle Elum are North Latitude 47–07–36 and West Longitude 120–50–41. Since Cle Elum is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before January 6, 1997, and reply comments on or before January 21, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian J. Lord, 3824 SW Myrtle Street, Seattle, Washington 98126–3210 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–233, adopted November 8, 1996, and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30584 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–178; RM–8865]

Radio Broadcasting Services; Hollis, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of The Hollis Group, dismisses its petition to delete Channel 223A and allot Channel 267C3 at Hollis, Oklahoma. The Commission retains vacant and unapplied-for Channel 223A at Hollis, Oklahoma, as the community's only potential local aural service. *See* 61 FR 48660, September 16, 1996. The petitioner withdrew its intention to apply for Channel 267C3 if allotted to Hollis and no other party expressed an interest in applying for Channel 267C3. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–178, adopted November 8, 1996, and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30583 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–230, RM–8911]

Radio Broadcasting Services; Levan, Utah

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Windy Valley Broadcasting, proposing the allotment of Channel 268A to Levan, Utah, as the community's first local aural transmission service. Channel 268A can be allotted to Levan in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 268A at Levan are 39–33–18 and 111–51–42.

DATES: Comments must be filed on or before January 6, 1997, and rely comments on or before January 21, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael Jr., President, Windy Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–230, adopted November 8, 1996, and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30582 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–229, RM–8919]

Radio Broadcasting Services; Boonville, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri proposing the allotment of Channel 226A to Boonville, Missouri, as that community's second local FM broadcast service. The coordinates for Channel 226A are 38–58–00 and 92–35–54. There is a site restriction 11.9 kilometers (7.4 miles) east of the community.

DATES: Comments must be filed on or before January 6, 1997, and reply comments on or before January 21, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Richard L. Billings, Big Country of Missouri, Inc., 1600 Radio Hill Road, Boonville, Missouri 65333.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.96–229, adopted November 8, 1996 and released November 15, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–30581 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 87–268; FCC DA96–1929]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission is extending the time for filing reply comments relating to the *Sixth Further Notice of Proposed Rule Making* in this proceeding until January 10, 1997. The Commission also indicates that it will accept late-filed comments for a reasonable period of time after the November 22, 1996, due date for comments. This action will allow the development of a complete record on the matter of channel allotments for operation of digital TV service.

DATES: Comments received after the original November 22, 1996, due date will be accepted for a reasonable period of time; reply comments must be received on or before January 10, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION:

1. On July 25, 1996, the Commission adopted a *Sixth Further Notice of Proposed Rule Making (Sixth FNPRM)* in MM Docket No. 87–268, 61 FR 43209, August 21, 1996, that proposed policies for developing the initial channel allotments for digital TV (DTV) service, proposed procedures for assigning DTV allotments, and plans for spectrum recovery. The *Sixth FNPRM* also contains a draft DTV Table of Allotments. Comments and reply comments responding to the *Sixth FNPRM* were due November 22, 1996, and December 23, 1996, respectively.

2. On November 13, 1996, Cohen, Dippell and Everist (CDE), a consulting engineering firm, submitted a request seeking to extend the dates for filing comments and reply comments in response to the *Sixth FNPRM*. It asks that the comment and reply dates be extended 60 days. CDE argues that this additional time is needed to study the multiple technical issues related to DTV operation, including propagation, protection ratios to and from other radio services, out-of band emissions, use of channel 6, alternative allotment possibilities, etc. that are addressed in the *Sixth FNPRM*.

3. A number of parties representing broadcast interests, including ABC, ALTV, APTS, CBS, Chris Craft, MSTV, NAB, NBC PBS, and Tribune (Broadcasters) submitted a joint opposition to CDE's request for an extension of time. Broadcasters submit that it is important that the Commission adopt a DTV Table as soon as possible. They argue this is the only way to ensure that the long-awaited DTV service is licensed in the very near future. They observe that the DTV transmission standard and planning factors used to allot and assign DTV channels have been under study for nine years. Broadcasters further state, however, that they recognize the importance of providing an opportunity to fully study and to comment meaningfully on the *Sixth FNPRM*. They therefore urge that instead of extending the time in which to file all comments, the Commission should: (1) accept late filed comments for a reasonable period time, and (2) extend the time for filing reply comments to January 10, 1997. Broadcasters submit that, with the approach of the holiday season, this approach should give all parties an

opportunity to prepare fully developed comments.

4. In a letter of November 19, 1996, CDE stated that after reviewing the Broadcasters opposition filing, it now intends to offer comments that advance an alternative procedure that would provide flexibility in resolving the numerous technical issues that impact DTV allotments. CDE therefore amended its earlier request to support the comment date plan suggested by the Broadcasters.

5. We agree with the Broadcasters that it is desirable to complete our action adopting an initial DTV Table of Allotments as soon as possible. We find that the alternative plan for filing comments and reply comments suggested by the Broadcasters, rather than that originally suggested by CDE, is appropriate in the interests of developing a complete record on the DTV channel allotment matter and of accommodating the demands of the holiday season. We therefore are extending the date for filing reply comments to January 10, 1997. In addition, we will accept late-filed comments that are filed within a reasonable period of time after the November 22, 1996, due date for comments.

6. Accordingly, *It is ordered* that Broadcasters' request that we accept late-filed comments for a reasonable period of time and that we provide additional time for the filing of reply comments, as supported by CDE in its supplemental filing, *Is granted* as indicated herein. *It is further ordered* the time for filing reply comments relating to the *Sixth FNPRM is extended* to January 10, 1997. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.202(b), 0.283 and 1.45 of the Commission's rules, 47 CFR §§ 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–30542 Filed 11–29–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644, and 678

[I.D. 112296A]

Atlantic Highly Migratory Species Fisheries; Consolidation of Regulations

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

ACTION: Public hearings; request for comments.

SUMMARY: NMFS will hold six public hearings to receive comments from fishery participants and other members of the public on the proposed consolidation of existing Highly Migratory Species (HMS) regulations. The proposed rule would provide the public with a single reference source for the regulations applying to Atlantic tunas, swordfish, billfish, and sharks, which is clearer and easier to use than the existing regulations. The proposed rule is part of the President's Regulatory Reinvention Initiative.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of hearings. Written comments and suggestions on the consolidation must be received on or before December 23, 1996.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the hearings. Written comments should be sent to Christopher Rogers, Office of Sustainable Fisheries, (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the proposed rule are available from the same address.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, (301) 713–2347.

SUPPLEMENTARY INFORMATION: A complete description of the measures, and the purpose and need for the proposed action, are contained in the proposed rule published November 6, 1996 (61 FR 57361) and are not repeated here.

NMFS requests comments or suggestions for further consolidation or elimination of obsolete or duplicative provisions contained in the proposed revision to Atlantic HMS regulations. Comments concerning the impacts of identified and or other substantive changes are also requested.

The public hearings are scheduled as follows:

1. Monday, December 9, 1996, 1 to 3 p.m.—NOAA Building 2, Room 14316, 1325 East-West Highway, Silver Spring, MD 20910;

2. Monday, December 9, 1996, 6:30 to 9:30 p.m.—Virgin Islands Gamefish Association, Red Hook, St. Thomas, USVI 00802;

3. Tuesday, December 10, 1996, 6 to 9 p.m.—NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702;

4. Tuesday, December 10, 1996, 7 to 10 p.m.—Ponce Hilton, Malecon Avenue, Playa de Ponce, Ponce, PR 00732;

5. Wednesday, December 11, 1996, 6 to 10 p.m.—Kings Grant Quality Inn, Route 128 at Trask Lane, Danvers, MA 01923;

6. Friday, December 13, 1996, 7:00 to 9:30 p.m.—North Carolina Aquarium, Airport Road, Manteo, NC 27954.

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher Rogers at (301) 713–2347 at least 5 days prior to the meeting date.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: November 25, 1996.

George Darcy,

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

[FR Doc. 96–30570 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961121323–6323–01; I.D. 111396C]

RIN 0648–AJ05

Fisheries in the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Increase Halibut Quota Share Use Limits in Area 4

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut fisheries in and off Alaska. This action would increase halibut quota share (QS) use limits for QS holders in IFQ regulatory

areas 4A, 4B, 4C, 4D, and 4E (Area 4) of the Bering Sea and Aleutian Islands (BSAI). This action is necessary to increase individual harvest limits of IFQ halibut in Area 4 and is intended to improve the profits for IFQ halibut fishermen operating in Area 4.

DATES: Comments on the proposed rule and supporting documents must be received by January 2, 1997.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501.

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

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut fishery is managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the Alaskan coastal communities where many of these fishermen are based. NMFS implemented the IFQ Program in 1995. Various constraints were placed on QS and IFQ that limit consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges. Use limits on BSAI sablefish QS are written into the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action does not propose any change to sablefish QS use limits. No FMP for halibut exists; the halibut fishery is subject to the regulations of the International Pacific Halibut Commission (IPHC) and additional management measures developed by the Council that allocate harvesting privileges among U.S. fishermen. The Halibut Act provides NMFS, in consultation with the Council, with authority to implement such allocation measures through a regulatory amendment.

Limits on QS use were created in response to concerns that an unrestricted market for QS could result in a few powerful interests controlling most of the IFQ landings and thus result in excessive decreases in the number and demographic distribution of vessels and fishermen participating in the fixed gear halibut fishery. The use limits restrict the amount of QS that a single QS holder may use to harvest IFQ species. Current regulations at 50 CFR 679.42(f)(3) allow a single QS holder to use no more than ½ percent (0.005) of the total amount of halibut QS for IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E combined, unless the amount in excess of this limit was received in the initial allocation of QS. The ½ percent limit for these regulatory areas combined limited QS use to 165,015 QS units per IFQ holder in 1996.

The amount of halibut, in pounds, that a fisherman is allowed to harvest each year is calculated annually by dividing the number of QS units a fisherman holds by the QS pool, the total of all QS for each respective IFQ regulatory area. From the resulting figure is derived the percentage of the catch limit of halibut that a fisherman may harvest in each IFQ regulatory area for which the fisherman holds QS. This percentage is then multiplied by the catch limit in each IFQ regulatory area determined annually for halibut by the IPHC. The mathematical formula for deriving IFQ pounds from QS is given at 50 CFR 679.40(c). Because the total allowable catch can change annually in response to changes in fish stocks, IFQ based on a certain amount of QS can also vary from year to year. The QS pool can also change as appeals are decided and additional QS issued, or as QS are revoked due to violations.

In 1995, representatives of the fishing industry testified to the Council that the limited profits available from halibut harvests under the ½ percent limit were insufficient to justify the expense of traveling to remote fishing grounds in the western BSAI. To further exacerbate this problem, most QS are distributed among IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E. Hence, QS units result in differing amounts of IFQ poundage for each specific regulatory area. For example, in 1996, the Area 4 use limit of ½ percent (165,015 QS units) resulted in 32,813 IFQ lb for IFQ regulatory area 4B, but only 16,005 IFQ lb for IFQ regulatory area 4C. Moreover, because the current use limit is expressed as a percentage of the QS pool—and the size of the QS pool can vary from year to year—a fisherman's QS holdings that are at the use limit in one year could exceed the use limit in another year without the fisherman adding more QS to his holdings.

At its meeting in January 1996, the Council initiated an analysis of options for increasing Area 4 halibut use limits from the current one-half percent to a range of from 1 percent to 2 percent and, at its next meeting in April 1996, approved the analysis for public review. The Council took final action to recommend a regulatory amendment increasing the use limits to 1½ percent at its meeting in June 1996. Under this proposal, the halibut QS use limit in Area 4 would be increased from one-half percent to 1½ percent of the QS pool. This would allow halibut QS holders currently at the present limit to increase their QS and would provide greater economic incentive to harvest halibut in remote areas of the western BSAI.

Current regulations at 50 CFR 679.42 set the use limit as a percentage of the QS pool in any given year; this action would set the use limit for Area 4 at 1½ percent of the 1996 QS pool for a total of 495,044 QS units. For consistency, regulations at 50 CFR 679.42(f) (1) and (2), which set halibut QS use limits for IFQ regulatory areas 2C, 3A, and 3B, would be revised also to set the halibut QS use limit for all IFQ regulatory areas at a fixed number of QS units rather than a percentage of the annual QS pool. By setting the use limit at a fixed number of QS units, this action would provide QS holders with an unchanging QS limit that will not vary according to the size of the QS pool. While the amount of IFQ produced from a certain amount of QS will vary from year to year, an invariable use limit would allow QS holders to judge more accurately whether their holdings exceed the use limit.

Classification

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

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. A copy is available (see **ADDRESSES**). Approximately 500 halibut QS holders in regulatory areas 4A through 4D would benefit from an increase in the Area 4 QS use limit, either as QS buyers or sellers. Area 4E would not be affected by this action, because all of the halibut QS in this area is assigned to the CDQ Program, which would not be impacted by this rule. Under this proposed action, 45 QS holders would be allowed to increase

their holdings above the current limit to the new limit. Because blocked QS are limited by block and vessel category restrictions, unblocked QS units are more likely to be transferred. The unblocked halibut QS units in regulatory areas 4A through 4D equal approximately 2.1 million lb (952 metric tons) of halibut worth more than $4.6 million in exvessel value. Therefore, this proposed action would have a significant positive impact on a substantial number of small businesses. It would significantly improve the profitability of operations for fishermen wishing to harvest IFQ halibut in remote areas of the western BSAI.

List of Subjects in 50 CFR Part 679

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is proposed to be amended as follows:

PART 679—FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR Part 679 continues to read as follows:

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

2. In § 679.42, paragraphs (f)(1) through (f)(3) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(f) * * *

(1) IFQ regulatory area 2C. 599,799 units of halibut QS.

(2) IFQ regulatory areas 2C, 3A, and 3B. 3,005,646 units of halibut QS.

(3) IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E. 495,044 units of halibut QS.

* * * * *

[FR Doc. 96–30634 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 679

[I.D. 112596C]

RIN 0648–AI62

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limits for Tanner Crab

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

ACTION: Notice of availability of an amendment to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 41 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 41 would adjust the prohibited species catch (PSC) limits for Tanner crab (*Chionoecetes bairdi*) (*C. bairdi*) in Zones 1 and 2 of the Bering Sea. This action is necessary to protect the *C. bairdi* stock in the Bering Sea, which has declined to a level that presents a serious conservation problem. The intended effect of the proposed action is to further limit crab bycatch in the Bering Sea groundfish fisheries.

DATES: Comments on the FMP amendment must be received by January 31, 1997.

ADDRESSES: Comments on the proposed FMP amendment must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802–1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of proposed Amendment 41 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the Council, 605 West Fourth Ave., Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document that the plan or amendment is available for public review and comment.

Amendment 41 would adjust the PSC limits for Tanner crab (*C. bairdi*) in Zones 1 and 2 of the Bering Sea based on the total abundance of *C. bairdi* crab as indicated by the NMFS bottom trawl survey. The PSC limits would be determined on an annual basis as part of the annual BSAI groundfish specification process, after consultation with the Council.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment.

Dated: November 26, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30633 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records—Food Stamp Program Retailer Information.

SUMMARY: The United States Department of Agriculture (USDA), Food and Consumer Service (FCS), is proposing to establish a new system of records in accordance with the Privacy Act of 1974. This system of records, entitled Food Stamp Program Retailer Information, USDA/FCS–9, is necessary in order for FCS to administer the enforcement provisions of section 9 of the Food Stamp Act of 1977, as amended. Information contained in this system of records will be used to determine whether retail or wholesale store owners and officers, and/or owners and officers associated with other entities authorized to redeem food stamps, such as private restaurants that qualify to participate in the special restaurant program to serve elderly, homeless and disabled Food Stamp Program (FSP) recipients, qualify to participate or continue to participate in the FSP, to monitor compliance with program regulations, and for program management.

EFFECTIVE DATE: This notice will be effective, without further notice, January 13, 1997, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before January 21, 1997, to be assured of consideration.

ADDRESSES: Comments should be addressed to: Thomas O'Connor, Director, Benefit Redemption Division, Food and Consumer Service, USDA, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2419.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, FCS Privacy Act Officer, Room 308, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2244.

SUPPLEMENTARY INFORMATION: In accordance with section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018), and USDA FSP regulations (7 CFR part 278), each retail or wholesale food store or other eligible entity that desires to participate or continue to participate in the FSP must file such application for authorization or reauthorization as prescribed by FCS. The information provided in the application for authorization or reauthorization is used to determine whether a retail or wholesale store or other entity, such as private restaurants that qualify to participate in the special restaurant program to serve elderly, homeless and disabled FSP recipients, qualifies or continues to qualify to participate in the FSP, to monitor compliance with program regulations, and for program management.

Section 1735 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3359) amended section 205(c)(2)(C)(iii) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(iii)) and added section 6109(f) to the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)) to authorize FCS to request each applicant retail or wholesale store or other entity to furnish FCS the Social Security Number (SSN) of each individual who is an officer of a corporate applicant and, in the case of a privately owned applicant, the SSN of each owner, as well as the employer identification numbers (EINs) assigned to the applicant by the Internal Revenue Service. Public Law 101–624 also provided that no officer or employee of USDA may have access to the SSN or EIN information provided in the applications for any purpose other than the establishment and maintenance of a list of such individuals for use in determining those applicants who have been previously sanctioned or convicted under sections 12 or 15 of the Food Stamp Act (7 U.S.C. 2021 or 2024).

When FCS determines that a store or other concern qualifies to participate in the FSP, the information provided by the applicant on the application including the personal information (i.e., name, home address, SSN, and date of birth) pertaining to the owners or officers, is entered into the FCS' computer database (i.e., Store Tracking and Redemption Subsystem (STARS)). STARS is used primarily for tracking the authorization and food stamp redemption activity of owners and officers of concerns currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the program.

Recently, FCS was given broader authority with respect to the use and disclosure of the personal identifying information provided by applicant owners and officers on their application for authorization or reauthorization. Section 203 of the Food Stamp Program Improvements Act of 1994 (Pub. L. 103–225, 108 Stat. 106) amended section 9(c) of the Food Stamp Act to expand the use and disclosure of information obtained from applicant and participating retail or wholesale food concerns and other entities, such as food stamp redemption data, as well as information about ownership (excluding SSNs and EINs) and sales data included on the initial application, in addition to information required to be submitted for purposes of determining whether a retailer or wholesaler or other concern continues to qualify. USDA/FCS may release this information to other Federal agencies or to State government agencies, for the purpose of administering and enforcing the Food Stamp Act as well as any other Federal or State laws.

In addition, section 316 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. 103–296, 108 Stat. 1464) expanded the authority of FCS to share SSNs and EINs of food stamp retailers or wholesalers with other Federal agencies to the extent that the Secretary of Agriculture determines sharing would assist another Federal agency, which otherwise has access to SSNs and EINs in accordance with applicable Federal law, in verifying and matching information. The recipient agency may use the information so supplied only for the purpose of enforcing Federal laws. The SSNs and EINs of owners and officers will not be shared with State entities.

A ''Report on New System,'' required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the

Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Operations, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on November 18, 1996.

Signed at Washington, DC, on November 18, 1996.

Dan Glickman,

Secretary of Agriculture.

SYSTEM NAME: USDA/FC5–9

Food Stamp Program Retailer Information.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The paper records (i.e., the applications for authorization and reauthorization) which contain the personal identifying information on retail and wholesale store owners and officers, and/or owners and officers associated with other entities, are located in FCS field offices throughout the United States. The location of each FCS field office may be found in the local phone books. The host computer database which contains the STARS database, is located at the Minneapolis Computer Support Center, PO Box 135, Minneapolis, Minnesota 55440.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of personal information from owners and officers of stores and other entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the program. The individual paper records (i.e., applications for authorization) located in FCS field offices also contain personal information from owners and officers who applied for authorization to participate in the FSP but were denied authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The applications for authorization and reauthorization are in the STARS database and located in the files of FCS field offices. The applications contain the following personal information regarding owners and officers: Name, home address, social security number, and date of birth. Financial data (i.e., food sales, gross sales, food stamp redemption data) relative to each entity currently authorized or previously authorized is in the STARS database. While this information is not covered by the Privacy Act when associated with business information, it is subject to the Privacy Act when associated with the personal information of owners and officers of such entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018); section 1735 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3359); section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)); and section 6109(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)).

PURPOSE:

This information will be shared with other Federal and State entities to assist in the administration and enforcement of the Food Stamp Act, as well as other Federal and State laws. STARS is used primarily for tracking the authorization and food stamp redemption activity of owners and officers of entities currently participating in the Food Stamp Program, as well as those owners and officers who have previously participated in the Food Stamp Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

LIMITATIONS ON DISCLOSURE UNDER THE FOLLOWING ROUTINE USES (1) THROUGH (10):

Information obtained from applicants under the authority of 7 U.S.C. 2018(c) may be used or disclosed only as specified in 7 U.S.C. 2018(c).

Applicant social security numbers and employer identification numbers may be disclosed only to other Federal agencies authorized to have access to social security numbers and employer identification numbers, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency. 42 U.S.C. 405(c)(2)(C)(iii); 26 U.S.C. 6109(f).

(1) USDA/FCS may disclose information from this system of records to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee of the USDA in his or her official capacity, any USDA employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation; provided, however, that in each case, USDA determines that such disclosure is compatible with the purpose for which the records were collected.

(2) In the event that material in this system indicates a violation of the Food Stamp Act or any other Federal or State law whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, USDA/FCS may disclose the relevant records to the appropriate agency, whether Federal or State, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) USDA/FCS may disclose records from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(4) USDA/FCS may disclose information from this system of records to the Internal Revenue Service for the purpose of offsetting a monetary penalty for violations committed under the Food Stamp Program against a tax refund that may be due to the debtor.

(5) USDA/FCS may disclose information from this system of records to other Federal and State agencies to respond to specific requests from such Federal and State agencies for the purpose of administering the Food Stamp Act as well as other Federal and State laws.

(6) USDA/FCS may disclose information from this system of records to other Federal and State agencies to verify information reported by applicants and participating firms, and to assist in the administration and enforcement of the Food Stamp Act as well as other Federal and State laws.

(7) USDA/FCS may disclose information from this system of records to other Federal and State agencies for the purpose of conducting computer matching programs.

(8) USDA/FCS may disclose information from this system of records to private entities having contractual agreements with USDA for designing, developing, and operating the system, and for verification and computer matching purposes.

(9) USDA/FCS may disclose an owner's home address to a financial institution to verify information contained on a redemption certificate

(Form FCS–278B, formerly Form FNS–278B) submitted by a participating retailer. Authorized entities use these certificates when depositing food coupons at financial institutions. On occasion, particularly with small businesses, the owner's business address may also be the owner's home address.

(10) USDA/FCS will disclose information from this system of records to the Internal Revenue Service, for the purpose of reporting delinquent retailer and wholesaler monetary penalties of $600 or more for violations committed under the Food Stamp Program. USDA/FCS will report each delinquent debt to the Internal Revenue Service on Form 1099–C (Cancellation of Debt). USDA/FCS will report these debts to the Internal Revenue Service under the authority of the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050P of the Internal Revenue Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tapes, and computer disks.

RETRIEVABILITY:

In STARS, the personal identifying information is retrievable by owner's name and by SSN.

SAFEGUARDS:

1. *Authorized Users:* When designing, developing and/or operating a system of records on individuals, contractors are required to comply with all provisions of the Privacy Act. Contractors are required to maintain and protect the personal data and cannot release or share data without consulting with FCS. Access to records maintained within FCS is limited to those staff officials responsible for the subject system of records. Otherwise, access is limited to persons authorized and needing to use the records, including project directors, contract officers, programmers, analysts, statisticians, statistical clerks and key punch operators on the staff of the contractors or in the FCS.

2. *Physical Safeguards:* Paper records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process personal identifiable data are located in secured areas and are accessible only to authorized users. Back up records which are stored off-site shall be used and stored under the same secure conditions.

3. *Procedural Safeguards:* In order to access STARS, each authorized individual is given a personal access ID and password. The individual's password must be changed at least every 45 days or whenever the individual feels it might have been compromised.

Access to personal information contained in the STARS database and to the paper record files is restricted to those individuals who have been authorized by FCS and who have a need to know such information in the performance of their official duties in administering the Food Stamp Act and other Federal and State laws. SSNs cannot be viewed on screen in STARS by those individuals who are not specifically authorized to view them.

FCS personnel, project officers, and contract officers oversee compliance with these requirements. When appropriate, FCS personnel will review the site facilities to ensure that records have been maintained in accordance with the terms of this notice.

RETENTION AND DISPOSAL:

In STARS, the personal identifying information is maintained indefinitely. The applications for authorization and reauthorization are kept in the FCS field offices for three years and then destroyed pursuant to the applicable document retention and disposal schedule.

SYSTEM MANAGER AND ADDRESS:

Thomas O'Connor, Director, Benefit Redemption Division, Food and Consumer Service, United States Department of Agriculture, Room 706, 3101 Park Center Drive, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records from the System Manager. The request must be in writing.

RECORD ACCESS PROCEDURES:

An individual who wishes to request access to records in the system which pertains to him or her may submit a written request to the System Manager. The envelope and the letter should be marked, ''Privacy Act Request''. An individual may be required to reference the record by furnishing name, address, Social Security Number, and/or other identifiers needed by FCS.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager. The request should include, as appropriate, the reasons for contesting it, and the proposed amendment to the information with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system comes from the authorization and reauthorization applications of stores and other entities which are currently participating in the Food Stamp Program, as well as information on file for those entities which have previously participated in the program. Personal information in this system of records is also obtained from the owners and officers of such entities as reported on the authorization and reauthorization applications.

The STARS database also keeps a food stamp redemption history on such entities. The database maintains the dollar amount of food stamp benefits accepted by each entity currently authorized or previously authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–30088 Filed 11–29–96; 8:45 am]

BILLING CODE 3410–30–P

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Supplemental Security Income (SSI)/Food Stamp Program (FSP) Joint Processing Alternatives Demonstration Evaluation

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intent to request Office of Management and Budget (OMB) review of the data collection for the Supplemental Security Income (SSI)/Food Stamp Program (FSP) Joint Processing Alternatives Demonstration Evaluation.

DATES: Comments on this notice must be received by January 31, 1997.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: SSI/FSP Joint Processing Alternatives Demonstration Evaluation.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The SSI/FSP joint processing alternative demonstration in South Carolina seeks to improve the delivery of food assistance to elderly and disabled SSI recipients by using a single application and information source to facilitate the participation of SSI clients in the Food Stamp Program. The demonstration evaluation will provide information on how the demonstration changes from normal program requirements affect FSP participation and benefits, FSP and SSI administrative costs, timeliness and accuracy of application processing, and client satisfaction.

The evaluation's data collection consists of two telephone-interview surveys: (1) Interviews with randomly-selected respondents from three groups of SSI applicants (demonstration participants, demonstration-eligible clients who receive food stamps through regular processing, and demonstration-eligible clients who do not receive food stamps) to assess client satisfaction; and (2) interviews with both FSP and SSI program managers and caseworkers to measure the effectiveness of the demonstration from their perspectives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes for the clients and 30 minutes for the staff.

Respondents: For the client survey, the client or a designated proxy, if the selected respondent is incapable of answering the questions directly due to disabilities which prevent a coherent interview, will serve as the interview respondent. For the staff survey, program managers and caseworkers knowledgeable about the demonstration will serve as the interview respondent.

Estimated Number of Respondents: There will be 1,200 (400 for each subgroup) respondents for the client survey and 24 (8 program managers and 16 caseworkers) respondents for the staff survey.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 412 hours.

Copies of this information collection can be obtained from Diana Perez, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: November 12, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–30553 Filed 11–29–96; 8:45 am]

BILLING CODE 3410–30–U

Grain Inspection, Packers and Stockyards Administration

Designations for the Decatur (IL), Grand Forks (ND), McCrea (IA) Areas and the State of South Carolina

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Decatur Grain Inspection, Inc. (Decatur), Grand Forks Grain Inspection Department, Inc. (Grand Forks), John R. McCrea Agency, Inc. (McCrea), and the South Carolina Department of Agriculture (South Carolina) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 28, 1996, Federal Register (61 FR 33706), GIPSA asked persons interested in providing official services in the geographic areas assigned to Decatur, Grand Forks, McCrea, and South Carolina to submit an application for designation. Applications were due by August 1, 1996. Decatur, Grand Forks, McCrea, and South Carolina, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Decatur, Grand Forks, McCrea, and South Carolina were the only applicants for the respective areas, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Decatur, Grand Forks, McCrea, and South Carolina are able to provide official services in the geographic areas for which they applied. Effective January 1, 1997, and ending December 31, 1999, Decatur, Grand Forks, McCrea, and South Carolina are designated to provide official services in the geographic areas specified in the June 28, 1996, Federal Register.

Interested persons may obtain official services by contacting Decatur at 217–429–2466, Grand Forks at 701–772–0151, McCrea at 319–242–2073, and South Carolina at 803–554–1311.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: November 20, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–30414 Filed 11–29–96; 8:45 am]

BILLING CODE 3410–EN–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 20, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice

(61 F.R. 49435) of proposed addition to the Procurement List. A comment was received after the close of the comment period from a contractor at one of the installations involved in this addition to the Procurement List. The contractor claimed that three of its employees would be displaced by the addition. Because the SERVMART warehousing operation is currently handled as part of the larger warehousing operation for which the contractor is responsible, the contractor anticipates a financial impact if the nonprofit agency does not assume some of the burden of performing these tasks and coordinating its activities with the contractor.

The contracting activity has informed the Committee that other work will be found for the displaced employees. The SERVMART inventory will be totally controlled by the nonprofit agency, so it will no longer be commingled with contracting activity property handled by the contractor. The nonprofit agency has indicated that coordination of its functions with the contractor is being developed. The nonprofit agency will perform warehousing operations related to the SERVMART with its own personnel and equipment. Consequently, addition of the SERVMART at this installation to the Procurement List will have no impact on the contractor or its employees.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Operation of SERVMART Stores, Fleet and Industrial Supply Center, Jacksonville, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–30629 Filed 11–29–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 27 and October 4, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 50805 and 51881) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

GSA, Federal Supply Service Bureau, Service Acquisition Center, Arlington, Virginia

Janitorial/Custodial, Kilauea Armed Forces Recreation Center, Island of Hawaii

Janitorial/Grounds Maintenance, U.S. Army Reserve Center, Hilo, Hawaii

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–30630 Filed 11–29–96; 8:45 am]

BILLING CODE 6353-01-P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 2, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Davis-Monthan Air Force Base, Arizona)
NPA: Arizona Industries for the Blind, Phoenix, Arizona

Services

Grounds Maintenance for the following locations:
Rockville Post Office, 2 West Montgomery Avenue, Rockville, Maryland
Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland
Consumer Product Safety Commission, 10901 Darnstown Road, Gaithersburg, Maryland
NPA: Melwood Horticultural Training Center, Inc., Upper Marlboro, Maryland
Grounds Maintenance, USARC, Greenwood, South Carolina
NPA: Emerald Center Multi-County Board for Disabilities and Special Needs, Greenwood, South Carolina
Janitorial/Custodial, U.S. Border Stations, Lynden/Sumas, Washington
NPA: Cascade Christian Services, Bellingham, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–30631 Filed 11–29–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 26, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 18571) of proposed addition to the Procurement List. Comments were received from the current contractor at both its local and parent corporation levels, its legal counsel, a trade association, two Members of Congress, and the mayors of the two communities in the area where the service will be performed. Concerns were expressed about both the impact the addition to the Procurement List would have on the current contractor and its employees, and the capability of the designated nonprofit agency to perform the laundry service.

On the question of impact, several commenters claimed that the local branch of the current contractor would lose considerable business and be forced to lay off workers. Objections were made to the Committee's focus on the entire business enterprise of a contractor, including the parent corporation, as the entity on which impact is assessed, and the Committee's failure to solicit information directly from the contractor's local operation or to assess the impact of this addition to the Procurement List on the local economy.

The Committee looks at an entire business enterprise because the contractor can use other assets to support a local branch or to compensate for business losses there if it chooses. The Committee is not required to provide direct notice of its proposed actions to affected parties, as opposed to notice in the Federal Register, and frequently bases its initial impact assessment on current financial data from a reporting service, as occurred in this case.

Even if the Committee were to confine its impact analysis to the local branch of the current contractor's business, the figures the commenters have given, which are not consistent with each other, do not show an impact which reaches the level the Committee normally considers to be severe adverse impact. In addition, the Committee has reduced the scope of the Procurement List addition from what was proposed by eliminating the base laundry service, so only the hospital laundry service will be added, which should further minimize impact on the contractor and its employees. The contractor has only held short-term contracts for the hospital laundry service over the past two years, and the values of the contracts have been decreasing due to base downsizing. Consequently, the Committee does not believe the addition will have a severe adverse impact on the contractor or its employees. The commenters did not provide information to show an impact on the local economy, so the Committee has not assessed that impact, in accordance with the regulatory requirement at 41 CFR 51–2.4(a)(4)(i)(C) to address impact matters other than financial impact on the current contractor and the contractor's dependency on the contract over time only if substantive comments are received on those other impact matters.

Commenters also claimed that the legislative history of the Committee's statute shows that Congress did not intend for the Committee's program to have any impact on contractors, citing the legislative history of the 1938 act as interpreted by a 1970 court decision. However, the statute was extensively revised in 1971, and a 1978 decision by the same court stated that the legislative history of the amended statute showed Congress accepted the fact that every Procurement List addition will deprive private industry of a substantial amount of potential business.

On the question of nonprofit agency capability, commenters noted that the nonprofit agency is not in the laundry business and does not have a laundry facility. The role of base contracting personnel in inducing the nonprofit agency to perform this service was questioned. Commenters also pointed out that very stringent health and safety requirements apply to hospital laundry services, particularly in connection with blood-borne pathogens, including a requirement to have a backup laundry facility. They questioned the ability of any small entity to perform the service and meet these requirements, given the performance history of small businesses on this service, and particularly the

ability of an entity that will use mentally impaired persons to perform the service.

The nonprofit agency is aware of the health and safety requirements the commenters noted and is taking steps to assure compliance with them. Among these steps, the nonprofit agency has retained a retired nurse who worked at the hospital's infectious control unit to develop its quality assurance plan and related procedures and to provide expert advice. The nonprofit agency has acquired and installed the necessary laundry equipment. The nonprofit agency performed laundry service for a local hospital as part of its training and has made arrangements for that hospital to provide backup laundry services as needed.

The Committee's program is currently performing 25 other laundry projects successfully, including several hospital laundries, and the central nonprofit agency responsible for developing those projects has reviewed this nonprofit agency's plans and laundry facility and concluded that it will be able to perform this project successfully. In each of the hospital laundries, people with mental disabilities are successfully performing tasks which require contact with infectious materials, as they will do in performing this service. The contracting activity has visited and approved the nonprofit agency's laundry facility. Given this record, and the central nonprofit agency's expertise in assessing nonprofit agency capability to perform hospital laundry services and assisting such agencies in performing these services, the Committee believes the nonprofit agency is capable of performing this service successfully.

The Committee does not consider the involvement of base contracting personnel in the development of this addition to the Procurement List to be improper. Government personnel are encouraged by a Committee regulation, 41 CFR 51–5.1, to assist the Committee and its central nonprofit agencies in identifying suitable services to be added to the Procurement List, and are required by the same regulation to provide the Committee and the central nonprofit agencies with information needed to determine if a service should be added.

Commenters also indicated that the nonprofit agency would provide the service at a higher price than the contractor. The Committee's statute requires services added to the Procurement List to be sold to the Government at a fair market price, not necessarily the lowest possible price. The Committee's procedures require prices in the dollar range represented by the hospital laundry service to be set by negotiation between the nonprofit agency and the contracting activity. The price which has been set for this service has followed this fair market pricing procedure and has been recognized by the Committee as a fair market price.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Laundry Service, Hospital, Barksdale Air Force Base, Louisiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–30632 Filed 11–29–96; 8:45 am]

BILLING CODE 6353–01–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

November 27, 1996.

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 6, 1996, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 15, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. Future Agenda Items
11:00 a.m. Briefing on Civil Rights, Immigrant Rights, and Related Issues Presented by Welfare Reform

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 96–30775 Filed 11–27–96; 2:18 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 856]

Designation of New Grantee for Foreign-Trade Zone 174, Tucson, Arizona; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request with supporting documents (Docket 59–96) from the Arizona Technology Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 174, Tucson, Arizona, for reissuance of the grant of authority for said zone to the City of Tucson, Arizona, a public corporation, which has accepted such reissuance subject to approval of the FTZ Board, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the City of Tucson, Arizona as the new grantee of Foreign-Trade Zone 174.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of November 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 96–30625 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 855]

Designation of New Grantee for Foreign Trade Zone 126 and Reissuance of Grant of Authority for Subzone 89A (Porsche) Reno, Nevada; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of requests (FTZ Docket 50–96, filed 6/5/96) from the Nevada Development Authority, which is grantee of both Foreign-Trade Zone 89, Las Vegas, Nevada and Foreign-Trade Zone 126, Reno, Nevada for (1) reissuance of the grant of authority for FTZ 126 to the Economic Development Authority of Western Nevada (EDAWN), a Nevada non-profit corporation (which has accepted such reissuance subject to approval of the FTZ Board) and for (2) reissuance of the subzone grant of authority for the Porsche Cars North America, Inc. facility in Reno to EDAWN as grantee of FTZ 126, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposed actions are in the public interest, approves both requests, recognizing the Economic Development Authority of Western Nevada as the new grantee of Foreign-Trade Zone 126, Reno, Nevada, and of Subzone 89A, Reno, Nevada, which is hereby redesignated as Subzone 126A.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of November 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 96–30624 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 852]

Grant of Authority for Subzone Status Robin Manufacturing U.S.A., Inc. (Small Internal-Combustion Engines); Hudson, Wisconsin

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Brown County, Wisconsin, grantee of Foreign-Trade Zone 167, for authority to establish special-purpose subzone status at the small internal-combustion engine manufacturing plant of Robin Manufacturing U.S.A., Inc., in Hudson, Wisconsin, was filed by the Board on September 5, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 51–95, 60 FR 48101, 9–18–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 167A) at the Robin Manufacturing U.S.A., Inc., plant in Hudson, Wisconsin, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of November 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 96–30626 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–201–601]

Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part of antidumping duty order.

SUMMARY: On June 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The period of review is April 1, 1994 through March 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. We have not changed our preliminary results of review. We have determined that sales have not been made below normal value (NV). We have also determined to revoke the order in part, with respect to the respondent, Rancho El Aguaje (Aguaje).

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1996, we published in the Federal Register (61 FR 28166) the preliminary results of administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491 (April 23, 1987)), wherein we gave notice of our intent to revoke the order with respect to Aguaje's sales of the subject merchandise. We received a case brief from petitioners, The Floral Trade Council, on July 5, 1996, and a rebuttal brief from respondent on July 12, 1996.

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review (POR), such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes

only. The written description remains dispositive as to the scope of the order.

This review covers the period April 1, 1994 through March 31, 1995.

Revocation of the Order in Part

On April 28, 1995, Aguaje submitted a request, in accordance with 19 C.F.R. 353.25(b), to revoke the order with respect to its sales of the subject merchandise. In accordance with 19 C.F.R. 353.25(b)(1), this request was accompanied by a certification from the firm that it had not sold the relevant class or kind of merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. In our preliminary results we incorrectly stated that Aguaje had also submitted a written agreement to reinstatement in the order if we found that Aguaje had sold the subject merchandise at less than NV subsequent to revocation. Section 353.25(b)(2) requires that a firm that previously has been found to have sold the subject merchandise at less than NV also submit a written agreement to reinstatement in the order if we conclude that it sold the subject merchandise at less than NV subsequent to revocation. At the time of Aguaje's April 28, 1995 request for administrative review and revocation, this provision was not applicable to Aguaje, as we had not yet completed an administrative review in which we found dumping margins for Aguaje. The reinstatement agreement became applicable when we published the final results for the 1991–1992 administrative review on September 26, 1995 (60 FR 49569), in which we found dumping margins for Aguaje's sales in that period. Aguaje submitted a reinstatement agreement for the record of this review on November 15, 1996.

Analysis of the Comments Received

Comment 1: Petitioner argues that Aguaje has not established its entitlement to revocation of the antidumping duty order pursuant to 19 CFR 353.25(a)(2) because: (1) Aguaje failed to submit a reinstatement agreement when filing its request for revocation in accordance with 19 CFR 353.25(a)(2) & (b); and (2) Aguaje failed to maintain a three-year period of sales at not less than NV. Petitioner notes that Aguaje received a calculated dumping margin of 1.54% in the preliminary results of the 1993–94 administrative review, and was assigned a final 39.95 percent dumping margin for the 1991–92 administrative review on September 26, 1995.

Aguaje contends that, as of the date of its request for revocation, April 28, 1995, the Department had never issued a final affirmative antidumping determination for Aguaje. Thus, the reinstatement agreement was not required at the time the request for revocation was filed.

Aguaje argues that the preliminary finding of a 1.54 percent dumping margin for the 1993–94 review was based on a misallocation of indirect selling expenses which was at odds with standard Departmental methodology; after correction for this methodological error, Aguaje argues, its dumping margin becomes zero. Aguaje points out that the Department found zero dumping margins for the 1992–93 review, and preliminarily found zero dumping margins for this 1994–95 review. Thus, when the most recent two reviews are completed, Aguaje will have three consecutive reviews in which its dumping margin was zero, and will therefore have met the conditions for revocation under 353.25(a)(2)(i).

Department's Position: We disagree with petitioner. Since we published the preliminary results in this administrative review, we have completed the 1993–94 review, in which we found a final margin of zero for Aguaje. We also found a final margin of zero for Aguaje for the 1992–93 period. Although we found a margin of 39.95 percent in the 1991–92 review, Aguaje has subsequently demonstrated that it has sold the subject merchandise at not less than NV for three consecutive years. As we state in the above section, ''Revocation of the Order in Part,'' Aguaje has provided all the certifications required by 19 CFR 353.25(b). Therefore, we are revoking the order with respect to Aguaje.

Comment 2: Petitioner argues that the Department should not revoke the antidumping order with respect to Aguaje because Aguaje's questionnaire response data could not be reconciled with an audited financial statement and/or tax return. Petitioner cites the *Preliminary Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico*, 60 FR 19209 (April 17, 1995), in which the Department stated that an unaudited ''in-house'' system does not provide assurance that costs have been stated in accordance with generally accepted accounting principles, or that all sales and costs have been appropriately captured, and the *Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico*, 60 FR 49569 (September 26, 1995), in which the Department stated that, ''without such independent substantiation, the entire questionnaire responses are unusable.''

Petitioner also cites the Department's rejection of the questionnaire responses in *Chrome-Plated Lug Nuts from Taiwan*, 60 FR 44837 (August 29, 1995) (*Lug Nuts*), because the responses could not be reconciled to the respondents' audited financial statements. Petitioner asserts that Aguaje has provided the Department with questionable data for three consecutive years, and suggests that the Department postpone revocation until Aguaje's tax returns are available to confirm the reported data.

Aguaje argues that the fact that it does not maintain records with the same level of sophistication as larger, multi-million dollar companies should not preclude it from revocation. Aguaje asserts that it went far beyond the accounting requirements or practices of other small Mexican agricultural businesses in order to demonstrate to the Department that it is not dumping. Aguaje maintains that its financial statements and subsidiary ledgers provide detailed cost and revenue information for all of its flower operations, and that it has fully satisfied the verification provisions of 353.25(c)(2)(ii).

Department's Position: We disagree with petitioner. Although we routinely request that respondents provide audited financial statements and/or income tax returns as independent sources with which to substantiate questionnaire responses, we have concluded in this review that Aguaje cannot provide these documents because they do not exist. Petitioner cites language from the 1991–92 preliminary and final results of review of this order, in which we presented our rationale for requiring such sources of independent substantiation, as we also did in *Lug Nuts*. However, this review is distinct from those reviews. In the 1991–92 review of this order, the Department was unable to conclude from the record that the requested documents did not exist. In *Lug Nuts*, we found that the respondents' submissions were ''unreconcilable to their audited financial statements and thus unverifiable. * * *'' *Lug Nuts* at 44838. In this case, respondent has provided evidence that it is not required by law to keep audited financial statements, and that it has not yet filed its income tax returns for the review period. Therefore, we cannot deny revocation with respect to Aguaje because it failed to provide these documents. *Cf. Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990).

Comment 3: The petitioner claims that the zero margin found by the Department in its preliminary results

was based in large part on facts otherwise available (FA) instead of verifiable costs or actual profit figures, and is therefore an imprecise analysis of Aguaje's pricing practices in the U.S. market. Thus, petitioner argues, the Department should reconsider revoking the order with respect to Aguaje at this time.

Aguaje contends that petitioner's argument misinterprets the facts on the record. Aguaje asserts that *total* general and administrative (G&A) expenses were verified to original invoices, the expense ledger and the general ledger, and that the Department found Aguaje to be ''generally cooperative'' at verification. Aguaje cites the Department's Verification Report and the Preliminary Results at 28167. Aguaje states that the only aspect of G&A which could not be verified was the allocation methodology devised by Aguaje's former counsel, which relied on a recalculation of the cost of goods sold for roses. In this instance, Aguaje believes that the Department's application of FA was a just and reasonable exercise of the FA provision.

Aguaje argues that the verified data show that Aguaje's U.S. prices are almost 4 to 7 times its constructed value (CV) even though the Department applied a 52 percent profit rate to U.S. cost of production. Further, any G&A allocation method, however adverse to Aguaje, would still result in a finding of zero dumping margins, as G&A costs would have to increase by multiples of hundreds before any positive dumping margin would result.

Department's Position: Because Aguaje could not support its reported allocation of G&A to the subject merchandise at verification, we preliminarily used the higher of the amount Aguaje reported for this review, or the amount it reported for the 1992–93 review, which we verified. We have reconsidered our application of FA for G&A for the final results, and have recalculated Aguaje's G&A using the entire unallocated G&A figure, which we were able to verify.

We do not consider our use of FA in this case to be grounds for denying revocation. With respect to G&A, we used a verified figure that is adverse to Aguaje. With respect to profit, we calculated a substantial profit rate based on recent data that is representative of the Mexican flower industry. Even with these changes to Aguaje's reported data, Aguaje's margin remains zero.

Comment 4: Petitioner argues that Aguaje understated its G&A expenses to the extent that it did not include the cost of income taxes owed. Petitioner claims that income taxes should be included in G&A expenses as a cost of doing business in Mexico, and the Department should therefore impute the cost of Aguaje's income tax liability for the 1994–95 period.

Aguaje contends that the Department's long-held policy to exclude income taxes from the cost of production calculations does not lead to understated G&A rates, because the Department considers income tax to be a reduction in corporate profit rather than an increase in production cost. Aguaje cites the *Final Determination of Less Than Fair Value; High Information Content Flat Panel Display Glass from Japan*, 56 FR 32376 (July 16, 1991) (*Flat Panel Displays*) and *Final Results of Antidumping Administrative Review; Color Picture Tubes from Japan*, 55 FR 37915 (September 14, 1990).

Department's Position: We disagree that G&A should be recalculated to include imputed income tax. The amount of this tax is determined based on the level of corporate income. We do not consider taxes based on the aggregate profit/loss of the company to be a cost of producing the product. *See Flat Panel Displays* at 72792. We have therefore not made the requested adjustment.

Comment 5: Petitioner argues that, contrary to the statute, the general expense percentage the Department used for CV in the preliminary results does not reflect selling expenses. Petitioner asserts that, since Aguaje does not have a viable home or third country market, the Department should base CV selling expenses on Aguaje's U.S. selling expenses, reported for the 1994–95 period.

Petitioner states that the Department should also confirm that selling expenses have been allocated based on resale prices to unrelated parties, rather than transfer prices between Aguaje and its U.S. subsidiary, Lizbeth's Wholesale Flowers, Inc. (Lizbeth).

Aguaje argues that, if the Department were to include U.S. selling expenses in the calculation of total CV as advocated by the petitioner, it would have to deduct them as a circumstance-of-sale adjustment. Thus, the net effect of the inclusion of U.S. indirect selling expenses would be to slightly increase the amount of profit included in CV, which would not come close to the 400 percent increase in CV necessary to create positive dumping margins.

Aguaje states that the use of acquisition costs to allocate Lizbeth's selling expenses is tantamount to using resale prices to unrelated parties, because Lizbeth's acquisition costs are equal to resale prices, less its commission. As Lizbeth's commission rate to Aguaje was substantially less than that charged to unaffiliated customers, Aguaje claims, the use of acquisition costs would overstate the selling expenses allocable to Aguaje.

Department's Position: We have revisited this issue and have added to CV the amount of U.S. selling expenses incurred by Aguaje, pursuant to section 773(e)(2)(B)(iii) of the Act. Section 773(e)(2)(A) provides that CV include the actual amount of selling expenses incurred and realized by the specific exporter or producer being examined ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. . . .'' We determine that this provision does not apply here because Aguaje only sells culls in the home market. Because of (1) the significant physical differences between culls and export quality sales and (2) the major difference in commercial value for these two products, culls are not part of the foreign like product as defined by section 771(16)(A)–(C) of the Act. Therefore, we are unable to base the amount for selling expenses on home market sales of the like product.

For purposes of determining an amount of selling expenses, we have relied on the U.S. selling expenses reported by Aguaje as a reasonable method for determining selling expenses. *See* Section 773(e)(2)(B)(iii) (allowing the Department to base selling expenses on ''any other reasonable method''). As we have stated elsewhere, ''[b]ecause we rejected the prices of home market and third countries for purposes of FMV, we find it necessary to reject the general expenses and profits associated with these sales.'' *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42842 (Aug. 19, 1996). Here, we have determined that Aguaje's home market sales are not viable and, thus, not an appropriate basis for NV. Similarly, we determine that the selling expenses associated with those home market sales will not provide an accurate measurement of dumping in this case. We therefore resort to U.S. selling expenses incurred by Aguaje as the facts otherwise available. We note that these amounts are the only remaining alternative on the record for determining selling expenses.

Contrary to Aguaje's assertion, there is no need for an adjustment for differences in circumstances of sale, as the direct selling expenses included in CV are the same as those included in the U.S. selling price. Furthermore, there is no provision in the statute for deducting

indirect selling expenses from CV in this situation.

We agree that Aguaje's selling expenses should be allocated based on resale prices to unrelated parties, and not Lizbeth's acquisition cost (resale price plus Lizbeth's commission). We have made this recalculation for the final results.

Comment 6: The petitioner argues that the Department should recalculate constructed export price (CEP) profit to attribute all of Aguaje's expenses to export quality U.S. sales as offset by home market cull revenue.

Aguaje states that the Department's calculation of CEP profit was based entirely on U.S. sales, as Aguaje has neither home market sales nor costs associated with such sales.

Department's Position: We disagree that a recalculation of CEP profit is necessary. As demonstrated in Attachment 1 to our preliminary results calculation memo, the calculation of CEP profit was based solely on U.S. sales revenue and U.S. costs, offset by home market cull revenue. As Aguaje had neither a viable home market nor any third country markets during the POR, Aguaje's expenses have been allocated to U.S. sales in their entirety. *See* Memorandum to the File dated May 23, 1996, on file in room B–099 of the Commerce Department.

Comment 7: Petitioner states that the Department should reconsider whether revocation is appropriate if it cannot confirm that Aguaje is not likely to sell merchandise at less than NV in the future, as required by section 353.25(a)(2) of the Department's regulations. Petitioner notes that several factors weigh heavily against the finding that Aguaje is not likely to dump subject merchandise in the future. These factors include Aguaje's recent history of ''evasive and misleading'' responses in the 1991–92 review, the Department's inability to rely on independent sources for verification, the massive pricing pressure from Colombian exporters of the subject merchandise on the U.S. market, and the devaluation of the Mexican peso.

Aguaje contends that the history and facts found in the previous three annual reviews undercut petitioner's claim that Aguaje has failed to present any evidence that it will not dump in the future. Aguaje states that it is in the business for the sole purpose of exporting fresh cut flowers to the United States, and that carnation production in Mexico requires virtually no fixed costs. Aguaje adds that its sales to the United States relative to the total size of the market are so small that it cannot engage in predatory pricing. Finally, Aguaje asserts that the 1994 peso devaluation has greatly increased profitability of sales to the United States relative to sales in Mexico, rather than placing further pressure on firms to engage in less than fair value pricing as petitioner contends.

Department's Position: We disagree that we should not revoke the order with respect to Aguaje at this time. As stated in our responses to the comments received from petitioner and respondent, Aguaje has proven that it is entitled to revocation in accordance with section 353.25(a)(2) of the regulations. Our decision to revoke is based on the period April 1, 1992 through March 31, 1995. Our characterization of Aguaje's questionnaire response for the 1991–92 period is not relevant.

Petitioner has presented no evidence that Colombian pricing will cause Aguaje to begin dumping the subject merchandise in the future. Furthermore, as the 1994 devaluation of the peso did not cause Aguaje to dump flowers, we have no basis to conclude that the most recent devaluation will cause Aguaje to change its pricing practices to the degree needed to create dumping margins, given the negative margins found in this review, despite the use of FA for certain elements of CV.

Final Results of Review

We determine that no dumping margin exists for Aguaje for the period April 1, 1994 through March 31, 1995. We further determine that Aguaje has sold fresh cut flowers at not less than NV for three consecutive review periods, including this review period. For the reasons stated in our response to petitioner's comments, and because Aguaje has submitted the required certifications, we are revoking the order on certain fresh cut flowers from Mexico with respect to Aguaje in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2).

This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1995. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made on or after April 1, 1995.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Furthermore, the following deposit rates will be effective upon publication of these final results of administrative review for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.20 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d)(1). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: November 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30627 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, The Timken Company (Timken), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, (TRBs) from Romania. The review covers shipments of the subject merchandise to the United States during the period June 1, 1993, through May 31, 1994. The review indicates the existence of dumping margins during the period of review.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (U.S. price) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department published in the Federal Register (52 FR 23320) the antidumping duty order on TRBs from Romania. On June 7, 1994, the Department published in the Federal Register (59 FR 29411) a notice of opportunity to request an administrative review of this antidumping duty order. On June 30, 1994, in accordance with 19 CFR 353.22(a), the petitioner requested that we conduct an administrative review of Tehnoimportexport, S.A. (TIE); Tehnoforestexport; S.C. Rulmenti S.A. Alexandria (Alexandria); S.C. Rulmentul S.A. Brasov (Brasov); S.C. Rulmenti S.A. Barlad (Barlad); S.C. Rulmenti Grei S.A. Ploiesti (Ploiesti); S.C. Rulmenti S.A. Slatina (Slatina); and S.C. URB Rulmenti Suceava S.A. (Suceava). We published the notice of initiation of this antidumping duty administrative review on July 15, 1994 (59 FR 36160). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of this Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers eight companies and the period June 1, 1993 through May 31, 1994. Of the eight companies for which petitioner requested a review, only TIE made shipments of the subject merchandise to the United States during the period of review. Alexandria and Brasov produced the merchandise sold by TIE to the United States, but have stated that they did not ship TRBs directly to the United States. Tehnoforestexport, Barlad, Ploiesti, Slatina, and Suceava have responded that they did not produce or sell TRBs subject to this review.

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts.

TIE is the only company covered by this review with shipments of the subject merchandise to the United States during the period of review. Therefore, TIE is the only firm for which we have made a determination of whether it should receive a separate rate. The evidence on the record demonstrates that TIE does not have autonomy in making decisions regarding the selection of its management. Consequently, we have found that there is *de facto* government control with respect to TIE's exports according to the criteria identified in *Sparklers* and *Silicon Carbide.* For further discussion of the Department's preliminary determination that TIE is not entitled to a separate rate, *see Decision Memorandum to the Director, Office of Antidumping Compliance*, dated June 19, 1995; ''Assignment of a separate rate for Tehnoimportexport, S.A. in the 1993/1994 administrative review of tapered roller bearings and parts thereof, finished or unfinished, from Romania,'' which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Verification

Verification of the questionnaire responses of TIE was conducted between April 3, 1995, and April 8, 1995, at TIE's facility in Bucharest, Romania. The majority of TIE's exports were of merchandise produced by Brasov, and we conducted an additional verification at Brasov's facility in Brasov, Romania. Verification of Brasov's questionnaire response, in which it stated that it had no direct shipments of TRBs to the United States

during the period of review, was conducted at its facility in Brasov, Romania.

United States Price

Information on the record indicates that TIE was the only Romanian exporter of the subject merchandise to the United States during the period of review. For sales made by TIE, the Department used purchase price, in accordance with section 772(b) of the Act, in calculating U.S. price. We calculated purchase price based on the price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight and ocean freight. We used surrogate information from Turkey to value foreign inland freight for reasons explained in the ''Foreign Market Value'' section of this notice.

Foreign Market Value

For merchandise exported from an NME country, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if available information does not permit the calculation of FMV using home market prices, third country prices, or constructed value (CV) under section 773(a) of the Act.

In every case conducted by the Department involving Romania, Romania has been treated as an NME country. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we calculated FMV in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations based on information submitted by TIE and verified by the Department. We determined that Poland and Turkey are each at a level of economic development comparable to Romania in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We have found that both Poland and Turkey are significant producers of bearings, but that Poland has a larger bearings industry than Turkey. Therefore, we have selected Poland as the primary surrogate country. Where we have been unable to locate publicly available published information to establish surrogate values from Poland, we have used Turkey as a secondary surrogate country. For further discussion of the Department's selection of these surrogate countries, *see Memorandum to the Acting Division Director*, dated March 24, 1995; ''Surrogate Country Selection for Tapered Roller Bearings from Romania,'' and *Memorandum to the File*, dated May 4, 1995, ''Selection of the surrogate country in the 1993/1994 administrative review of tapered roller bearings and parts thereof, finished or unfinished, from Romania,'' which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

For purposes of calculating FMV, we valued the Romanian factors of production as follows, in accordance with section 773(c)(1) of the Act:

- To value all direct materials used in the production of TRBs, we used the European currency unit (ECU) per metric ton value of imports into Poland from the countries of the European Community for the period June 1993 through May 1994, obtained from the *EUROSTAT, Monthly EC External Trade* (*EUROSTAT*). Because these statistics are exclusive of freight charges incurred by Poland, we have applied to each surrogate price a CIF/FOB conversion factor, which was obtained from the *International Financial Statistics Yearbook, 1995*, published by the International Monetary Fund. Some materials used to produce TRBs were imported into Romania from market-economy countries, and, in these instances, we used the import price to value the relevant portion of the material input. We made adjustments to include freight costs incurred between the suppliers and the TRB factories. We also made an adjustment for scrap steel which was sold.
- For direct labor, we used the average monthly wages for the manufacture of machinery except electrical reported in the September 1994 issue of the *Statistical Bulletin* published by the Central Statistical Office in Warsaw. To determine the number of hours worked each week, we used information published by the Economic Intelligence Unit in *Investing, Licensing & Trading Conditions Abroad, Poland*, April 1994.
- For factory overhead, we used information from a publicly available summarized version for factory overhead reported for the 1993/1994 administrative review of the antidumping duty order on welded carbon steel pipe and tube from Turkey (pipe and tube from Turkey), because we had no useable information from Poland for this expense. Factory overhead was reported as a percentage of total cost of manufacture.
- For selling, general, and administrative expenses, we used the statutory minimum percentages found in section 773(e)(1)(B) pursuant to our authority in section 773(e)(1), because we had no useable surrogate country information for these expenses.
- For profit, we used information from a publicly available summarized version for profit reported for pipe and tube from Turkey, because we had no useable information from Poland for this expense.
- To value the packing materials, we used the ECU per metric ton value of imports into Poland from the countries of the European Community as published in the *EUROSTAT*. Because these statistics are exclusive of freight charges incurred by Poland, we have applied to each surrogate price a CIF/FOB conversion factor, which was obtained from the *International Financial Statistics Yearbook, 1995*, published by the International Monetary Fund. Some materials used to pack TRBs were imported into Romania from market-economy countries, and, in these instances, we used the import price to value the relevant portion of the packing material. We adjusted these values to include freight costs incurred between the suppliers and the TRB factories.
- To value foreign inland freight, we used information from a publicly available summarized version for foreign inland freight reported for pipe and tube from Turkey, because we had no useable information from Poland for this expense.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank, or, where certified Federal Reserve Bank rates were not available, average monthly exchange rates published by the International Monetary Fund in *International Financial Statistics.*

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/ exporter	Time period	Margin (per-cent)
Romania Rate	6/1/93–5/31/94	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. *See* section 353.38(d) of the Department's

regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: November 20, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30623 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Exporters' Textile Advisory Committee; Solicitation for Members

The Exporters' Textile Advisory Committee was re-established effective October 21, 1996.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee shall consist of approximately 35 members appointed by the Secretary of Commerce to ensure a balanced representation of textile and apparel products. Representatives of small, medium and large firms with broad geographical distribution in exporting shall be included on the Committee. Members shall represent the views of their companies, trade associations and other entities on matters that affect their business interest in exporting.

The Committee shall function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act.

Persons interested in becoming members are invited to submit a letter to Troy H. Cribb, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, U.S. Department of Commerce, Washington, DC 20230 telephone: (202) 482–3737. Letters must include the applicant's social security number, date of birth, place of birth and home address. This information is required to process a records check to determine suitability for membership.

Dated: November 26, 1996.

Troy H. Cribb,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries.

[FR Doc. 96–30683 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DR–F

Joint Projects With the U.S. Commercial Centers in Sao Paulo, Brazil, Jakarta, Indonesia, and Shanghai, People's Republic of China

AGENCY: U.S. and Foreign Commercial Service, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity.

SUMMARY: The Department of Commerce offers a unique opportunity for nonprofit trade promotion organizations to undertake a joint project with the U.S. and Foreign Commercial Service (US&FCS), the export promotion arm of the U.S. Government, in three of the world's most promising Big Emerging Markets: Brazil, Indonesia and the People's Republic of China. This joint project features space sharing with the US&FCS in the U.S. Commercial Centers (''Commercial Centers'') in Sao Paulo, Jakarta, and Shanghai to enhance opportunities for joint project participants to work toward shared market development goals and assist U.S. companies in-country.

FOR FURTHER INFORMATION CONTACT:

John Steuber, Director, U.S. Commercial Center—Sao Paulo, Rua Estados Unidos, 1812, Sao Paulo, SP. 01427–002, Brazil

or

AMCONGEN—Sao Paulo, Unit 3502, APO AA 34030, TEL: (55–11) 853–2811, FAX: (55–11) 3061–0718, INTERNET: JSteuber@doc.gov

Jon Kuehner, Director, U.S. Commercial Center—Jakarta, Wisma Metropolitan II, Third Floor, JL. Jendral Sudirman, Jakarta 12920, Indonesia, TEL: (62–21) 526–2850, FAX: (62–21) 526–2855, INTERNET, Jkuehner@doc.gov

Amy Chang, Director, U.S. Commercial Center—Shanghai, Portman Shanghai Centre, Suite 631, 1369 Nanjing West Road, Shanghai, 200040 China, TEL: (86–21) 6279–7640, FAX: (86–21) 6279–7649, INTERNET: AChang@doc.gov.

SUPPLEMENTARY INFORMATION:

Commerical Center Concept: U.S. Commercial Centers are enhanced U.S. government export promotion programs that provide, under one roof, expert business counseling by frontline Commercial Officers, a winning collection of core trade promotion programs, and an impressive array of world class, in-house business facilities. Commercial Centers are the only U.S. government operations that are designed physically and legally to share space on a long-term basis with nonprofit trade promotion entities who seek to build a presence in one or more of these Big Emerging Markets. US&FCS has authority to enter into joint projects on matters of mutual interest with public organizations and establish U.S. Commercial Centers overseas under 15 U.S.C. §§ 1525 and 4723a. Through joint projects, nonprofit trade promotion organizations can expand both the trade promotion resources available to U.S. companies as well as the number of U.S. companies served at the Commercial Center.

Eligible Participants: The U.S. and Foreign Commercial Service seeks other federal trade promotion agencies, state-local economic development agencies, nonprofit industry associations, and other nonprofit trade promotion entities to share space in the Commercial Centers.

Features of Commercial Centers: Commercial Centers are strategically placed in the heart of the business districts of Sao Paulo, Jakarta and Shanghai to serve clients, U.S. companies, and their business partners in-county. While striving to adapt to local business conditions and opportunities, each Commercial Center provides a consistent level of service and access to core features. In accordance with the authorizing legislation, Title IV, Jobs Through Exports Act of 1992, U.S. Commercial Centers offer the following basic features:

- All the core US&FCS export promotion programs and services, including expert business counseling, advocacy, business-facilitation services;
- Long-term space-sharing for nonprofit trade promotion partners, such as other federal trade promotion

agencies, state-local export development offices, and nonprofit industry associations;

- Fully equipped offices and executive support services (in Sao Paulo and Jakarta) for short-term use by U.S. companies and trade promotion organizations;
- Multipurpose rooms for conferences, meetings, technical seminars, product launches, receptions, and other business functions;
- Exhibit or display areas, depending on the market;
- Business Information Center, offering an array of information products, including up-to-the minute commercial intelligence on trade leads and opportunities, extensive market research on leading sectors, on-line/CD–ROM-based company and product locators, and from the Sao Paulo Center, accessibility from remote locations in the U.S. and Brazil;
- Prime business location that enhances access to prospective business partners and clients.

Joint Project Opportunity in Sao Paulo, Brazil

In July 1994, the first U.S. Commercial Center was established in Sao Paulo. Since then, agencies including the U.S. Information Service, the Foreign Agricultural Service, the Export-Import Bank have helped put the Commercial Center at the ''center'' of the bilateral commercial dialogue by holding key events such as government-to-government meetings, technical seminars, and business receptions there. U.S. and Brazilian policymakers used the Sao Paulo Commercial Center as the primary vehicle for establishing the U.S.-Brazil Business Development Council (BDC), the bilateral forum for government-private sector commercial dialogue.

In February 1997, the San Paulo Commercial Center will have four private offices for long-term participants. Each fully furnished office is twelve square meters and the annual contribution to participate in this joint project is $15,000, which covers use of a private office, common areas—reception area and business information center (commercial library). Use of the multipurpose rooms and audio visual equipment are available on a nominal user-fee basis. For short-term use of business facilities, please contact the Commercial Center listed under the ''For More Information'' section or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Joint Project Opportunity in Jakarta, Indonesia

The late Commerce Secretary Ronald H. Brown officially opened the U.S. Commercial Center in Jakarta during the ministerial meetings of the Asia-Pacific Economic Cooperation forum in November 1994. Since its inception, the Commercial Center has been a vehicle for implementing regional events, particularly those tied to the Alliance for Mutual Growth, a Clinton Administration initiative to promote trade with the member countries of the Association of Southeast Asian Nations. The Jakarta Commercial Center has helped link trade policy with trade promotion by organizing policy roundtables with technical seminars where participating small- and medium-size U.S. companies can demonstrate technical expertise to host country government policymakers and business decisionmakers. Already positioned as long-term participants are the California Trade and Commerce Agency, and the Foreign Agricultural Service, which plans to establish its Agricultural Trade Office within the Commercial Center this year.

Located in the Jakarta World Trade Center Complex, the Commercial Center will have one newly renovated, fully equipped office in March 1997. The annual contribution of $12,000 for participating in this joint project covers the use of a private office and common areas—reception area and Business Information Center (Commercial Library). Use of multi-purpose rooms and audio visual equipment are available on a nominal user-fee basis.

For short-term use of business facilities, please contact the post listed under the ''For More Information'' or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Joint Project Opportunity in Shanghai, China

The U.S. Commercial Center in Shanghai, established in July 1996, is the first export-promotion facility of its kind in the People's Republic of China. For the first time, U.S. state economic development offices, operating under the aegis of the Commercial Center, can open a representative office in China.

Shanghai is located at the mouth of the Yangtze River, the commercial lifeline of Southeast China, reinforcing this pivotal city's role as the commercial nexus that fits strategically between Beijing, the administrative capital, and the booming special economic zones in the southern and eastern coastal provinces. Placing the Commercial Center in Shanghai, the financial hub of all of China, positions U.S. companies to compete in the entire Chinese Economic Area, which comprise the vast markets of China, Taiwan and Hong Kong, which reverts to the Mainland in 1997.

The Shanghai Commercial Center includes six private offices for long-term space sharing. The US&FCS and several prospective participants are in the final stages of concluding the joint project agreements for the majority of these offices. Each fully furnished office is 130 square feet and the annual contribution to participate in this joint project is $40,000. Please contact the post listed under the ''For More Information'' or call the Trade Information Center for a program brochure at 1–800–USA–TRAD.

Short-Term Use of Commercial Centers by U.S. Companies or Organizations

The joint project opportunity, which features long-term space for periods of one year, or longer, is designed to assist nonprofit trade promotion organizations achieve long-term market development goals. The Commercial Centers in Sao Paulo and Jakarta also offer short-term use of business facilities to U.S. companies and business organizations on a user fee basis. For the latter group, the Commercial Center provides an ideal venue to achieve specific, short-term business objectives: hold meetings with prospective clients, potential agents/distributors, local staff, conduct market research, stage technical seminars or product launches, or find a local office. The length of time depends on the specific business objectives and proposals will be considered on a case-by-case basis. The broad goal of Commercial Centers is to offer clients a unique package that combines US&FCS counseling and trade programs and the convenience of using in-house business facilities—fully equipped offices, meeting and conference rooms, exhibit/display areas—at one site. The facilities are made available to complement the core US&FCS trade promotion programs and services which are designed to help U.S. companies export.

Submitting Proposal(s): Send your written proposals to use the Commercial Centers—on either a long-term or short-term basis—to the Commercial Center Director(s) for review. The Directors are in the best position to suggest best uses of the Commercial Center and the viability of the proposals. Long-term participants are asked to fax or mail a synopsis (three pages maximum) of market development plan(s) to the Director(s) of the Commercial Center listed above for review. Synopsis of

market development plan must address four items: 1) plans to assist U.S. companies, particularly small- and medium-size enterprises, do business in the host country; 2) the role the Commercial Center can play in the plan; 3) measurable goals, 4) a statement indicating a willingness to share performance results, such as success stories; and 5) a timetable of milestones.

Companies and organizations who seek to use the Commercial Centers on a short-term basis are asked to send or fax a letter to the Director(s) of the Commercial Center outlining how the Commercial Center can help them fulfill their business goals.

All proposals will be considered on a first-come, first-served basis. For the convenience of clients, Commercial Center brochures will be made available through the Trade Information Center in January.

For general inquires or requests for export counseling on exploring business opportunities in Brazil, Indonesia and the People's Republic of China and neighboring markets, call 1–800–USA–TRAD and ask the Trade Information Center for the nearest US&FCS domestic field office, referred to as the U.S. Export Assistance Center, for individual counseling.

Dolores F. Harrod,

Deputy Assistant Secretary for International Operations.

[FR Doc. 96–30226 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–FP–M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet on Tuesday, December 10, Wednesday, December 11 and Thursday, December 12, 1996 from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on December 10, 11 and 12, 1996 from 9:00 a.m. to 5:00 p.m. in the Administration Building, Lecture Room E on the 10th and 11th; Lecture Room D on the 12th.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

AGENDA:

—Welcome and Overview
—Issues Update
—Public Key Infrastructure and Related Issues
—Privacy/Data Protection/Electronic Benefits Transfer
—Pending Business
—Public Participation
—Agenda Development for March Meeting
—Wrap-Up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who area interested in speaking area asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by December 9, 1996. Approximately 20 seats will be available for the pubic and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Computer Systems Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: November 20, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–30536 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–01–M

National Oceanic and Atmospheric Administration

[I.D. 112196C]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee, together with the Industry Advisory Subcommittee and Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, and its Comprehensive Management Committee will hold public meetings.

DATES: The meetings will be held on December 17 to December 19, 1996. On December 17, the Council will meet as a Demersal Species Council Committee of the Whole, together with the Industry Advisory Subcommittee and the ASMFC Summer Flounder, Scup, and Black Sea Bass Board, beginning at 8:00 a.m. On December 18, the Council will meet from 8:00 a.m. until 4:00 p.m., at which time the Comprehensive Management Committee will meet until 5:00 p.m. On December 19, the Council will meet from 8:00 a.m. until approximately noon.

ADDRESSES: These meetings will be held at the Holiday Inn SunSpree Resort, 39th Street and Atlantic Avenue, Virginia Beach, VA 23451; telephone: 804–428–1711.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to prepare recommendations for summer flounder and scup recreational measures for 1997, discuss Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and possibly adopt for public hearings, have presentation on the Magnuson-Stevens Act (which will include discussion on essential fish habitat), scoping of the Dogfish FMP with possible adoption of the document for staff to schedule scoping meetings, review the role of the Comprehensive Management Committee, and other fishery management matters.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the meeting dates.

Dated: November 22, 1996.

Gary C. Matlock,

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

[FR Doc. 96–30571 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 112196B]

South Atlantic Fishery Management Council; Public Meetings.

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement Committee and Law Enforcement Advisory Panel.

The Council welcomes written public comment on any of the agenda items. See **ADDRESSES** for the Council address to send in comments.

DATES: The meetings will be held from December 9-10, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571-1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

November 9, 1996, 1:30 p.m. - 5:00 p.m.

The Law Enforcement Committee will meet jointly with the Law Enforcement Advisory Panel to discuss the status of NMFS/States cooperative agreements, particularly state participation and reimbursement, and funding. They will also discuss the Florida drift net issue;

November 10, 1996, 8:30 a.m. - 5:00 p.m.

The Law Enforcement Committee and Advisory Panel will meet to discuss the consolidated regulations for the Southeast region, particularly the possible development of an index for consolidated regulations and the development of a timeframe for review and revision of the consolidated regulations. They will also discuss how the Council may improve regulations. The Committee and Advisory Panel will also review the new NOAA General Counsel penalty schedule; discuss developing a regulatory information exchange system between NMFS, the States, and the Coast Guard; hear a report on enforcement activities associated with the Charleston NMFS Laboratory; review proposed management measures for Snapper Grouper Amendment 8; hear a report on the Atlantic Coast Law Enforcement Workshop; discuss how the sale of bag limit caught fish impacts law enforcement; and discuss the development of an enforcement strategy for the Oculina Habitat Area of Particular Concern closed area.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 2, 1996.

Dated: November 22, 1996.

Gary C. Matlock,

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

[FR Doc. 96–30572 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0130]

Submission for OMB Review; Comment Request Entitled Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate. A request for public comments was published at 61 FR 50003, on September 24, 1996. No comments were received.

DATES: Comment Due Date: January 2, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION: Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 1,140; responses per respondent, 5; total annual responses, 5,700; preparation hours per response, .167; and total response burden hours, 952.

Obtaining Copies of Proposals: Requester may obtain copies of justifications from the General Services

Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

Dated: November 26, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–30575 Filed 11–29–96; 8:45 am]

BILLING CODE 6820–EP–P

Office of the Secretary

Meeting of the Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations about environmental response actions at military installations that are being closed or realigned. At the meeting the DERTF will address issues related to the effects of base closure in California, the state role in cleanup at non-national priorities list sites, administrative reforms of Superfund, and a panel presentation on institutional controls. The DERTF also will be briefed on the cleanup program at the U.S. Marine Corps Air Station (MCAS) Tustin and at MCAS El Toro. The business meeting and hearing will be open to the public. Public witnesses who wish to speak before the DERTF should contact Shah A. Choudhury, Executive Secretary, and prepare a written statement that can be summarized verbally before the DERTF at the time to be fixed for public comment as stated below. Written statements must be received by the close of business, December 23, 1996, at the Office of the Deputy Under Secretary of Defense (Environment Security).

DATE: January 8, 1997, 9:00 a.m.–7:30 p.m.; January 9, 1997, 9:00 a.m.–5:30 p.m.

PUBLIC COMMENT PERIOD: January 8, 1997, 6:30 p.m.–7:30 p.m.

ADDRESS: The Westin South Coast Plaza, 686 Anton Boulevard, Costa Mesa, CA 92626–1988.

FOR FURTHER INFORMATION CONTACT: Mr. Shah A. Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Room 3C767, Washington, DC 20301–3400; telephone (703) 697–7475.

Dated: November 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–30534 Filed 11–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Draft Environmental Impact Statement (DEIS) for the Massachusetts Military Reservation (MMR), Cape Code, Massachusetts; Proposed Expansion

AGENCY: National Guard Bureau, Department of the Army.

ACTION: Notice of availability (NOA).

SUMMARY: The MAARNG is proposing the development of the following: rifle and machine gun ranges; battle course; urban training sites; unit training equipment site; aircraft control tower; fire station; aircraft generation facility; and an environmental building. The purpose of this action is to improve readiness, training, and safety in order to meet Army and Air National Guard training demands and comply with environmental requirements.

This document addresses the environmental impacts of the ten proposed actions, reasonable alternatives and the impacts upon Guard readiness of taking no action. The proposed action and each alternative action consist of the following essential components: construction of modern rifle and machine gun ranges and infantry assault courses that better reflect realistic training conditions; expansion and update of maintenance and storage facility to accommodate upwards of 150 track and wheel vehicles that meet current occupational safety requirements; replacement of airfield facilities that increase safety and meet space and power requirements; and provide for more efficient administrative activities that serve safety, environmental and administrative demands.

The DEIS will be available for public review for 90 days from the date the Notice of Availability is published in the Federal Register by the Environmental Protection Agency. The Massachusetts National Guard will conduct a series of four open houses (one in each of the four adjacent communities of Bourne, Falmouth, Mashpee and Sandwich) as well as a formal public meeting to discuss concerns and comments on the DEIS. Specific locations, dates and times will be announced to those on the project mailing list (approximately 1,350 names) through the quarterly newsletter ''Focus,'' other weekly newspapers, and on the Massachusetts Military Reservation Environmental Impact Statement Web Page (http://www.tiac.net/users/mmreis).

ADDRESSES: Copies of the DIES Executive Summary of the full DEIS document will be made available to all addresses on the mailing list at their option or on request from the general public through advertisements in area newspapers concerning the availability of the DEIS. Additionally, copies of the entire DEIS and Executive Summary will be placed in each of the community public libraries cited herein as well as the MMR base library. Copies will also be sent to Federal, state, regional and local agencies and interested organizations and agencies.

FOR FURTHER INFORMATION CONTACT: Captain Tracy Norris, Project Officer, Unified Environmental Planning Office, Building #1204, Camp Edwards, MA 02542; telephone (508) 968–5824.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I, L&E).

[FR Doc. 96–30604 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4 & 5 December 1996.

TIme of Meeting: 0900–1600, (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) 1997 Summer Study on ''Application of Emerging Technologies to Distance Learning'' will meet on the study subject. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30543 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 11 & 12 December 1996.

Time of Meeting: 0900–1600 (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) 1997 Summer Study on ''Battlefield Visualization'' will meet on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30544 Filed 11–25–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 7 & 8 January 1997.

Time of Meeting: 0900–1600 (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) 1997 Summer Study on ''Battlefield Visualization'' will meet on the study subject. The meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30545 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16 & 17 December 1996.

Time of Meeting: 0900–1600, 16 Dec 96: 0900–1700, 17 Dec 96.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on ''Global Broadcast Service'' will meet on the study subject. These meetings will be closed to the public in accordance with Section 552(b)(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30546 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10 December 1996.

Time of Meeting: 0800–1630 (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Independent Assessment on ''Theater Air Defense/Theater Missile Defense Battle Management/Command, Control, Communications, Computers & Intelligence (TAD/TMD BMC4I)'' will meet on the study subject. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30547 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10 December 1996.

Time of Meeting: 0900–1200.

Place: TBD.

Agenda: The Army Science Board's (ASB) Ad Hoc Study on ''Optimizing Unit Capabilities Systems'' will meet on the study subject. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 695–0781.

Leonard Gliatta,

COL, GS, Army Science Board.

[FR Doc. 96–30548 Filed 11–29–96; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) fifth meeting in a series, described below, regarding the Department of Energy's (DOE) standards-based safety management program. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on the status of the Board's oversight of the DOE's initiatives to simplify existing safety orders and to promulgate new rules and invites any interested persons or groups, as well as DOE contractors, to present any comments, technical information, or data concerning this matter.

TIME AND DATE: December 12, 1996, 9:00 a.m.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the open meeting conducted on November 7, 1996, regarding the adequacy of DOE's standards-based safety management program. The Department of Energy is scheduled to provide a status report and to respond to questions concerning the open issues identified at the Board's public meeting on November 7, 1996. DOE contractors, public representatives, and others will be given an opportunity to present their comments on these safety orders and proposed rules.

Some of the open issues that were identified by the Board's staff during the November 7, 1996 meeting are included in the appendix to this notice.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel , Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Board has a responsibility for oversight of DOE's development and implementation of nuclear health and

safety requirements. DOE is endeavoring to change existing safety orders to revised safety orders and rules. The Board wants to make sure that the requirements-based safety program now embodied in the DOE's safety orders and existing regulations is not compromised.

The Board has held four public Board meetings, to date, in connection with DOE initiatives to revise and improve its nuclear safety requirements. This will be the fifth in that series. On May 31, 1995, the board met in open session, to lay the groundwork for a full assessment of how Standards/Requirements Identification Documents, rules, orders, and other safety requirements are integrated into an overall safety management program for defense nuclear facilities. That public meeting was continued on July 18, 1995. The Board's staff reported on its comprehensive review of existing orders and rules, their adequacy, and the status of DOE revisions to safety orders and rules. Individual Board members presented their views. Then, in a joint meeting with DOE officials on September 20, 1995, DOE's representative reported on the status of DOE's review and proposed revision of nuclear safety orders and rules. The Board at that time identified safety issues requiring resolution, including inappropriate application of ''sunset provisions'' to safety orders, the need for ''corsswalks'' showing the disposition of requirements in superseded safety orders and the need to preserve sound engineering practices embodied in guidance documents. The Board reserved its right to further comment after it completed its integrated review of how rules, orders, and other safety requirements are being revised and integrated into an overall safety management program for defense nuclear facilities. The Board reiterated its concern that DOE's streamlining and conversion process not compromise the requirements-based safety program currently embodied in contracts which incorporate applicable DOE safety orders.

On November 7, 1996, the Board held its fourth public meeting to assess DOE's progress in streamlining the safety orders and promulgating new safety rules pertaining to its defense nuclear facilities, and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to its new regulatory system did not eliminate the sound engineering practices now codified in its safety orders that are necessary to adequately protect public health and safety. Transcripts of each of the four previous public meetings are on file and may be reviewed at the Board's public document room.

In accordance with the authority granted to the Board, and in furtherance of its continuing responsibility for oversight of these matters vital to the public health and safety, a public hearing is to be conducted by the Board on December 12, 1996, in an open meeting. This hearing is an information-gathering function. Examination of those appearing before the Board will be limited to questions put to them by the Board. Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on December 11, 1996, will be scheduled for time slots, beginning at approximately 2:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the Reception Area (room 346) at the start of the 9:00 a.m. meeting.

Anyone who wishes to comment, provide technical information or data, may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. The Board will hold the record open until December 27, 1996, for the receipt of materials. A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board reserves its right to further schedule and otherwise regulate the course of this meeting and hearing, to recess, reconvene, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: November 27, 1996

John T. Conway,

Chairman.

Appendix—Issues Identified During November 7, 1996 Meeting

- Technical issues, finalization and issuance of Implementation Guides associated with DOE Order 420.1, Facility Safety.
- Preparation of a nuclear design handbook to capture and document the extensive years of sound engineering practices developed during many years of experience.
- Previous Board comments regarding DOE Order 251.1A, Directives System, and the associated manual.
- Issuance of a Glossary of Terms to include definitions previously contained in DOE orders and rules.
- Revision of DOE Order 435.1 and its associated Implementation Guide.
- The removal of the decommissioning chapter from DOE Order 5820.2A and addition of appropriate requirements and guidance on decommissioning in DOE Order 430.1, Life Cycle Asset Management.
- Board comments and issuance of the Weapons Orders and Implementation Guide, DOE Orders 452.1 and 452.2.
- DOE's action plan for DOE Order 210.1, that has included a performance indicator program to provide an acceptable level of protection for the health and safety of workers and the public at defense nuclear facilities.
- Completion of Implementation Guide, DOE G 460.1–1 for use with DOE Order 460.1, Packaging and Transportation Safety, and Implementation Guide, DOE G 460.2–1 for use with DOE Order 460.2, Departmental Materials Transportation and Packaging Management.
- Compatibility of the Nuclear Safety Rules (10 CFR Part 830) with the integrated safety management concepts of Board Recommendation 95–2, and clarification of the process for submitting Implementation Plans by the contractors.
- Technical issues relative to Nuclear Safety Rules, 10 CFR Part 830.
- Criteria for worker protection and related issues, including: the requirements contained in the proposed Rules 10 CFR Part 830.110, Safety Analysis Report; 10 CFR Part 830.320, Technical Safety Requirements, and 10 CFR Part 830.112, Unreviewed Safety Questions.
- Revised DOE Manual 232.1–1, Occurrence Reporting and Processing of Operations Information, and discussion regarding the impact of the proposed rule to provide for reporting consistency throughout the complex.
- DOE's proposed changes to the exemption rule relative to the ''adequate protection'' and ''special circumstances'' determination changes discussed by DOE.
- Status of Board staff's comments to the nine Implementation Guides, and planned revisions to the remaining three Implementation Guides and the standards related to Internal Dosimetry, and issuance of the amendment to 10 CFR Part 835 regarding Occupational Radiation Protection.

[FR Doc. 96–30782 Filed 11–27–96; 3:01 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-

Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, December 10, 1996: 6:30 pm–9:30 pm; 7:00 pm to 7:30 pm (public comment session).

ADDRESSES: Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970, or (505)262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Tuesday, December 10, 1996

6:30 P.M. Call to Order and Welcome
7:00 P.M. Public Comment
7:30 P.M. Old Business
9:00 P.M. New Business
9:30 P.M. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on November 26, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–30593 Filed 11–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–88–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 25, 1996.

Take notice that on November 20, 1996, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below, with a proposed effective date of December 20, 1996:

Third Revised Sheet No. 101
Original Sheet No. 101A

Alabama-Tennessee states that this filing is submitted pursuant to Section 4 of the Natural Gas Act and 18 CFR Part 154 of the Rules and Regulations of the Commission.

Alabama-Tennessee also states that the tariff sheets are being submitted to replace Alabama-Tennessee's current Section 3.14(e) of the General Terms and Conditions of its tariff. Specifically, Section 3.14(e) is being changed so as to provide that Alabama-Tennessee shall be entitled to post capacity subject to the right of first refusal up to one (1) year prior to the expiration of transportation contract(s) if construction is needed.

Alabama-Tennessee has requested that the Commission grant all waivers of its regulations necessary, if any, to implement the revised tariff sheets on December 20, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's 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 appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 96–30560 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–89–000]

Alabama-Tennessee Natural Gas Company; Notice of Waiver of Tariff Provisions

November 25, 1996.

Take notice that on November 20, 1996, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing a petition for waiver of Section 3.14(e) of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, to permit Alabama-Tennessee to conduct a right-of-first refusal process in excess of six months with respect to four expiring firm transportation contracts with Decatur Utilities, City of Decatur, Alabama (Decatur).

Alabama-Tennessee states that the requested one-time waiver is necessary to permit Alabama-Tennessee to provide new FT services for the 1997–1998 winter heating season if Decatur elects to match any bids for capacity under the expiring contracts.

Alabama-Tennessee states that copies of the filing have been served upon all customers of Alabama-Tennessee and affected 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 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 appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 96–30561 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–104–000]

CNG Transmission Corporation; Notice of Application for Abandonment

November 25, 1996.

Take notice that on November 19, 1996, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP97–104–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for

permission and approval to abandon 1.3 miles of small diameter gathering pipeline, authorized by CNG's blanket certificate in Docket No. CP82–537–000, by sale to American Refining and Exploration Company (AR&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG relates that the 1.3 miles, composing 6 blanket-certificated lines, are a part of its sale to AR&E of 177 miles of gathering facilities, which includes: approximately 175.7 miles of uncertificated gathering lines, three filed compressor stations, and other non-jurisdictional production properties located in Clearfield, Elk, and Cameron Counties, Pennsylvania. CNG requests that the Commission make a determination of the non-jurisdictional nature of the facilities and AR&E operations of the gathering lines and compressors following the sale to AR&E.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 16, 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 and 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 in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 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 CNG to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30555 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–111–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 25, 1996.

Take notice that on November 20, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP97–111–000, pursuant to Sections 157.205, 157.121 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to retire five (5) of its meters and appurtenant facilities and then upgrade the existing delivery points to accommodate incremental gas deliveries to Wisconsin Power & Light (WP&L) authorized in blanket certificate issues in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to upgrade five (5) existing delivery points located in Columbia, Rock, Lafayette and Iowa Counties, Wisconsin. In addition Northern proposes to retire the meters and appurtenant facilities associated with the upgrade of the existing delivery points which would accommodate natural gas deliveries to WP&L. Northern states that the estimated total cost to install and upgrade the proposed facilities would be $212,700.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30557 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11464–000–Utah]

Utah State University; Notice of Surrender of Preliminary Permit

November 25, 1996.

Take notice that Utah State University has requested to surrender its preliminary permit for the U.S.U. Project No. 11464, which would have been located in Logan, Utah. The preliminary permit was issued on November 14, 1994, and would have expired on October 31, 1997.

The permittee requested the surrender on October 31, 1996, and the preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30558 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–108–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

November 25, 1996.

Take notice that on November 19, 1996, Williams Natural Gas Company (WNG), One Williams Center, Tulsa, Oklahoma 74101 filed in Docket No. CP97–108–000 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 approval and permission to install and operate a delivery tap and appurtenant facilities for the delivery of transportation gas to Cal-Maine Foods, Inc. (Cal-Maine), located in Rice County, Kansas, under the blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it proposes to install and operate a delivery tap, measuring, and appurtenant facilities in Rice County, Kansas to deliver transportation gas to Cal-Maine for use in a new egg production facility near Chase, Kansas. WNG further states that the deliveries through the facilities proposed herein will have no effect on WNG's existing customers. It is estimated that the

annual delivered volume of natural gas for the proposed facilities will be approximately 11,000 Dth with a peak day volume of 100 Dth. WNG asserts that the total volume of natural gas to be delivered after the request will not exceed the total volume of natural gas authorized prior to the request. WNG indicates that the cost to construct the proposed facilities is estimated to be approximately $10,750 which will be fully reimbursed by Cal-Maine. It is further indicated that Cal-Maine will own, and WNG will operate and maintain the proposed facilities.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's 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 activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30556 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–387–000]

Williams Natural Gas Company; Notice of Technical Conference

November 25, 1996.

In the Commission's order issued on October 31, 1996, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Thursday, December 12, 1996, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30559 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–93–000]

Young Gas Storage Company Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 25, 1996.

Take notice that on November 21, 1996, Young Gas Storage Company Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the pro forma tariff sheets listed in Appendix A to the filing, to be effective May 1, 1997.

Young states that the purpose of this compliance filing is to conform Young's tariff to the requirements of Order No. 587.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before December 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–30562 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–450–000, et al.]

Upper Peninsula Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ER97–450–000]

Take notice that on November 12, 1996, Upper Peninsula Power Company (UPPCO), tendered for filing a proposed Power Service Agreement for sales of electricity to the Village of L'Anse, Michigan. UPPCO states that the rates established in the Power Service Agreement for the year ending September 30, 1997 will result in a decrease in revenues from sales to Gladstone of approximately 2.5% annually. UPPCO has asked for waiver of the FERC's regulations to the extent necessary to permit the proposed Power Service Agreement to be made effective as of October 1, 1996.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Indiana Public Service Company

[Docket No. ER97–451–000]

Take notice that on November 12, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Aquila Power Corporation.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Aquila Power Corporation pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer counselor.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER97–452–000]

Take notice that on November 12, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Wolverine Power Supply Cooperative, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Wolverine Power Supply Cooperative, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company,* 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested

that the Service Agreement be allowed to become effective as of October 18, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company

[Docket No. ER97–453–000]

Take notice that on November 12, 1996, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated October 31, 1996, establishing The Power Company of America (PCA) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 31, 1996 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon PCA and the Illinois Commerce Commission.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–454–000]

Take notice that on November 13, 1996, Florida Power Corporation (Florida Power), tendered for filing two agreements between itself and Tampa Electric Company: a Service Agreement for Network Integration Transmission Service, and a Network Operating Agreement. The Agreements describe services to be provided to TECO pursuant to the terms and conditions of the Company's open access transmission tariff (T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on November 14, 1996.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Edison Company

[Docket No. ER97–455–000]

Take notice that on November 13, 1996, Toledo Edison Company (Toledo Edison), tendered for filing with the Federal Energy Regulatory Commission a market-based sales tariff.

Toledo Edison requests that its tariff be accepted for filing and allowed to become effective as soon as possible and in any event no later than January 13, 1997.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER97–456–000]

Take notice that on November 13, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Electric Power Company.

NSP requests that the Commission accept the agreement effective November 1, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER97–457–000]

Take notice that on November 13, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Aquila Power Corporation under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to Aquila Power Corporation.

NUSCO requests that the Service Agreement become effective November 15, 1996.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER97–458–000]

Take notice that on November 12, 1996, Northern Indiana Public Service Company (Northern Indiana), tendered for filing certain revisions to its Power Sales Tariff.

Northern Indiana Public Service Company states that the revisions to the Power Sales Tariff include unbundling Power Sales from transmission services as required under Order No. 888 and instituting market-based power sales rates for Northern Indiana Public Service Company under the Power Sales Tariff. Northern Indiana Public Service Company has requested waiver of the Commission's Regulations to allow the revisions to the Power Sales Tariff to become effective November 8, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor, and all customers having service agreements with Northern Indiana under the Power Sales Tariff.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota Company)

[Docket No. ER97–459–000]

Take notice that on November 12, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and City of New Ulm, MN.

NSP requests that the Commission accept the agreement effective October 16, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER97–460–000]

Take notice that on November 12, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement for NSP Wholesale under the Northern States Power Company Transmission tariff.

NSP requests that the Commission accept the agreement effective November 11, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No. ER97–461–000]

Take notice that on November 14, 1996, Atlantic City Electric Company (ACE), tendered for filing executed service agreements under which ACE will sell power and energy at market-based rates to The Power Company of America, L.P. (PCA) and CPS Utilities (CPS) in accordance with ACE's Wholesale Power Sales Tariff.

ACE states that a copy of the filing has been served on PCA and CPS.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER97–462–000]

Take notice that on November 14, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing a rate schedule change to PG&E Rate Schedule FERC No. 149, between Pacific Gas and Electric Co., (PG&E), and Lassen Municipal Utility District (Lassen).

PG&E's filing submits an agreement, entitled Three-Day Islanding Agreement By And Between Lassen Municipal Utility District And Pacific Gas and Electric Company. This agreement, which was executed on October 1, 1996, sets forth provisions for reimbursing PG&E for costs incurred during emergency islanding on behalf of and for the sole benefit of Lassen in response to a severe storm in December 1995.

Copies of this filing have been served upon Lassen, Western Area Power Administration, and the California Public Utilities Commission.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER97–463–000]

Take notice that on November 14, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing a rate schedule change to PG&E Rate Schedule FERC No. 149, between Pacific Gas and Electric Co., (PG&E), and Lassen Municipal Utility District (Lassen).

PG&E's filing submits a contract, entitled ''Islanding Agreement Between Lassen Municipal Utility District, HL Power Company and Pacific Gas and Electric Company.'' This contract sets forth provisions for reimbursing PG&E for costs incurred during Islanding on behalf of and for the sole benefit of Lassen.

Copies of this filing have been served upon Lassen, HL Power Company, Western Area Power Administration, and the California Public Utilities Commission.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. AMVEST Coal Sales, Inc.

[Docket No. ER97–464–000]

Take notice that on November 14, 1996, AMVEST Coal Sales, Inc., tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective January 14, 1997, or the date that the Commission issues an order in this proceeding, whichever is earlier. AMVEST Coal Sales, Inc., intends to engage in electric energy and capacity transactions as a marketer.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER97–465–000]

Take notice that on November 14, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Seminole Electric Cooperative Incorporated 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, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER97–466–000]

Take notice that on November 14, 1996, PECO Energy Company (PECO), filed a Service Agreement dated November 1, 1996 with AIG Trading Corporation (AIG) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds AIG as a customer under the Tariff.

PECO requests an effective date of November 1, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to AIG and to the Pennsylvania Public Utility Commission.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER97–467–000]

Take notice that on November 14, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing two Firm Point-to-Point Transmission Service Agreements between NSP and Sonat Power Marketing L.P.

NSP requests that the Commission accept the agreements effective October 15, 1996, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER97–468–000]

Take notice that on November 14, 1996, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Electric Clearinghouse, Inc. (ECT); Vitol Gas & Electric L.L.C. (Vitol); CINergy Services, Inc. (Cinergy); Southern Energy Marketing, Inc. (SEMI); Minnesota Power & Light Company (MP&L) as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon ECI, Vitol, Cinergy, SEMI or MP&L, and the Public Utilities Commission of Ohio.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. The Dayton Power and Light Company

[Docket No. ER97–469–000]

Take notice that on November 14, 1996, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Sonat Power Marketing L.P. (SPMLP); CNG Power Services Corp. (CNG); Western Power Services, Inc. (WPS); TransCanada Power Corp. (TCP); Rainbow Energy Marketing Corporation (REMC); Morgan Stanley Capital Group (MSCG); Federal Energy Sales, Inc. (FES); AYP Energy, Inc. (AYP); Minnesota Power & Light Company (MP&L); Heartland Energy Services, Inc. (HES) and Coral Power, L.L.C. (CP) as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon SPMLP, MSCG, REMC, TCP, WPS, CNG, FES, AYP, MP&L, HES, or CP and the Public Utilities Commission of Ohio.

Comment date: December 6, 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. 96–30554 Filed 11–29–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5657–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Source Performance Standards for Subparts K, Kb, S, T, U, V, W, X, and AAA and NESHAP Subparts F, G, H, and I

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 31, 1997.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance. People interested in getting copies of or making comments about these ICRs should direct inquiries or comments to the Office of Compliance, Mail Code 2224A, 401 M Street, S.W., Washington, DC 20460. Information may also be acquired electronically through the Enviroene Bulletin Board, (703) 908–2092 or the Enviroene WWW/Internet Address, http//wastenot.inel.gov./envirosense/. All responses and comments will be collected regularly for Enviroene

FOR FURTHER INFORMATION CONTACT: For NSPS Subparts K and Kb: Everett Bishop of the Manufacturing Energy, and Transportation Division (mail code 2223A), telephone (202) 564–7032, facsimile (202) 564–0050 or e-mail Bishop.Everett@epamail.epa.gov; for NSPS Subpart S: Jane Engert of the Manufacturing Energy, and Transportation Division (mail code 2223A), telephone (202) 564–5021, facsimile (202) 564–0050 or e-mail engert.jane@epamail.epa.gov.; for NSPS Subparts T, U, V, W, and X: Steve Howie, telephone (202) 564–4146, facsimile (202) 564–0085 or Cletis Mixon, telephone (202) 564–4153, facsimile (202) 564–0085, of the Agriculture and Ecosystems Division, Agriculture Branch (mail code 2225A); for NSPS Subpart AAA: Robert C. Marshall, Jr., of the Wood Heater Program, telephone (202) 564–7021, facsimile (202) 564–0039 or e-mail marshall.robert@epamail.epa.gov.; and for NESHAP Subparts F, G, H, and I, the Hazardous Organic NESHAP (HON): Marcia Mia of the Chemical, Commercial Services and Municipal Division, (mail code 2224A), telephone (202) 564–7042, facsimile (202) 564–0009 or e-mail mia.marcia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

NSPS Subpart K: Petroleum Liquid Storage Vessels Supplementary Information

Affected entities: Entities potentially affected by this action are those which maintain storage vessels containing petroleum liquids which have a storage capacity greater than 151,412 liters (40,000 gallons) that commenced construction, reconstruction or modification after June 11, 1973 and prior to May 19, 1978. Exemptions to this Subpart are for those storage vessels for petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer. This document is to begin the process of reissuing an OMB number for an information collection request that has lapsed.

Title: The New Source Performance Standards (NSPS) for Petroleum Liquid Storage Vessels at 40 CFR Part 60, Subpart K, ICR Control Number 1797.01.

Abstract: The ICR contains recording and recordkeeping requirements under 40 CFR Part 60, Subpart K, that apply to Petroleum Liquid Storage Vessels. In the Administrator's judgment volatile organic compound (VOC) emissions from petroleum storage vessels cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS have been promulgated for this source category.

The control of VOC emissions from petroleum storage vessels requires properly operated and maintained equipment. VOC emissions are the result of evaporation of volatile organic liquids contained in the vessels. These standards rely on the owner or operator to equip their storage vessels with a floating roof, a vapor recovery system or their equivalents.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Generally, this information will be readily available because it is needed for plant records. As a result, there should be no additional burden from these requirements.

The format of the rule is the collecting and maintaining of prescribed information. An owner or operator shall maintain a record of the petroleum liquid stored, the period of storage and the maximum true vapor pressure of that liquid during the storage period. Determining the vapor pressure may be ascertained by nomographs contained in API Bulletin 2517 or from liquid samples taken from a storage vessel, if specified by the Administrator.

Initial notifications are required by the General Provisions at 40 CFR section 60.7. These initial reports include notification of construction or modification, reconstruction, startup, shutdown, or malfunction. Due to the time frames established under Subpart K, there can be no new notices for construction. Subpart K, itself, does not require further notifications to the Agency.

Information generated by notifications and recordkeeping is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment used to achieve compliance. Notification of construction and startup indicated to the Agency that an affected facility was being constructed and therefore subject to the standards. If the information were not collected, the Agency would have no means for ensuring that compliance with the NSPS was achieved and maintained by the sources subject to the regulation. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the recordkeeping requirements, the standards could be enforced only through continuous onsite inspection by regulatory agency personnel. Consequently, not collecting

the information results in (1) greatly increased resource requirements for enforcement agencies or (2) the inability to enforce the standards.

NSPS Subpart K required notification to the Agency of any affected facility. Afterwards, the only requirements were to install appropriate equipment, a floating roof, vapor recovery system or their equivalents and then to maintain the following information, record of the petroleum liquid stored, maximum true vapor pressure of the liquid stored and the storage period for each petroleum liquid.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Burden Statement: It is estimated that 150 Respondents are affected by Subpart K. The estimated reporting burden is 2.5 hours/respondent/year for recordkeeping. The frequency for collecting this information depends on the number of times in a year the petroleum storage tank is emptied and refilled. The estimate for this is once a year. Respondent costs generally can be calculated on the basis of $14.50 per hour, plus 110 percent overhead.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart Kb: Volatile Organic Liquid Storage Vessels Supplementary Information

Affected entities: Entities potentially affected by this action are those which maintain volatile organic liquid (VOL) storage vessels, including petroleum storage vessels, which have a storage capacity greater than or equal to 40 cubic meters that commenced construction, reconstruction or modification after July 23, 1984. Exemptions to Subpart Kb are for vessels at coke oven by-product plants, pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere, vessels permanently attached to mobile vehicles, vessels with a design capacity less than or equal to 1,589.874 m^3 used for petroleum or condensate stored, processed, or treated prior to custody transfer, vessels located at bulk gasoline storage plants, storage vessels located at gasoline service stations and vessels used to store beverage alcohol.

Title: The New Source Performance Standards (NSPS) for Volatile Organic Liquid Storage Vessels at 40 CFR Part 60, Subpart Kb, OMB Control Number 2060–0074, expiring on June 3, 1997.

Abstract: The ICR contains reporting, recording, and recordkeeping requirements under 40 CFR Part 60, Subpart Kb, that apply to VOL Storage Vessels. In the Administrator's judgment, VOC emissions from VOL storage vessels cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS have been promulgated for this source category.

The control of emissions of VOC from storage vessels requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions are the result of evaporation of volatile organic liquids contained in the vessels. These standards rely on the enclosure of the tanks by fixed or floating roofs, or a vapor recovery system or equivalent control device.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Generally, this information will be readily available because it is needed for plant records. As a result, there should be no additional burden from these requirements.

The format of the rule is that of an equipment standard. A performance test is not required because conducting a performance test is not feasible for floating roofs. Floating roofs are subject to visual inspections and periodic measurements. Flares must meet the General Provisions at section 60.18(f). An alternative means of limiting emissions is permitted if it can meet the emissions limitations required in § 60.112b. For the equipment to be permitted, a person or company must notify the Administrator who must then publish the information in the Federal Register and hold a public hearing. The submittal of information must include an actual emissions test that uses a full-size or scale model storage vessel that accurately collects all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure. Also, the submittal must include an engineering evaluation that the Administrator determines is an accurate method of determining equivalence. (60.114b).

Owners or operators of tanks equipped with a fixed roof and internal floating roof (IFR) shall perform visual inspections of the roof and seals prior to filling the vessel with VOL and at least once every 12 months thereafter. As an alternative to annual inspections, double-sealed systems may be visually inspected internally every 5 years and each time the vessel is emptied and degassed. An internal inspection, in which the tank is emptied and degassed, is required at least every 10 years.

Owners or operators of tanks equipped with an external floating roof (EFR) shall perform seal gap measurements of the gap area and maximum gap width between the primary seal and the wall of the storage vessel (within 60 days of the initial fill

and at least every 5 years thereafter) and between the secondary seal and the wall of the storage vessel (initially and at least once per year thereafter). They shall perform visual inspections of the roof, seals and fittings each time the vessel is emptied and degassed.

Owners or operators of vessels equipped with closed vent systems are required to submit, for the Administrator's approval, an operating plan describing system design, operation, and maintenance specifications, and an inspection plan for the system. In the event the owner or operator has installed a flare, a report showing compliance with visible emission General Provisions shall be furnished to the Administrator.

Initial notifications are required by the General Provisions at 40 CFR section 60.7. These initial reports include notification of construction or modification, reconstruction, startup, shutdown, or malfunction. Subpart Kb includes notifications when a tank is filled or refilled and prior to seal gap measurements.

The owner or operator of each storage vessel that is equal to or greater than 40 m3 (10,000 gal) in capacity shall, for the life of the source, keep readily accessible records showing the dimension of the vessel and an analysis showing the capacity of the storage vessel.

Records shall be kept for at least 2 years of the type of VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period for each storage vessel with: (1) a design capacity greater than or equal to 151 m3 (40,000 gal) storing a liquid with a maximum true vapor pressure greater than or equal to 1.75 kPa (0.25 psia) or (2) a design capacity greater than or equal to 75 m3 (20,000 gal) but less than 151 m3 (40,000 gal) storing a liquid with a maximum true vapor pressure greater than or equal to 15.0 kPa (2.2 psia). In cases where vessels meet the criteria for size cut-offs but are typically below the vapor pressure cut-offs, the owner or operator shall notify the Administrator when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor pressure values for each volume range. Owners or operators of each vessel equipped with a closed-vent system and 95 percent effective control device are exempt from these requirements. Records must be kept of inspections and seal gap measurements.

Owners or operators of each vessel storing a waste mixture of indeterminate or variable composition shall conduct semiannual physical testing for maximum true vapor pressure in cases where the vapor pressure of the anticipated liquid composition is above the cutoff for monitoring, but below the cutoff for control requirements.

The owner or operator shall keep copies of all reports and records resulting from inspections for at least 2 years. Owners or operators of vessels equipped with an IFR or EFR are required to submit a report describing the control equipment and certify that the control equipment meets the specifications of the regulation. Owners or operators of external floating roof (EFR) vessels shall submit a seal gap measurement reports for the primary seal and the secondary seal. Additional reports are required only in the event the vessel is determined to be out of compliance with the standards. These reports shall identify the vessel, the nature of the defects, and the date that the vessel was emptied or repaired. Reports are required for periods when a pilot light is absent from a flare.

Information generated by notifications, recordkeeping, and reporting requirements is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment used to achieve compliance. Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. If the information were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by the new, modified, or reconstructed sources subject to the regulation. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the recordkeeping requirements, the standards could be enforced only through continuous onsite inspection by regulatory agency personnel. Consequently, not collecting the information results in (1) greatly increased resource requirements for enforcement agencies or (2) the inability to enforce the standards.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Burden Statement: Based upon the last ICR, there were 857 respondents with 10,455 storage vessels affected by this Subpart. The estimated burden is: One time notification or start up burden is 47 hours/year/respondent; repeat requirements (seal and gap measurements) burden is 23 hours/year/respondent; recordkeeping requirements burden is estimated at 104 hours/respondent/year. Respondent costs generally can be calculated on the basis of $14.50 per hour, plus 110 percent overhead.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart S: Primary Aluminum Supplementary Information

Affected entities: Entities potentially affected by this action are primary

aluminum reduction plants that commenced construction, modification, or reconstruction after the date of proposal. The specific units to which this subpart applies are potroom groups and anode bake plants.

Title: New Source Performance Standards (NSPS) for Primary Aluminum Reduction Plants at 40 CFR Part 60, Subpart S, OMB Control Number 2060–0031, expiring July 31, 1997.

Abstract: Primary aluminum processing activities result in emissions of gaseous hydrogen fluoride and particulate fluorides, alumina, carbon monoxide, volatile organic compounds and sulfur dioxide. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards establish limits for both total fluoride emissions and visible emissions, and rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers. Typically, primary aluminum plants are components of larger facilities that produce a variety of finished products. The primary aluminum source category, however, does not include holding furnaces, casting, or refining processes which are generally considered under the category of secondary aluminum.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 874 person-hours. This is based on an estimated 7 respondents, with no new plants or potlines expected to be constructed in the next three years. The average annual burden for reporting only is projected to be 296 person-hours. Respondent costs generally can be calculated on the basis of $14.50 per hour, plus 110 percent overhead.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subparts T, U, V, W, X: Phosphate Fertilizer Supplementary Information

Affected entities: This action affects entities which operate wet-process phosphoric acid plants, super phosphoric acid plants, granular diammonium phosphate plants, and triple superphosphate plants. This action also affects entities which operate granular triple superphosphate storage facilities.

Title: New source Performance Standards (NSPS) for the Phosphate Fertilizer Industry at 40 CFR Part 60, Subparts T, U, V, W, X, OMB Control Number 2060.0037, expiring June 30, 1997.

Abstract: The NSPS for the Phosphate Fertilizer Industry were proposed in October 22, 1974, and promulgated on August 6, 1975. These standards apply to each wet-process phosphoric acid plant, each super phosphoric acid plant, each granular diammonium phosphate plant, and each triple superphosphate plant, having a design capacity of more than 15 tons of equivalent phosphorous pentoxide (P_2O_5) feed per calendar day. These standards also apply to granular triple superphosphate storage facilities. Specific affected facilities for each subpart are found at 40 CFR. 60.200, 60.210, 60.220, 60.230 and 60.240.

Phosphate fertilizer plant and phosphate bearing feed owner operators of phosphate fertilizer plants must notify EPA of construction, modification, start-ups, shutdowns, malfunctions, and dates and results of the initial performance test. Owner/operators must install, calibrate, and maintain monitoring devices to continuously measure/record pressure drop across scrubbers.

Recordkeeping shall consist of: the occurrence and duration of all startups and malfunctions as described; initial performance tests results; amount of phosphate feed material; equivalent calculated amounts of P_2O_5, and pressure drops across scrubber system. Startups, shutdowns and malfunctions must be recorded as they occur. Performance test records must contain information necessary to determine conditions of performance test and performance test measurements. Equivalent P_2O_5 stored or amount of

feed must be recorded daily. The CMS shall record pressure drop across scrubbers continuously and automatically.

Reporting shall include: initial notifications listed and initial performance test results.

The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources. These standards must reflect application of the best technological system of continuous emissions reductions. Such reductions should take into consideration the cost of achieving emission reduction, or any non-air quality health and environmental impact and energy requirements.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Burden Statement: The reporting burden for this requirement is limited to initial notifications and reports of performance test results. No new sources are anticipated to occur during the period for which renewal is requested so no reporting burden is anticipated.

The average total annual recordkeeping burden associated with this ICR is 962.5 hours. This figure reflects a per-respondent burden of 87.5 hours, with a total of 11 respondents representing the industry. These figures are unchanged from the current ICR. The per-respondent annual burden consists of 0.25 hours per (daily) occurrence of time to enter information, times 350 operation days per year (as specified in the NSPS review document). All other burdens associated with recordkeeping under this ICR, including time necessary to read instructions, plan activities, and implement activities, are assumed to be included in the burden associated with startup of new facilities and not included in the annual recordkeeping. The numbers were derived from standard estimates based on the EPA's experience with other standards. Respondent costs generally can be calculated on the basis of $14.50 per hour, plus 110 percent overhead.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart AAA: New Residential Wood Heaters Supplementary Information

Affected entities: Entities potentially affected by this action are those which manufacture or sell new residential wood heaters.

Title: Standards of Performance for New Stationary Sources; New Residential Wood Heaters at 40 CFR 60, Subpart AAA, Sections 60.530 through 60.539(b), OMB Control Number 2060–0161, expiring August 31, 1997.

Abstract: Information is supplied to the Agency under the applicable rule by emission testing laboratories, manufacturers and commercial owners (e.g., distributors, retailers).

The information supplied by manufacturers to the Agency is used: (1) to ensure that the best demonstrated technology (BDT) is being used to reduce emissions from wood heaters, (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards, (3) to provide evidence that production-line wood heaters have emission performance characteristics similar to tested models and (4) to provide assurance of continued compliance.

Manufacturers submit a notification to the Agency stating the dates of certification testing, perform the certification testing at an accredited laboratory, supply detailed component drawings including manufacturing tolerances to the Agency, reapply for certification every five years, seal/store each tested model, and maintain all necessary certification test records.

For each certified model line, manufacturers are required: (1) to submit biennially, a statement certifying that no material or dimensional changes have been made to the model line that affects emission performance; (2) to affix both permanent and temporary labels to each new wood heater manufactured; (3) to disclose, to the consumer, instructions for operation and maintenance of the wood heater; (4) to notify the Agency that a quality assurance emission test will be conducted within one week of the mailing; (5) to maintain, for each model line, records of certification test reports including raw field, laboratory, and instrument calibration data; and (6) to perform and document quality assurance parameter inspections conducted on assembly-line wood heaters; (7) to perform and document emission audit tests performed on assembly-line wood heaters; (8) to maintain records of the quantity and model type of wood heaters produced and sold; (9) to maintain records and storage locations of all wood heaters exempt from certification requirements; and (10) to retain for the life of the model line wood heater units tested for certification purposes.

Emission testing laboratories seeking accreditation are required: (1) to apply to the Agency for accreditation before conducting certification tests; (2) pass a standardized proficiency test; and (3) notify the Agency prior conducting the required test.

The regulation requires currently accredited laboratories: (1) to participate in proficiency test programs on an annual basis, (2) to report within ten days the results of random compliance audits in the form of a preliminary test report, (3) to report to the Agency the failure of any manufacturer to submit a wood heater for testing, (4) to report any

interruptions or postponements in the testing schedule and advise the Agency of the new testing date; (5) to retain all certification test records and documentation; and (6) to retain all certification test records and associated documentation.

Commercial owners are required to maintain records of previous owners of wood heaters to enable the Agency to confirm whether the stove should be categorized as a used stove or an affected facility.

Most recordkeeping and reporting provisions of the rule consists of emissions-related data and other information not considered confidential. Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

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

The agency would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Burden Statement: Previous ICRs used a combination of burden hours and/or dollar-cost figures. In these ICRs, burden hours were converted to dollar-cost figures using an average salary multiplier ($14.50 per hour plus 110 percent overhead) times the number of burden hours. The dollar-cost figures were then added to compute the overall dollar-cost figure. In this ICR, both burden hours and dollar-cost figures will be assigned to each regulatory burden.

Based on the previous ICR, approved for use through August 31, 1996, the total annual burden to regulated entities is 8,775 hours with a total dollar-cost of $1,349,673.38. The burden to manufacturers is 6,861 hours and $1,291,423.00. The burden to testing laboratories is 1,564 hours and $47,654.25, and the burden to retailers is 350 hours and $10,657.25.

For manufacturers, the following hourly burden and cost estimates are used in the current ICR. A total of 50 manufacturers testing 1.33 wood heaters per year, at a cost of 2 hours per wood heater with payment of $5,000 in fees to the testing laboratory. Applications, taking 8 hours each to prepare, are submitted at the rate of 1.33 per year. Biennial reporting occurs 0.50 times per year, at a cost of 2 hours per report. It is estimated that manufacturers, on an annual basis, attach to production-line wood heaters, 4,000 permanent and 4,000 temporary labels per year at a cost of $2 per permanent label, and $0.75 and 0.0083 hours per temporary label. It is also estimated that manufacturers create one owner's manual per year, taking 20 hours to prepare, perform quality assurance testing 0.80 times per year at a cost of $5,000 per wood heater and that it takes 2 hours to prepare the notification to the Agency. Emission test documentation is estimated to take 1 hour for each tested wood heater. Recordkeeping for research and development wood heaters is expected to take place once per year and take 2 hours to prepare. Eight hours of recordkeeping is estimated for each stove used in certification testing that is subsequently sealed and stored by the manufacturer.

For emission testing laboratories, the following hourly burden and cost estimates are used in the current ICR. It is estimated that 1 new testing laboratory will apply for certification each year and that preparation of the application for certification will take 40 hours. The notice for initial proficiency testing for this laboratory will take 1 hour to prepare and the required initial proficiency test will take 135 hours to complete. For accredited testing laboratories, an annual demonstration of continuing proficiency is required and is estimated to take 135 hours. Rescheduling of proficiency tests are estimated to occur twice per year for each laboratory and take 2 hours to prepare the required notice to the Agency. It is estimated that currently certified test laboratories will spend 4 hours per week maintaining emission test records.

For retailers, records of wood heaters previously owned by noncommercial owners are required to be maintained for 5 years. It is estimated that 875 retailers will create such records, 4 times a year at an expense of 0.100 hour per record.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. The above burden estimate(s) includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subparts F, G, H, and I, the Hazardous Organic NESHAP (HON) Supplementary Information

Affected Entities: Entities potentially affected by this action are those which are subject to the HON with the exceptions listed in 40 CFR 63.100(f).

Title: NESHAP Subparts F, G, H, and I, the Hazardous Organic NESHAP (HON), OMB number 2060–0282, expiring May 31, 1997.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 63.100, 63.110, 63.160, and 63.190; subparts F, G, H, and I, respectively, for hazardous air pollutant emissions from process vents, storage vessels, transfer racks, wastewater and equipment leaks. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control is being properly applied. The standards require periodic recordkeeping to document process information relating to the source's ability to comply with the standards. Respondents are owners or operators of processes in SOCMI industries, styrene-butadiene rubber production, polybutadiene production, chloride production, pesticide production, chlorinated hydrocarbon use in production of chemicals, pharmaceutical production, and miscellaneous butadiene use.

Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAP's) from stationary sources. The sources subject to the proposed rule can potentially emit 149 of the 189 HAP's listed in Section 112. In the Administrator's judgment, hazardous air pollutant (HAP) emissions in the synthetic organic chemical industry and other negotiated industries cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAPs have been promulgated for this source category as required under section 112 of the Clean Air Act.

Generally, respondents are required by law to submit one time reports of start of construction, anticipated and actual start-up dates, and physical or operational changes to existing facilities. In addition, Subpart G requires respondents to submit five types of reports: (1) Initial Notification, (2) Implementation Plan (note: on August 26, 1996, EPA proposed to eliminate the need for an Implementation Plan. No adverse comments were received and EPA plans to go final with that notice in December), (3) Notification of Compliance Status, (4) Periodic Reports, and (5) several event triggered reports. The Initial Notification report identifies sources subject to the rule and the provisions which apply to these sources. The Notification of Compliance Status is submitted to provide the information necessary to demonstrate that compliance has been achieved. The Periodic Reports provide the parameter monitoring data for the control devices, results of any performance tests conducted during the period, and information on instances where inspections revealed problems. Subparts H and I require the source to submit an initial report detailing the equipment and process units subject to, and schedule for implementing each phase of, the standard. Owners and operators also have to submit semiannual reports of the monitoring results from the leak detection and repair program in the equipment leak standard. All records are to be maintained by the source for a period of at least 5 years. The Initial Notification is due 180 days before commencement of construction or reconstruction for new sources.

The Notification of Compliance Status would be submitted 150 days after the source's compliance date for both new and existing sources.

Generally, Periodic Reports would be submitted semiannually. However, if monitoring results show that the parameter values for an emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

Other reports would be submitted as required by the provisions for each kind of emission point. The due date for these kinds of reports is tied to the event that precipitated the report itself. Examples of these special reports include requests for extensions of repair, notification of scheduled inspections for storage vessel and wastewater management units, process changes, and startup, shutdown, and malfunctions.

Subparts H and I, the equipment leak standards, would require the submittal of an initial report and semiannual reports of leak detection and repair experiences and any changes to the processes, monitoring frequency and/or initiation of a quality improvement program. For new sources, the initial report shall be submitted with the application for construction, as under Subpart G. Every 6 months after the initial report, a report must be submitted that summarizes the monitoring results from the leak detection and repair program and provides a notification of initiation of monthly monitoring or implementation of a quality improvement program, if applicable.

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity or 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 EPA specifically would like comments on the following: (i) the estimated percentage of respondents filing electronically; (ii) the estimated percentage of respondents contracting out the leak detection and repair (LDAR) portion; (iii) an estimate of the annual cost of contracting out the LDAR program; and (iv) the model plant scenario, which consists of: 20 parameters to monitor at control devices throughout facility; 10 affected storage tanks of various capacities; 3 affected major wastewater streams; 4 affected transfer rack operations; 1 overall LDAR program for 2000 components; and 1 facility wide inventory of emission points, Group 1 and Group 2.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR. Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Work Reduction Act.

The estimate was based on the assumption that there would be 18 new affected facilities each year and that there would be 389 existing sources over each of the next three years covered by the ICR. For the new sources, it was estimated that it would take 250 person hours to read the instructions, 355 person hours to plan activities, 132 person hours for training, 4266 person hours for performance testing, 2943 person hours to gather information, monitor and inspect, 40 person hours to process, compile and review, 557 person hours to complete reports, 489 person hours to record and disclose information, and 264 person hours to store and file reports. For existing sources, it was estimated that it would take 83 person hours to read the instructions, 79 person hours to plan activities, 21 person hours for training, 1767 person hours for performance

testing, 1693 person hours to gather information, monitor and inspect, 20 person hours to process, compile and review, 406 person hours to complete reports, 454 person hours to record and disclose information, and 237 person hours to store and file reports.

The annual burden to industry for the three year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 2,321,399 hours. The respondents costs were calculated on a basis of $33/hr technical; $49/hr managerial, and $15/clerical; with a split of 0.05 managerial hours per technical hour and 0.10 clerical hours per technical hour. The total annual burden to industry is estimated at $74,587,566.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third party burden is associated with this ICR.

Dated: November 22, 1996.

Bruce R. Weddle,

Director, Office of Compliance.

[FR Doc. 96–30609 Filed 11–29–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5657–3]

Science Advisory Board Executive Committee; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee (EC) of the Science Advisory Board (SAB) will hold a public teleconference on Tuesday, December 17, 1996, from 3:00 p.m. to 4:00 p.m. (Eastern Standard Time). The teleconference will be hosted in the SAB Conference Room 2103 of the Mall, U.S. Environmental Protection Agency Headquarters Building at 401 M Street SW, Washington, DC 20460. For easy access, members of the public should use the EPA entrance next to the Safeway. Copies of the documents being reviewed will be available for the public at the time of the meeting in the Conference Room. During this teleconference, the Committee will review the following draft reports from two of its Standing Committees:

1. Review of Ecological Risk Assessment Guidelines
   —Ecological Processes and Effects Committee (EPEC).
2. Review of Thyroid Cancer Policy document
   —Environmental Health Committee (EHC).

A limited number of telephone lines will be available for use by members of the public.

FOR FURTHER INFORMATION—Members of the public desiring additional information concerning the teleconference or who wish to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–4126; by fax at (202) 260–9232 or via the INTERNET at: barnes.don@epamail.epa.gov. After December 1, 1996, copies of the draft meeting agenda and draft reports will be available from Ms. Priscilla Tillery-Gadson at the above telephone and fax numbers, and by INTERNET at: tillery-priscilla@epamail.epa.gov. Information regarding how to access the teleconference is available by contacting Ms. Tillery-Gadson at the above numbers.

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Barnes in writing by letter, by fax, or by INTERNET (at INTERNET address above) no later than 12 noon (Eastern Standard Time) Tuesday, December 10, 1996, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Since the EC will be reviewing reports already approved by Standing Committees of the Board, oral comments will be limited to three minutes per speaker and no more than fifteen minutes total. Comments should focus on matters of the clarity of the report and the completeness of responding to the charge, which is included in the report.

Dated: November 22, 1996.

Donald G. Barnes,

Staff Director Science Advisory Board.

[FR Doc. 96–30608 Filed 11–29–96; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of extension request—no change.

SUMMARY: In accordance with the Paperwork Reduction Act agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The EEOC has requested an extension of an existing collection as listed below.

ADDRESS: The Request for Clearance (SF 831), supporting statement, and other documents submitted to OMB for review may be obtained from: Margaret Ulmer Holmes, EEOC Clearance Officer, 1801 L Street, NW, Room 2928, Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 1801 L Street, NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Type of Review: Extension—No Change.

Collection Title: Equal Employment Opportunity Local Union Report EEO–3.

Form Number: EEOC Form 274.

Frequency of Report: Biennial.

Type of Respondent: Referral unions with 100 or more members.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Labor unions and similar labor organizations.

Responses: 3,000

Reporting Hours: 4,500

Federal Cost: $43,500.00.

Number of Forms: 1

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Commission. Pursuant to 29 C.F.R. § 1602.22, referral unions with 100 or more members are required to submit EEO–3 reports biennially. The EEO–3 data collection program has existed since 1967. The individual reports are confidential.

EEO–3 data are used by the Commission to investigate charges of employment discrimination against local referral unions. Pursuant to Section 709(d) of Title VII, EEO–3 data are shared with 89 state and local fair employment practices agencies, and with other federal agencies.

Burden Statement: The respondent burden for this collection is minimal. The estimated number of respondents included in the EEO–3 survey is 3,000 local unions. The estimated number or responses per respondent is one EEO–3 report, taking an estimated one and one half hours to complete. The total number of burden hours therefore is estimated to be 4,500.

This is an average burden estimate and is based on a long history (since 1985) of identical reporting experience. The burden is dependent on the size of the local union and on the number of referrals made by the union during the reporting period. Smaller unions may well take under an hour to complete the report. Over the years, the Commission has reduced the reporting and record keeping burden by eliminating all local unions with fewer than 100 members, by requiring record keeping for a two month period only, by changing the data collection instrument, and by changing the frequency of the data collection from an annual to a biennial basis. Further reductions, such as filing by diskette or magnetic tape, have been less successful as local unions appear less likely to have computerized record keeping and reporting capabilities.

Dated: November 26, 1996.

For the Commission.

Kassie A. Billingsley,

Director, Financial and Resource Management Service.

[FR Doc. 96–30594 Filed 11–29–96; 8:45 am]

BILLING CODE 6750–01–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, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 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.: 224–201005.

Title: Port of Oakland/Hyundai Merchant Marine Co. Ltd. Terminal Use Agreement.

Parties: Port of Oakland (''Port''), Hyundai Merchant Marine Co. Ltd. (''Hyundai'').

Synopsis: The proposed agreement permits Hyundai the nonexclusive use of assigned premises at the Port's Seventh Street Terminal for the berthing, loading and discharge of vessels through August 31, 2001.

Agreement No.: 224–201006.

Title: Port of New Orleans/Ceres Gulf, Inc. Terminal Lease Agreement.

Parties: Port of New Orleans Ceres Terminals, Inc.

Synopsis: The proposed Agreement replaces a former lease agreement between the parties under Agreement No. 224–010600–003. The terms of the new Agreement are essentially the same as the former agreement, and is filed to reflect the relocation of the Ceres terminal.

By order of the Federal Maritime Commission.

Dated: November 25, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–30566 Filed 11–29–96; 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 December 13, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lyle L. and Carolyn Fiene, both of Reeds Spring, Missouri; to retain a total of 36.84 percent of the voting shares of Gardner Bancorp, Inc., Gardner, Kansas, and thereby indirectly acquire First Kansas Bank and Trust Company, Gardner, Kansas.

Board of Governors of the Federal Reserve System, November 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–30532 Filed 11–29–96; 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 December 23, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First & Farmers Bancshares, Inc., Somerset, Kentucky; to merge with Cumberland Bancorp, Inc., Burkesville, Kentucky, and thereby indirectly acquire Bank of Cumberland, Burkesville, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Beaman Bancshares, Inc., Beaman, Iowa; to increase its ownership from 24.9 percent, to at least 51 percent, of the voting shares of Producers Savings Bank, Green Mountain, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community State Bancshares, Inc., Shelbina, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank, Shelbina, Missouri.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hickory Hill Bancshares, Inc., Avinger, Texas, and Hickory Hill Delaware Financial Corporation, Dover, Delaware; both to become bank holding companies by acquiring 100 percent of the voting shares of The First State Bank of Avinger, Avinger, Texas.

Board of Governors of the Federal Reserve System, November 25, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–30533 Filed 11–29–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on Dietary Supplement Labels; Notice of Meeting No. 7

AGENCY: Office of Disease Prevention and Health Promotion.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the seventh meeting of the Commission on Dietary Supplement Labels.

DATES: The Commission intends to hold its meeting on December 16, 1996 from 9:00 a.m. to approximately 12:00 noon, E.S.T. in the Potomac Room, Sheraton City Centre, 1143 New Hampshire Ave. N.W., Washington, D.C. 20037. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201, (202) 690–7102.

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is expected to evaluate how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's study report may include recommendations on legislation, if appropriate and necessary.

The Commission meeting agenda will include approval of minutes of the previous meeting, review of draft materials, and continuation of discussion of key issues related to labeling of dietary supplements that may be included in the Commission's forthcoming report.

The meeting is open to the public. If you will require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.S.T. on December 6, 1996.

Dated: November 22, 1996.

Linda D. Meyers,

Acting Deputy Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 96–30537 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–M

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Yi Li, University of Illinois, Urbana-Champaign: Based upon an investigation conducted by the University of Illinois, Urbana-Champaign, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Mr. Li's own admission, ORI found that Yi Li, while a candidate for a Ph.D. degree in the Neuroscience Program at the University of Illinois, Urbana-Champaign, engaged in scientific misconduct by fabricating an experimental study and results for research represented in an abstract prepared for submission for presentation at a national meeting. The research was supported by a grant from the National Institute on Aging (NIA), National Institutes of Health (NIH).

The fabricated abstract and results addressed an electrophysiological study of the behavioral correlates for long-term potentiation in the motor cortex of the central nervous system of freely moving rats.

Mr. Li has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning November 18, 1996:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which the respondent's participation is proposed or which uses the respondent in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of the respondent's research contribution. The institution must submit a copy of the supervisory plan to ORI.

The fabricated abstract was not submitted and has not been published or used in any grant applications.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852 (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 96–30637 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 1998

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for fiscal year 1998.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1998, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.380 billion for Fiscal Year 1998 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1998, the allotments are based upon the Bureau of Census population statistics contained in its report ''Population of States by Broad Age Groups and Sex: 1990 and 1995 (CB96–88, Table 4) released May 31, 1996, and ''1990 Census of Population and Housing'' (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1997.

FISCAL YEAR 1998 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Alabama	$38,307,808
Alaska	5,440,375
American Samoa	88,560
Arizona	37,992,554
Arkansas	22,373,994
California	284,529,822
Colorado	33,750,142
Connecticut	29,498,723
Delaware	6,458,194
Dist. of Col	4,990,013
Florida	127,596,615
Georgia	64,861,162
Guam	410,345
Hawaii	10,691,598
Idaho	10,475,425
Illinois	106,555,694
Indiana	52,269,036
Iowa	25,598,587
Kansas	23,103,580
Kentucky	34,767,961
Louisiana	39,109,452
Maine	11,177,990
Maryland	45,423,530
Massachusetts	54,709,999
Michigan	86,010,171
Minnesota	41,523,394
Mississippi	24,292,536
Missouri	47,954,566
Montana	7,836,302
Nebraska	14,744,858
Nevada	13,781,083
New Hampshire	10,340,316
New Jersey	71,562,552
New Mexico	15,177,206
New York	163,355,373
North Carolina	64,807,119
North Dakota	5,773,643
No. Mariana Islands	82,069
Ohio	100,439,775
Oklahoma	29,525,745
Oregon	28,291,753
Pennsylvania	108,735,447
Puerto Rico	12,310,345
Rhode Island	8,917,171
South Carolina	33,083,606
South Dakota	6,566,281
Tennessee	47,342,073
Texas	168,651,632
Utah	17,573,133
Vermont	5,269,238
Virgin Islands	410,345
Virginia	59,609,939
Washington	48,918,341
West Virginia	16,465,242
Wisconsin	46,144,110
Wyoming	4,323,477
Total	$2,380,000,000

Dated: November 26, 1996.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 96–30603 Filed 11–29–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96M–0447]

UroMed Corp.; Premarket Approval of Reliance® Urinary Control Insert and Sizing Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by UroMed Corp., Needham, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Reliance® Urinary Control Insert and Sizing Device. After reviewing the recommendation of the Gastroenterology and Urology Devices Advisory Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 16, 1996, of the approval of the application.

DATES: Petitions for administrative review by January 2, 1997.

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: Venkat Rao Nimmagadda, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On August 18, 1995, UroMed Corp., Needham, MA 02194, submitted to CDRH an application for premarket approval of the Reliance® Urinary Control Insert and Sizing Device. The device is a

transurethral female urinary occlusion device and is intended for use in the management of stress urinary incontinence in adult women.

On July 25, 1996, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 16, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 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 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 January 2, 1997, 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 24, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–30649 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Service Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Application for Certification as a Federally Qualified Health Center (FQHC)(OMB No.0915–0142)—Extension, No Change

The Federally Qualified Health Center (FQHC) Look-Alike application package (OMB No. 0915–0142) was developed to certify entities as FQHC providers under Medicaid and Medicare. FQHCs receive reasonable cost-related reimbursement under Medicaid and Medicare for a full range of primary health care services. The application for FQHC certification is divided into four components: (1) Need and Community Impact, (2) Health Services, (3) Management and Finance, and (4) Governance. Certified FQHC Look-Alikes must submit an annual recertification document with updated exhibits to retain designation as an FQHC.

In an effort to improve the procedures for certifying FQHCs, HRSA is considering revising the FQHC Look-Alike application (with parallel changes made to the recertification requirements). The revised version would update the application guidelines and exhibits to reflect current law, regulations, and practice. A revised application may also include more specific guidance on how applicants should document existing unmet need in the community.

These revisions will be developed during the next year. In the interim, a request for a two-year extension of OMB approval of the current form will be submitted.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	40	1	120	4,800
Recertification	213	1	20	4,260
Total Burden	253	1	35.8	9,060

2. Assessment of HIV Counseling and Testing (C&T) Services for Women of Childbearing Age in Bureau of Primary Health Care (BPHC) Programs—NEW

The Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA) is planning to conduct a survey-based study of its primary care programs to examine various implementation issues related to the design and delivery of HIV counseling and testing (HIV C&T) services to women of childbearing age and pregnant women. The study population will be a randomly selected 25 percent sample of the BPHC's programs, supplemented by oversample of specific programs (e.g., Health Care for the Homeless (Section 340); Ryan White Title III programs).

The mail survey instrument will be designed to explore various HIV C&T implementation issues and relevant research questions, including: (a) Extent to which HIV C&T services are available (provided directly by programs or through referrals), (b) attributes of the BPHC programs that offer HIV C&T services to women of childbearing age; (c) characteristics of HIV C&T services, provided by BPHC programs; (d) programmatic and population-specific barriers to delivery of HIV C&T services; (e) lessons and best practices for replication; (f) recommendations for technical assistance to facilitate timely, effective implementation. The resulting analysis and report will present program-based lessons and recommendations for assisting and improving capacity of various BPHC programs to design and implement HIV C&T services for women of childbearing age, and thus assist in promoting community-based HIV C&T services for women, especially pregnant women. Response burden is as follows:

Survey mechanism	Number of respondents	Responses/respondent	Hours per response	Total burden hours
Mail questionnaire	277	1	1.5	416

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 26, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–30591 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–15–U

National Institutes of Health

National Institute of Environmental Health Sciences: Opportunity for a Cooperative Research and Development Agreement (CRADA) and License for the Development of KAI1 in Gene Therapy Protocols for the Treatment of Metastatic Disease

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) seeks a company(ies) to pursue the development of gene therapy protocols involving the KAI1 metastasis suppressor gene. The National Institute of Environmental Health Sciences has established that KAI1 alterations occur in the development of malignant prostate cancer, and that its loss is correlated with progression to the metastatic phenotype.

DATES: Capability statements must be received by NIH on or before January 31, 1997.

ADDRESSES: Proposals and scientific questions about this opportunity may be addressed to Dr. J. Carl Barrett, NIEHS, Mail Drop C2–15, P. O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–2992; Fax (919) 541–7784; E-mail Barrett@NIEHS.NIH.GOV

Questions related to the CRADA process may be addressed to Ms. Lili Portilla, Senior Technology Transfer Specialist, National Heart, Lung, and Blood Institute, 31 Center Drive MSC 2490, Building 31, Room 1B30, Bethesda, MD 20892–2490; Phone: (301) 402–5579; Fax: (301) 594–3080; E-mail: portilll@gwgate.nhlbi.nih.gov

The NIEHS has applied for patents claiming this core technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available to interested parties. Licensing applications and licensing inquiries regarding this technology should be referred to Mr. Ken Hemby, Technology Licensing Specialist, NIH Office of Technology Transfer, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Phone: (301) 496–7735 ext 265; Fax: (301) 402–0220; E-mail: HembyJ@6100M1.odnih.gov

SUPPLEMENTARY INFORMATION: The National Institute of Environmental Health Sciences has shown that the KAI1 gene can suppress metastasis of prostate cancer and is down regulated in human malignant prostate cancers. Therefore it is possible that treatment of patients who are diagnosed with prostate cancer in the early stages may be treated with the KAI1 gene, to prevent the metastasis of their tumors, in conjunction with other therapies that are used to eradicate the primary tumor. It has been shown that expression of KAI1 in normal cells is not toxic and does not affect cell growth.

The NIEHS of the NIH is seeking capability statements from interested parties in developing a CRADA to develop gene therapy vectors as well as to develop models in which to test the efficacy of the use of KAI1 in gene therapy. This project is with the Laboratory of Molecular Carcinogenesis, Cancer and Aging Group at the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina. The goals are to use the respective strengths of both parties to achieve one or more of the following:

1. Develop suitable gene therapy vectors containing the KAI1 gene.

2. Develop a model for testing the efficacy of KAI1 vectors for the suppression of tumor metastasis *in vivo*, including gene delivery and metastases assays, and assessment of toxicity of treatment protocol.

It is anticipated that under this CRADA, the NIEHS will (1) provide cDNA of KAI1 gene for insertion into appropriate vectors and (2) work cooperatively with interested company(ies) to develop and test a model that is suitable to measure the ability of KAI1 to suppress tumor metastasis *in vivo*. The collaborator may also be expected to contribute financial support under this CRADA for supplies and personnel to support these projects.

Selection criteria for choosing the CRADA partner(s) will include, but not be limited to the following:

1. Experience in the development of gene therapy vectors.

2. Experience in delivery of pharmacological agents *in vivo*.

3. Ability to develop appropriate animal model for testing.

Dated: November 21, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–30539 Filed 11–29–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, DHH.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Image Registration Using Voxel Gradients With an Iterative Registration Process

J Ostuni (LDRR)

Serial No. 60/016,429 filed 29 Apr 96

Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 285

To date, it has been difficult to combine or compare images which represent a similar scene using different and unrelated intensities, for example, two magnetic resonance volumes taken with different sequences. The current invention represents a means by which this difficulty may be overcome, and embodies an algorithm which allows for the registration or the ''matching up'' of multiple three-dimensional images. Specifically, the algorithm is based upon finding the correspondence of closest gradient voxels, where a gradient voxel is any voxel containing a high 3D intensity gradient. Typically, gradient voxels represent areas of change within the image. This algorithm can successfully perform registrations under conditions of unrelated voxel intensity, significant object motion and/or significant amounts of missing data. The invention, therefore, represents a powerful new tool for users of a variety of three-dimensional systems. (portfolio: Devices/Instrumentation—Other)

Compositions for the Prevention or Retardation of Cataracts

JS Zigler Jr., P Russell, S Tumminia, C Qin, CM Krishna (NEI)

Serial No. 60/010,637 filed 26 Jan 96

Licensing Contract: J. Peter Kim, 301/496–7056, ext. 264

Oxidative stress is becoming recognized a major problem, and free radicals and activated oxygen species are recognized as agents of tissue damage associated with a number of conditions. Aging-related cataract is a disease of multifactorial origin involving many of the same processes which characterize the process of aging in other tissues. It appears that once cataractogenesis has begun, the process of cataract development may proceed via one or more common pathways or processes. The subject invention focuses on intervening at the level of these common pathways in hopes of stopping or slowing the progression of the disease process. The present invention provides methods and compositions for the prevention and treatment of cataract formation which comprise a nitroxide free radical compound or its hydroxylamine and a thiol reducing agent. (portfolio: Ophthalmology—Therapeutics, chemical)

Molecular Cloning and Characterization of a Differentiation Antigen, CAK1, Present on Mesothelium, Mesotheliomas and Ovarian Cancers

I Pastan, K Chang (NCI)

Serial No. 60/010,166 filed 05 Jan 96

Licensing Contact: Larry Tiffany, 301/496–7056 ext 206

CAK1, or ''mesothelin'', is an antigen present on the cell surface in mesothelium and on many mesotheliomas and ovarian cancers. While the role of this differentiation antigens has not yet been determined, it is postulated that it may be implicated in adhesion and in the dissemination of mesotheliomas and of ovarian cancers. CAK1, therefore, is a potential target for monoclonal antibodies to be used in the diagnosis and treatment of these cancers. The gene for CAK1 has been cloned and sequenced, as embodied in the current invention. The invention, therefore, should provide a valuable research tool for use in the development of diagnostics and/or therapeutic agents toward mesotheliomas and ovarian cancers. (portfolio: Cancer—Research Materials, DNA based)

Method of Mobilizing Pluripotential Hematopoietic Stem Cells With IL–7

RH Wiltrout, F Ruscetti, K Grzegorzewski, J Keller, KL Komschlies-McConville (NCI)

Serial No. 08/341,399 filed 16 Nov 94

Licensing Contact: Jaconda Wagner, 301/496–7735 ext 284

This invention provides a method of increasing numbers of hematopoietic stem cells in a subject by administering interleukin–7 to the subject. Hematopoietic stem cells are distinguishable from hematopoietic progenitor cells in that the stem cells are pluripotent and not yet committed to myeloid or lymphoid lineages. After treatment, a population of leukocytes enriched for hematopoietic stem cells may be isolated from the subject's peripheral blood. Such a population of leukocytes enriched from hematopoietic stem cells may be transferred into a recipient in order to enhance the repopulation of the recipient's hematopoietic and immune cells. In addition, the method provides for improved engraftment of a bone marrow transplant in a recipient following transplantation or irradiation. A Notice of Allowance has recently been issued for this patent application. (portfolio: Internal Medicine—Therapeutics; Cancer—Therapeutics; biological response modifiers, growth factors)

Dated: November 20, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–30538 Filed 11–29–96; 8:45 am]

BILLING CODE 4140–01–M

Office of the Secretary

Notice of Meeting of the Human Genetics Subcommittee of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of The Human Genetics Subcommittee of the National Bioethics Advisory Commission (NBAC). The purpose is to discuss issues regarding the use of genetic information and technologies.

DATES: Friday December 13, 1996, 7:30 a.m. to 3:30 p.m.

PLACE: National Institutes of Health, Building 31 C wing, 6th Floor, Conference Room 9, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National

Bioethics Advisory Commission (NBAC) by Executive Order 12975, October 3, 1995. The purpose of NBAC is to provide advice and make recommendations to the National Science and Technology Council and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Friday, December 13, 1996

Morning Session

7:30–11:30 a.m. Discussion of issues by subcommittee members regarding the use of genetic information and technology.

11:30–12:30 p.m. Lunch.

Afternoon Session

12:30–3:00 p.m. Continuation of discussion by subcommittee members of issues regarding the use of genetic information and technology.

3:00–3:30 p.m. Public comment.

3:30 p.m. Adjourn.

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax 301–480–6900.

Dated: November 22, 1996.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 96–30540 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–M

Notice of Meeting of the Human Subjects Subcommittee of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of the Human Subjects Subcommittee of the National Bioethics Advisory Commission (NBAC). The purpose is to discuss issues regarding the protection of human research subjects.

DATES: Monday, December 16, 1996, 7:30 a.m. to 3:30 p.m.

PLACE: National Institutes of Health, Building 31 C wing, 6th Floor, Conference Room 8, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (MBAC) by Executive Order 12975, October 3, 1995. The purpose of NBAC is to provide advice and make recommendations to the National Science and Technology Council and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Monday, December 16, 1996.

Morning Session

7:30–11:30 a.m. Discussion of human subjects protections issues by subcommittee members.

11:30–12:30 p.m. Lunch.

Afternoon Session

12:30–3:00 p.m. Continuation of discussion of human subjects protections issues by subcommittee members.

3:00–3:30 p.m. Public comment.

3:30 p.m. Adjourn.

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax 301–480–6900.

Dated: November 22, 1996.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 96–30541 Filed 11–29–96; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as the Services) announce the availability of their final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process. This final guidance document provides internal guidance for conducting the incidental take permit program under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 10(a)(1)(B) procedures to promote efficiency and nationwide consistency within and between the Services. Although intended primarily as internal agency guidance, this Handbook is fully available for public evaluation, and use, as appropriate.

ADDRESSES: Persons wishing to receive a copy of the final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process should contact the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203, or the Endangered Species Division, National Marine Fisheries Service, 1335 East-

West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358-2171), or Robert Ziobro, Acting Chief, Endangered Species Division, National Marine Fisheries Service at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

Section 9(a)(1)(B) makes it unlawful for any person to ''take'' an endangered species. Take of threatened species is prohibited by regulations issued by the Services under the authority of Sections 4(d) and 9(a)(1)(G) of the Act. See, e.g., 50 CFR 17.31, 17.21, and 17.40–.48 for FWS and 50 CFR 222 and 227 for NMFS. ''Take'' is defined by the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)) allows the Services, under certain circumstances, to issue permits to non-Federal entities to allow ''incidental take'' of federally listed fish and wildlife species. (Federal agencies may obtain similar authority for take under section 7 of the Act). The Act defines ''incidental take'' as take that is ''incidental to, and not the purpose of, carrying out an otherwise lawful activity.'' Any applicant for an incidental take permit must submit to the Services a ''conservation plan'' or ''Habitat Conservation Plan (HCP)'' that specifies, among other things, the impacts to affected species likely to result from such taking and the steps the applicant will take to minimize and mitigate such impacts.

This final Handbook provides consistent procedures for Service compliance with the incidental take permit provisions of section 10(a)(1)(B) of the Act. Consistency in the section 10(a)(1)(B) program will be achieved by:

(1) providing national procedural and policy guidance;

(2) providing standardized guidance to Service offices and personnel who participate in conservation planning programs under section 10(a)(1)(B) and review and process incidental take permit applications;

(3) providing assistance to applicants in the non-Federal sector who wish to apply for incidental take permits; and

(4) providing for conservation of federally listed, proposed, and candidate species.

Public Comments Addressed

The Services considered all information and recommendations from earlier comments submitted on the Handbook. The major issues advanced by commenters have been combined, paraphrased, and responded to below.

Issues: Several commenters stated that a process should be incorporated into the HCP planning process so that proposed, candidates, and unlisted species can be included on a permit.

Response: The Services revised the Handbook to allow the names of unlisted species that are adequately addressed in an HCP to be listed on a permit with a delayed effective date tied to the date of any future listing. Unlisted species as used here includes candidates, proposed, and any other species mutually agreed to by the applicant and Services that are adequately addressed in the HCP as though they were listed. The Services recognize that the primary jurisdiction over candidate and unlisted species generally rests with the affected State fish and wildlife agencies, thereby prompting the need for close coordination and active cooperation with State agencies in the HCP process.

Issue: Commenters stated that the HCP categories unnecessarily complicate the HCP process. In addition, specific instructions are needed for assigning projects to categories.

Response: The Services decided to eliminate the high-effect and medium-effect categories and link the target processing times to the NEPA analysis required rather than to HCP category. The rationale for this is that there is little to distinguish the high-effect and medium-effect categories other than NEPA requirements. The expedited low-effect category would remain in place. The Handbook also establishes target permit processing timelines for HCPs based on the level of NEPA analysis required. Although not mandated by law or regulation, these targets are adopted as FWS and NMFS policy, and all offices are expected to meet these targets to the maximum extent practicable.

Issue: Commenters stated that Implementing Agreements should not be required for single-project, low-to medium-effect projects.

Response: The Handbook has been revised by the Services so that an Implementing Agreement is no longer mandatory for all HCPs. Implementing Agreements would not be required for low-effect HCPs, and would be prepared in such situations only when one is requested by the permit applicant. In other HCPs, the development of the Implementing Agreement will depend on the size and scope of the HCP and is left to the discretion of the FWS's Regional Director or NMFS's Regional Administrator and the applicant. Implementing Agreements are recommended for regional or other large-scale HCPs that address significant portions of a species' range or involve numerous activities or landowners, or for HCPs with long-term mitigation and monitoring programs.

Issue: Commenters stated that more guidance was needed for mitigation issues, such as the suitability of research for mitigation or standardizing mitigation strategies.

Response: The Services have revised the Handbook to restate that, first and foremost, mitigation strategies should compensate for habitat lost through the permitted activities of the HCP by establishing suitable habitat for the species that will be conserved and held in perpetuity, if possible. For example, the mitigation requirement for low-effect HCPs or for HCPs that have a negligible effect on habitat could be to restore or enhance existing habitat so that it better meets the species' requirements. Research by itself is not considered a preferred mitigation strategy, since the type of mitigation is usually related directly to correcting the effect of the action. However, research may be an integral part of a mitigation strategy.

In addition, the Handbook reiterates that mitigation measures required by individual FWS or NMFS offices should be as consistent as possible for the same species. This can be challenging when a species encompasses multiple offices or regions, but is essential. Also, mitigation standards should also be developed in coordination with the appropriate state wildlife agencies. The Service should not apply inconsistent mitigation policies for the same species, unless differences are based on biological or other valid reasons and are clearly explained. Consistent mitigation strategies help streamline the HCP development process—especially for smaller HCPs—by providing readily available standards which applicants can adopt in their HCPs.

Issue: Commenters suggested that the NEPA analysis should be limited to the impacts of the Federal action (i.e., issuance of the incidental take permit) and that some of the NEPA analysis is duplicative to the HCP planning process.

Response: The scope of the NEPA analysis covers the direct, indirect, and cumulative effects of the proposed incidental take permit, including the mitigation and minimization measures proposed for implementation in the HCP. However, the scope of the NEPA analysis will vary depending on the

nature of the scope of activities described in the HCP. In some cases, the anticipated environmental effects in the NEPA document that addresses the HCP may be confined to effects on endangered species and other wildlife and plants, simply because there are no other important effects. In many cases, the NEPA analysis will focus on the effects of the minimization and mitigation actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the minimization and mitigation activities proposed in the HCP may affect a wider range of impacts analyzed under NEPA, such as cultural resources or water use. It is important to keep in mind, however, that, as required by the White House Council of Environmental Quality (CEQ) regulations, the NEPA analysis for an HCP should be directed toward analyzing direct, indirect, and cumulative impacts that would be caused by the approval of the HCP, that are reasonably foreseeable, and that are potentially significant. These impacts may extend beyond the direct impacts of the permit itself.

In addition, because the CEQ regulations specifically permit NEPA documents to be combined with other agency documents to reduce duplication and paperwork (40 CFR 1506.4), the Services revised the Handbook regarding the NEPA analysis to encourage the Service's offices to combine the HCP and NEPA analysis into a single document. This technique should not be viewed as preparation of two separate documents that are then published under the same cover, but rather one integrated analysis that meets the requirements of both NEPA and ESA. For example, the discussion of effects should include analysis of both the impacts of the proposed HCP and the alternatives to the listed plants and the wildlife as well as other environmental effects that should be analyzed under NEPA.

Issue: Commenters stated that the section 7 process was overly burdensome to the applicant, and recommended that HCP permit should be exempted from section 7 requirements.

Response: Issuance of an incidental take permit is a Federal action subject to section 7 of the ESA. Section 7(a)(2) requires all Federal agencies, in consultation with the Services, to ensure that any action ''authorized, funded, or carried out'' by any such agency ''is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification'' of critical habitat. Because issuance of a section 10 permit involves an authorization, it is subject to this provision.

The provisions of section 7 and section 10 are similar. Indeed, one of the statutory criteria for determining whether to issue an incidental take permit—whether ''the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild''—is based on the regulatory definition of the section 7(a)(2) jeopardy standard. *See* section 10(a)(2)(B)(iv) of the ESA and 50 CFR section 402.02 (definition of ''jeopardize the continued existence of''). However, section 7 and its regulations introduce several considerations into the HCP process that are not explicitly required by section 10—specifically, indirect effects, effects on federally listed plants, and effects on critical habitat. The Services have revised the Handbook so that the section 7 requirements are discussed earlier in the HCP planning process to help resolve any conflicts and to expedite the process.

Issue: Comments were received regarding the inconsistencies between 50 CFR Part 13 and incidental take permits.

Response: On September 5, 1995, the Fish and Wildlife Service published a proposed rule in the Federal Register amending the general regulations for its permit program (50 CFR Part 13 and Part 17). The Service is currently drafting additional language to further clarify the relationship between Part 13 and various endangered species permits issued under Part 17, and an amended rule will be published in the near future.

Issue: Several issues were raised regarding the ''No Surprises'' policy included in the draft HCP Handbook. These include: a request to clarify the fact that net benefit to the species is not required to obtain ''No Surprises'' assurances; the suggestion that the ''extraordinary circumstances'' provision in the policy is not consistent with the promise of long-term certainty under HCPs; and the conflicting suggestions that the ''No Surprises'' policy should be codified as a regulation and that the ''No Surprises'' policy exceeds FWS and NMFS authority under the ESA.

Response: The first issue pertains to the assurances provided to an applicant with an HCP that does not provide a net benefit to the species covered in the HCP. The HCP Handbook describes the differing assurances provided applicants depending upon whether the HCP is designed to provide a net benefit to the species. The following two assurances are provided regardless of whether an HCP provides an overall net benefit to a species:

1. If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the obligation for such measures shall not rest with the HCP permittee.

2. If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall maintain the original terms of the HCP to the maximum extent possible. Further, any such changes shall be limited to modifications within any Conserved Habitat areas which might be established under the HCP or to the HCP's operating conservation program for the affected species. In all cases, additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels of land available for development or land management under the original terms of the HCP without the consent of the HCP permittee.

In addition, even in the event of unforeseen circumstances, the FWS and NMFS will not seek additional mitigation from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that species and contained measurable criteria for the biological success of the HCP which have been or are being met. This means that the Services will not attempt to impose additional mitigation measures of any type under the terms stated. It is intended to encourage HCP applicants to develop HCPs that provide an overall net benefit to affected species. It does not mean that any HCP must in fact have already achieved a net benefit before the ''No Surprises'' policy applies, but instead that the HCP must have been designed to achieve an overall net benefit and is being implemented fully by the HCP permittee.

The second issue, which pertains to the promise of long-term certainty under HCPs and the ''extraordinary circumstances'' provision in the policy, has been clarified in the final Handbook. The ''No Surprises'' policy provides certainty for private landowners in HCPs through the following assurances: In negotiating ''unforeseen circumstances'' provisions for HCPs, the Services will not require the commitment of additional land or financial compensation beyond the level

of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, the Services will not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances. Thus, the long-term certainty that is provided is the assurance that under no circumstances, including extraordinary circumstances, shall an HCP permittee who is abiding by the terms of their HCP be required to provide a greater financial commitment or accept additional land use restrictions on property available for economic use or development.

The third issue pertains to the codification of the ''No Surprises'' policy into a regulation. The Services do not believe it is necessary to codify the ''No Surprises'' policy as a specific regulation, because it is simply a statement of policy. Nevertheless, the policy has been subjected to procedures similar to those used to codify regulations. The policy was incorporated into the draft Handbook for Habitat Conservation Planning and Incidental Take Permitting Process to help address the problem of maintaining regulatory assurances for applicants applying for incidental take permits through the HCP process. This policy was subjected to a public review process when a notice of availability was published in the Federal Register for the draft Handbook for Habitat Conservation Planning and Incidental Take Permitting Process on December 21, 1994 and the FWS solicited comments through this availability announcement.

The final issue concerns the fact that commenters objected to the ''No Surprises'' policy because it is seen as exceeding FWS and NMFS authority under the ESA. The Services believe this policy is fully consistent with their authority under the ESA and is based on legislative history. Congress recognized in enacting the habitat conservation plan/incidental take provision in section 10 of the ESA that ''. . . the Secretary may utilize this provision [on HCPs] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act'' (H.R. Rep. No. 835, 97th Cong., 2d Sess. 30–31 (1982)). Accordingly, Federal regulation requires such procedures to be detailed in the HCP [50 CFR 17.22(b)(1)(iii)(C)].

Moreover, as the discussion of the ''No Surprises'' policy in the final Handbook makes clear, the commitment by the Services in the policy is a commitment ''to the extent consistent with the requirements of the Endangered Species Act and other Federal laws,'' like the Anti-Deficiency Act. However, the policy also makes clear that ''methods of responding to the needs of affected species [other than exacting additional mitigation from the permittees], such as government action and voluntary conservation measures by the permittee, remain available to assure the requirements of the ESA are satisfied.''

Issue: Commenters stated that the Handbook does little to streamline the HCP process.

Response: A summary of the streamlining measures and other improvements introduced in the revised HCP Handbook are identified in the following section of this notice.

Summary of Streamlining Measures

The following is a summary of the streamlining measures and other improvements introduced in the revised HCP Handbook as a result of this review process. The final Handbook includes numerous reforms that are designed to:

1. Provide clear guidance and standards for all aspects of the HCP program.

2. Encourage flexibility in many procedural decisions to combine the HCP process, NEPA, and the ESA section 7 documents to the extent possible.

3. Establish joint policies and procedures for FWS and NMFS.

4. Establish a low-effect HCP category with expedited permit approval procedures for small-landowner and other low-impact projects. The new streamlined procedure would:

a. Categorically exclude low-effect HCPs from NEPA requirements,

b. Eliminate the requirement for Implementation Agreements for low-effect HCPs, and

c. Eliminate Solicitor review of low-effect permit applications.

5. Establish specific time-frame targets for processing incidental take permit applications once the application is submitted for public comment and approval (less than 3 months for low-effect HCPs, 3–5 months for HCPs with an Environmental Assessment, and less than 10 months for HCPs with an Environmental Impact Statement).

6. Encourage the integration of the HCP with the NEPA analysis and provide an example of a combined HCP/EA document.

7. Make use of Implementing Agreements subject to Regional Director discretion for HCPs other than low-effect HCPs.

8. Allow unlisted species to be named on the HCP permit (with a delayed effective date tied to date of any future listing) if adequately addressed in the HCP, eliminating the need for further paperwork processing to amend the permit if such a species is subsequently listed.

9. Allow mitigation/monitoring activities resulting in take to be authorized under the HCP permit rather than a separate section 10(a)(1)(A) scientific research permit.

10. Require the integration of section 7/section 10 requirements early in the HCP process, and

11. Increase coordination requirements between a Field Office and Regional Office during HCP negotiation and permit processing phases.

Author/Editor: The editors of this document were Cindy Dohner, U.S. Fish and Wildlife Service, Division of Endangered Species, and Margaret Lorenz, Endangered Species, National Marine Fisheries Service (See **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 1996.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

Dated: November 22, 1996.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–30610 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–55–P
BILLING CODE 3510–22–P

Bureau of Land Management

[NM–030–1430–01; NMNM96514]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has

been examined and found suitable for classification for lease or conveyance to Las Cruces School District under the provision of the R&PP Act, as amended (43 U. S. C. 869 *et seq.*). Las Cruces School District proposes to use the land for a Regional Park and Sports Complex.

T. 22 S., R. 2 E., NMPM
Sec. 11, lot 2, S½S½NE¼, portion of S½S½NW¼, E½SW¼, NW¼SW¼, SE¼.

Containing 326.8 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before January 15, 1997.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. Applicant acknowledges the potential for hazardous materials on the site and indemnifies the United States from any future liability.

4. Applicant sets aside areas for the drilling and maintenance of ground water monitoring wells.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before January 15, 1997, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Regional Park and Sports Complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Regional Park and Sports Complex.

Dated: November 22, 1996.

Theresa M. Hanley,

Acting District Manager.

[FR Doc. 96–30577 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–VC–P

[CA–360–1220–00]

Interlakes Special Recreation Management Area Plan and Draft Environmental Impact Statement (DEIS)

AGENCY: Bureau of Land Management (BLM), Redding Resource Area, NORCAL District, California.

ACTION: Notice of availability of a plan and DEIS.

SUMMARY: BLM has released a plan and DEIS covering land management options and anticipated consequences regarding the Interlakes Special Recreation Management Area. Preparation of this plan and DEIS is a joint effort between the BLM, U.S. Forest Service, National Park Service, and Bureau of Reclamation. BLM was directed to lead this planning effort under BLM's Record of Decision for the Redding Resource Management Plan and EIS which was prepared under the authority of the Federal Land Policy and Management Act of 1976 (section 202). This plan and DEIS is prepared under the authority of the National Environmental Policy Act of 1969.

SUPPLEMENTARY INFORMATION: The Interlakes Special Recreation Management Area is a 74,850 acre region which encompasses lands administered through the United States Department of the Interior's BLM, National Park Service, Bureau of Reclamation, and the Department of Agriculture's Forest Service. Once approved, this plan will guide management activities for the BLM for the next 10 to 15 years. The National Park Service, Bureau of Reclamation and U.S. Forest Service may approve this plan by continuing with this joint planning effort and approving a Record of Decision, or may implement portions of this plan by tiering to this document within their own planning documents.

DATES: Comments on this plan and DEIS should be submitted in writing by January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA., 96002 (916) 224–2100.

Dated: November 19, 1996.

Kelly Williams,

Acting Area Manager.

[FR Doc. 96–30549 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–1430–00; N–61315]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed an application (N–61315) to withdraw 2,369.80 acres of public land for flood control facilities in Clark County, Nevada. This notice closes the lands for up to 2 years from surface entry and mining. The Corps of Engineers has canceled the application (N–59007) that was published in the 59 FR 60998, November 29, 1994.

DATES: Comments and requests for meeting should be received on or before March 3, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–785–6532.

SUPPLEMENTARY INFORMATION: On October 4, 1996, the Department of the Army, Los Angeles District, Corps Engineers, filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

Area 1

T. 21 S., R. 59 E.,
Sec. 3, lots 5 to 8, inclusive;
Sec. 36, lots 6, 7, and 19.
T. 21 S., R. 60 E.,
Sec. 29, E½SE¼NE¼NW¼, W½NE¼SE¼NW¼, E½SE¼SE¼NW¼, SE¼NW¼SW¼, E½SW¼NE¼SE¼, E½E½SE¼SE¼, E½NW¼SE¼SE¼, SE¼NE¼SW¼, W½SW¼NE¼SW¼, W½SE¼SE¼SW¼, W½SW¼SE¼SW¼, E½NE¼SW¼SW¼, and E½SW¼SW¼SW¼;
Sec. 32, E½NE¼NE¼NE¼, NW¼NE¼NE¼, E½E½NW¼NE¼, E½SW¼NW¼NE¼, NW¼SW¼NE¼, W½NE¼SE¼NW¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, SE¼SW¼NW¼, W½NW¼NE¼SW¼, W½NE¼NW¼SW¼, W½SW¼NW¼SW¼, and W½NW¼SW¼SW¼.

Area 2

T. 21 S., R. 59 E.,
Sec. 26, lots 1, 2, 3, 6, and 7;
Sec. 36, lots 21 and 23.
T. 22 S., R. 59 E.,
Sec. 13, NE¼, N½SE¼, N½S½SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SW¼SE¼SE¼, SE¼SE¼SE¼, E½NW¼SE¼SW¼, NE¼SE¼SW¼, SE¼NW¼, and NE¼SW¼.
T. 21 S., R. 60 E.,
Sec. 21, W½SE¼NW¼;
Sec. 26, E½SW¼SE¼SW¼ and W½SE¼SE¼SW¼;
Sec. 27, N½NE¼SW¼, SW¼NE¼SW¼, E½E½NW¼SW, E½SW¼NW¼SW¼, E½SW¼SE¼SW¼, W½SE¼SE¼SW¼, W½SW¼NW¼SE¼, NW¼SW¼SE¼, SE¼SW¼SE¼, and SW¼SE¼SE¼;
Sec. 28, W½NE¼SW¼, SE¼NE¼SW¼, NE¼NW¼SW¼, W½SE¼NW¼SW¼, and S½SW¼;
Sec. 29, E½NE¼NW¼SW¼ and E½NE¼SW¼NW¼;
Sec. 36, NW¼NE¼NE¼NE¼, S½NE¼NE¼NE¼, NW¼NE¼NE¼, N½SE¼NE¼NE¼, W½SW¼NE¼NE¼, NW¼NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, SE¼NW¼SE¼NE¼, NE¼SE¼SE¼NE¼, NW¼NE¼NE¼SE¼, SE¼NE¼NE¼SE¼, NE¼NW¼NE¼SE¼, NW¼SW¼NE¼SE¼, SE¼SW¼NE¼SE¼, W½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼, SE¼SW¼SW¼SE¼, SE¼NE¼SW¼SE¼, SW¼NW¼SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, NW¼SE¼SE¼SE¼, NW¼NE¼SW¼SE¼, E½SE¼NW¼SE¼, and NW¼SE¼NW¼SE¼.
T. 22 S., R. 60 E.,
Sec. 1, lots 11, 30, 43, 44, 46, 47, 56, 61, and 62, N½SW¼NW¼, N½NE¼SE¼NW¼, NE¼SW¼SW¼NW¼, NW¼SE¼SW¼NW¼, NW¼NE¼SE¼NW¼, NW¼NW¼SE¼NW¼, and NW¼NW¼SW¼SE¼;
Sec. 2, NW¼SE¼SE¼SW¼, N½NE¼NE¼SE¼, E½NW¼NW¼SE¼, W½SE¼NW¼SE¼, and NE¼NW¼SW¼SE¼;
Sec. 4, SW¼SW¼NW¼, W½SE¼SW¼NW¼, W½SW¼NW¼SW¼, and W½W½SW¼SW¼;
Sec. 5, E½NE¼SE¼NE¼;
Sec. 7, E½E½E½NE¼, E½NE¼NE¼SE¼, SE¼NE¼SE¼, E½W½SE¼SE¼, and E½SE¼SE¼;
Sec. 8, W½SW¼SW¼NW¼, W½W½NW¼SW¼, and W½NW¼SW¼SW¼;
Sec. 9, W½W½NW¼NW¼, W½NW¼NW¼SW¼, W½NW¼SW¼SW¼, E½SW¼SW¼SE¼, SE¼SW¼SE¼, N½SE¼SE¼, E½SW¼SE¼SE¼, and W½SE¼SE¼SE¼;
Sec. 10, W½NE¼NE¼NE¼, SW¼NE¼NE¼, E½SW¼SW¼NE¼, E½SE¼SE¼NW¼, E½NW¼NE¼SW¼, and W½SE¼NW¼SW¼;
Sec. 11, NE¼NW¼NW¼;
Sec. 16, W½NW¼NW¼NE¼, W½NE¼NE¼NW¼, E½NW¼NE¼NW¼, E½SW¼NW¼NW¼, SE¼NW¼NW¼, W½NE¼SW¼NW¼, and NW¼SW¼NW¼;
Sec. 17, S½SE¼SW¼NE¼, SW¼SE¼NE¼, W½SE¼SE¼NE¼, E½NE¼NE¼SW¼, SE¼NE¼SW¼, SE¼SW¼NE¼SW¼, N½SE¼SW¼, NE¼SW¼SW¼, W½NW¼SW¼SW¼, W½SE¼SW¼SW¼, SW¼SW¼SW¼, NW¼NE¼SE¼, N½NW½SE¼, W½SW¼NW¼SE¼, and W½NW¼SW¼SE¼;
Sec. 18, lots 5 to 25, inclusive, 29, 32 to 34, inclusive, and 36, W½W½E½NW¼, E½W½NE¼SW¼, W½E½NE¼SW¼, E½SE¼NE¼SW¼, W½NW¼SE¼SW¼, W½NE¼SE¼SW¼, SW¼SE¼SW¼, E½NW¼SW¼SE¼, SE¼SW¼SE¼, E½SW¼SE¼SE¼, and E½E½SE¼SE¼.
T. 21 S., R. 61 E.,
Sec. 31, lots 39, 40, 41, 42, 43, 45, 47, 53, 54, 56, and 57, W½NW¼NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NW¼NE¼NE¼, S½NE¼SE¼NW¼, W½SE¼NW¼, W½SE¼SE¼NW¼, E½SE¼NW¼NE¼NE¼, and SW¼NE¼NE¼SW¼.

Lateral Collectors

T. 21 S., R. 60 E.,
Sec. 33, E½NE¼NE¼NE¼, E½NE¼SE¼NE¼, and E½E½E½SE¼;
Sec. 34, SE¼NE¼NE¼NE¼, SE¼SE¼NE¼NE¼, NE¼NE¼SE¼NE¼, E½NE¼NE¼SE¼, SE¼SE¼NE¼SE¼, E½NE¼SE¼SE¼, and NE¼SE¼SE¼SE¼;
Sec. 35, NE¼NE¼NE¼NE¼, NE¼SE¼NE¼NE¼, NE¼NE¼SE¼NE¼, E½SE¼SE¼NE¼, and E½E½NE¼SE¼.
T. 22 S., R60 E.,
Sec. 2, lot 28, E½E½NE¼SE¼ and E½E½SE¼NW¼;
Sec. 3, E½E½NE¼SW¼, E½SE¼SE¼NW¼, E½SE¼SE¼SW¼, and E½SE¼NE¼SE¼;
Sec. 4, E½SE¼SE¼NW¼, E½SE¼NE¼SW¼, and E½E½SW¼SE¼;
Sec. 9, E½SE¼SE¼NE¼, E½E½SE¼SE¼, E½E½NE¼NW¼, E½NE¼SE¼NW¼, E½SE¼NE¼SW¼, and E½NE¼SE¼SW¼;
Sec. 10, E½SE¼SE¼NW¼.

The areas described aggregate 2,369.80 acres in Clark County.

The purpose of the proposed withdrawal is for the Tropicana and Flamingo Washes Flood Control Project at Las Vegas, Nevada.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested person who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

The temporary segregation of the land in connection with a withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have

the effect of authorizing any use of the land by the Corps of Engineers.

The application published in the 59 FR 60998, November 29, 1994, as amended in the 60 FR 49006, September 21, 1995; 60 FR 64177, December 14, 1995; 60 FR 64446, December 15, 1995, and 61 FR 13874, March 28, 1996, has been canceled by the Corp of Engineers.

Dated: November 25, 1996.

William K. Stowers,

Lands Team Lead.

[FR Doc. 96–30580 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[NM–038–1110–00; NMNM95104]

Proposed Withdrawal and Opportunity for Public Meeting; Devil's Backbone Bighorn Sheep Habitat Area, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM proposes to withdraw 5,607.52 acres of public land in Socorro County, New Mexico to protect State endangered desert bighorn sheep habitat in the Devil's Backbone Bighorn Sheep Habitat Area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting should be received on or before March 3, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Socorro Resource Area Manager, 198 Neel Avenue, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: On November 22, 1996, a petition was approved allowing the BLM to file an application to withdraw the following described public land from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 5 S., R. 3 W.,
Sec. 16, lots 5 to 8, inclusive, N½, and N½S½;
Secs. 21, 28, 29, and 32.
T. 6 S., R. 3 W.,
Sec. 4, lots 3 and 4, and SW¼;
Sec. 9, W½;
Sec. 15, W½;
Sec. 16;
Sec. 22, E½, N½NW¼, SE¼NW¼, and E½SW¼.
T. 5 S., R. 4 W.,
Sec. 25, E½.

The area described aggregates 5,607.52 acres in Socorro County, New Mexico.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Socorro Resource Area Manager. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Socorro Resource Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, permits, and rights-of-way.

Dated: November 22, 1996.

Josie Banegas,

Acting District Manager.

[FR Doc. 96–30578 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–VC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–038–1110–00; NMNM 95103]

Proposed Withdrawal and Opportunity for Public Meeting; Ladrones Mountain Area of Critical Environmental Concern, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM proposes to withdraw 4,556.60 acres of public land and 40.0 acres of non-Federal land in Socorro County, New Mexico to protect State endangered desert bighorn sheep habitat in the Ladrones Mountain Area of Critical Environmental Concern. This notice closes the Federal land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for meetings should be received on or before March 3, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Socorro Resource Area Manager, 198 Neel Avenue, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave., NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: On November 22, 1996, a petition was approved allowing the BLM to file an application to withdraw the following described public land from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 2 N., R. 2 W.,
Sec. 2, lots 1 to 8, inclusive, S½N½, and N½S½;
Sec. 32, lots 1 to 4, inclusive, and W½SW¼.
T. 3 N., R. 2 W.,
Secs. 16, 32 and 36.
T. 2 N., R. 3 W.,
Sec. 2, lot 4, S½N½, and S½;
Sec. 16;
Sec. 36, SE¼SW¼ and NW¼SE¼.
T. 3 N., R. 3 W.,
Sec. 36, N½SW¼, NE¼SE¼, and W½SE¼.

The area described aggregates 4,556.60 acres in Socorro County.

The petition was also approved allowing the BLM to file an application to withdraw the following described non-Federal lands (private surface and private minerals). In the event the non-Federal lands (private surface and private minerals) return to Federal ownership, the lands would become subject to the withdrawal.

New Mexico Principal Meridian

T. 3 N., R. 3 W.,
Sec. 36, SE¼SE¼.

The area described aggregates 40.0 acres in Socorro County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Socorro Resource Area Manager.

Notice is hereby given that an opportunity for a public meeting is

afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Socorro Resource Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the Federal Register, the public land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, permits, and rights-of-way.

Dated: November 22, 1996.

Josie Banegas,

Acting District Manager.

[FR Doc. 96–30579 Filed 11–29–96; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Westinghouse Electric Corporation and Infinity Broadcasting Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Westinghouse Electric Corporation and Infinity Broadcasting Corporation,* Civil Action No. 96–02563. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. § 16(b)–(h).

The United States filed a civil antitrust Complaint on November 12, 1996, alleging that the proposed acquisition of the Infinity Broadcasting Corporation (''Infinity'') by the Westinghouse Electric Corporation (''Westinghouse'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Westinghouse and Infinity own and operate numerous radio stations throughout the United States, and that they each own and operate stations in the Philadelphia, Pennsylvania and Boston, Massachusetts metropolitan areas. This acquisition would give Westinghouse control over more than 40 percent of the radio advertising revenues in those metropolitan areas, as well as a substantial amount of control over access to certain demographic groups of radio listeners targeted by advertisers in those metropolitan areas. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston metropolitan areas.

The prayer for relief seeks: (a) Adjudication that Westinghouse's proposed acquisition of Infinity would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Westinghouse to complete its acquisition of Infinity, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court at the same time the Complaint was filed.

The proposed Final Judgment orders Westinghouse to divest WMMR–FM, currently owned by Westinghouse, and WBOS–FM, currently owned by Infinity, in Philadelphia and Boston, respectively. Unless the United States grants an extension of time, Westinghouse must divest these radio stations within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Westinghouse does not divest these stations within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires the defendants to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, WMMR–FM and WBOS–FM will be operated independently as viable, ongoing businesses, and kept separate and apart from Westinghouse's and Infinity's other Philadelphia and Boston radio stations, respectively. Further, the proposed Final Judgment requires the defendants to give plaintiff prior notice regarding future radio station acquisitions and future Joint Sales Agreements, Local Marketing Agreements or comparable arrangements in Philadelphia and Boston.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW, Suite 4000, Washington, D.C. 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th St., NW, Washington, D.C. 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operation, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The defendants have agreed to waive the requirements of Fed. R. Civ. P. 4 and to accept service of the Complaint herein by first class mail, addressed to their undersigned counsel of record.

available to it as a result of such delay, provided that: (i) Defendants have entered into one or more definitive agreements to divest the WMMR–FM Assets and the WBOS–FM Assets, as defined in the Final Judgment, and such agreements and the Acquirer or Acquires have been approved by plaintiff; (ii) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestitures (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency; (iii) Receipt of such approvals are the only

closing conditions that have not been satisfied or waived; and (iv) Defendants have demonstrated that neither they nor the prospective Acquirer or Acquirers are responsible for any such delay.

(6) In the event the United States withdraws its consent, as provided in paragraph 3 above, or if the proposed Final Judgment is not entered, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(7) The defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: November 12, 1996.

For Plaintiff United States of America:

Dando B. Cellini,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20005, (202) 307–0829.

For Defendant Westinghouse Electric Corporation:

Joe Sims,

Jones, Day, Reavis & Pogue, 1450 G Street, N.W., Washington, D.C. 20005, (202) 879–3939.

For Defendant Infinity Broadcasting Corporation:

Daniel M. Abuhoff,

Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022, (212) 909–6000.

So Ordered:

United States District Judge

Certificate of Service

I, Dando B. Cellini, hereby certify that, on November 12, 1996, I caused the foregoing document to be served on defendants Westinghouse Electric Corporation and Infinity Broadcasting Corporation by having a copy mailed, first-class, postage prepaid, to:

Joe Sims, Jones, Day, Reavis & Pogue, 1450 G St., N.W., Washington, D.C. 20005, Counsel for Westinghouse Electric Corporation

Daniel M. Abuhoff, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022, Counsel for Infinity Broadcasting Corporation

Dando B. Cellini.

Whereas, plaintiff, the United States of America, having filed its Complaint herein on November 12, 1996, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint:

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants Westinghouse and Infinity, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Westinghouse'' means defendant Westinghouse Electric Corporation, a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and includes its successors and assigns, its subsidiaries (including CBS Inc.), and directors, officers, managers, agents and employees acting for or on behalf of Westinghouse.

B. ''Infinity'' means defendant Infinity Broadcasting Corporation, a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Infinity.

C. ''WMMR–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the WMMR 93.3 FM radio station in Philadelphia, Pennsylvania, including but not limited to: all real property (owned and leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of Westinghouse pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by Westinghouse or that station in connection with its business. The WMMR–FM Assets do not include any trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials created by Westinghouse, or its subsidiary CBS Inc., and used by other radio stations, not solely by WMMR–FM. For all assets used jointly by WMMR and KYW–AM or KYW TV prior to the divestiture required by this Final Judgment, defendants shall propose to the plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in plaintiff's sole discretion, does not impair WMMR's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term ''WMMR–FM Assets'' shall include only those assets allocated under the plan to WMMR.

D. ''WBOS–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the WBOS 92.9 FM radio station in Boston, Massachusetts, including but not limited to: all real property (owned and leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of Infinity pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by Infinity or that station in connection with its business. For all assets used

jointly by WBOS and WOAZ–FM prior to the divestiture required by this Final Judgment, defendants shall propose to plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in the sole discretion of plaintiff, does not impair WBOS's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term ''WBOS–FM Assets'' shall include only those assets allocated under the plan to WBOS.

E. ''Philadelphia Area'' means the Philadelphia, Pennsylvania Metro Survey Area as identified by The Arbitron Radio Market Report for Philadelphia (Summer 1996), which is made up of the following eight counties: Bucks, Montgomery, Chester, Philadelphia, Delaware, Burlington, Camden and Gloucester.

F. ''Boston Area'' means the Boston, Massachusetts Metro Survey Area as identified by The Arbitron Radio Market Report for Boston (Summer 1996), which is made up of the following five counties: Essex, Middlesex, Suffolk, Norfolk and Plymouth.

G. ''Westinghouse Radio Station'' means any radio station owned by Westinghouse or Infinity and licensed to a community in either the Philadelphia Area or the Boston Area, other than WMMR–FM in the Philadelphia Area and WBOS–FM in the Boston Area.

H. ''Non-Westinghouse Radio Station'' means any radio station licensed to a community in either the Philadelphia Area or the Boston Area that is not a Westinghouse Radio Station.

I. ''Acquirer'' means the entity or entities to whom defendants divest the WMMR–FM Assets and/or the WBOS–FM Assets under this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in either the Philadelphia Area or the Boston Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from an Acquirer, as defined herein.

IV. Divestiture of WMMR–FM and WBOS–FM

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final Judgment, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the WMMR–FM Assets and the WBOS–FM Assets to one or two Acquirers acceptable to plaintiff, in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WMMR–FM Assets and the WBOS–FM Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer or Acquirers that, in plaintiff's sole judgment, has or have the capability and intent of competing effectively, and has or have the managerial, operational and financial capability to compete effectively as radio station operators in the Philadelphia Area and the Boston Area; and (ii) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the purchaser(s) to compete effectively.

B. Defendants agree to use their best efforts to divest the WMAR–FM Assets and the WBOS–FM Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. Plaintiff, in its sole discretion, may extend the time period for the divestitures for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability for sale of the WMMR–FM Assets and the WBOS–FM Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the WMMR–FM Assets and/or the WBOS–FM Assets that the assets described in Section II (C) and (D) are being offered for sale and that the WMMR–FM Assets and the WBOS–FM Assets may be purchased as a two-station package or sold separately to different purchasers. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WMMR–FM Assets and the WBOS–FM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WMMR–FM Assets and/or the WBOS–FM Assets to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall not interfere with any efforts by any Acquirer or Acquirers to employ the general manager or any employee of WMMR–FM or WBOS–FM.

V. Appointment of Trustee

A. In the event that defendants have not divested the WMMR–FM Assets and the WBOS–FM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of plaintiff, a trustee selected by plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WMMR–FM Assets and the WBOS–FM Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VII of this Final Judgment and consistent with FCC regulations, and shall have other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to plaintiff, in its sole judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WMMR–FM and/or the WBOS–FM Assets by the trustee on any

grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the WMMR–FM Assets and the WBOS–FM Assets, and shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the WMMR–FM Asssets and the WBOS–FM Assets, and defendants shall develop such financial or other information as may be necessary to the divestiture of the WMMR–FM Assets and WBOS–FM Assets. Defendants shall permit prospective purchasers of the WMMR–FM Assets and WBOS–FM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendants, plaintiff and the Court, setting forth the trustee's efforts to accomplish divestiture of the WMMR–FM Assets and WBOS–FM Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WMMR–FM Assets and WBOS–FM Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to defendants and plaintiff, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Preservation of Assets/Hold Separate

Until the divestiture of the WMMR–FM Assets and the WBOS–FM Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that WMMR–FM is maintained as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in Philadelphia and that, except as necessary to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

B. Defendants shall take all steps necessary to ensure that WBOS–FM is maintained as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in Boston and that, except as necessary to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

C. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WMMR–FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

D. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WBOS–FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

E. Defendants shall take all steps necessary to ensure that the assets used in the operation of WMMR–FM are fully maintained. WMMR–FM's sales and marketing employees shall not be transferred or reassigned to any other station except for transfer bids initiated by employees pursuant to defendants' regular established job posting polices, provided that defendants give plaintiff and Acquirer ten (10) days' notice of any such transfer.

F. Defendants shall take all steps necessary to ensure that the assets used in the operation of WBOS–FM are fully maintained. WBOS–FM's sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting polices, provided that defendants give plaintiff and Acquirer ten (10) days' notice of any such transfer.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any WMMR–FM Assets or WBOS–FM Assets.

H. Defendants shall take no action that would jeopardize the sale of the WMMR–FM Assets or the WBOS–FM Assets.

I. Defendants shall each appoint a person or persons to oversee the assets to be held separate and who will be responsible for defendants' compliance with Section VI of this Final Judgment.

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreement (e.g., financing), to effect in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment,

defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the WMMR–FM Assets or the WBOS–FM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information, whichever is later, plaintiff shall provide written notice of defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if plaintiff objects to the identity of the proposed purchaser or purchasers. Upon objection by plaintiff, or by defendants under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiff.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to plaintiff an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the WMMR–FM Assets and/or the WBOS–FM Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer or buyers for the WMMR–FM Assets and the WBOS–FM Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve WMMR–FM and WBOS–FM pursuant to Section IV of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve WMMR–FM and WBOS–FM and to divest the WMMR–FM Assets and the WBOS–FM Assets.

X. Notice

A. Unless such transaction is otherwise subject to the reporting an waiting period requirements of the Hart-Scott-Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), defendants, without providing advance notification to the United States Department of Justice, shall not directly or indirectly:

(1) acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-Westinghouse Radio Station or any person affiliated with any such Station; provided, however, that defendants need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-Westinghouse Radio Station that would result in defendants' holding no more than five percent of the total equity of the station; or

(2) enter into any Joint Sales Agreements, Local Marketing Agreements or comparable arrangement with any Non-Westinghouse Radio Station.

Notification shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respects to Westinghouse Radio Stations in the city implicated by the transaction giving rise to the notification obligation under this Section X. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (1) or (2) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreements who negotiated the agreement, and any management or strategic plans discussing the propose transaction. If within the 30-days period after notification, representatives of the Department make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

B. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. Compliance Inspection

For the purpose of determining of securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the plaintiff, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to the principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XI shall be divulged by any representative of plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by either defendant to plaintiff, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

COMPETITIVE IMPACT STATEMENT

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on November 12, 1996, alleging that the proposed acquisition of the Infinity Broadcasting Corporation (''Infinity'') by the Westinghouse Electric Corporation (''Westinghouse'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Westinghouse and Infinity own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Philadelphia, Pennsylvania and Boston, Massachusetts metropolitan areas. This acquisition would give Westinghouse control over more than 40 percent of the radio advertising revenues in those metropolitan areas, as well as a substantial amount of control over access to certain demographic groups of radio listeners targeted by advertisers in those metropolitan areas. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston metropolitan areas.

The prayer for relief seeks: (a) adjudication that Westinghouse's proposed acquisition of Infinity would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Westinghouse to complete its acquisition of Infinity, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court at the same time the Complaint was filed.

The proposed Final Judgment orders Westinghouse to divest WMMR–FM, currently owned by Westinghouse, and WBOS–FM, currently owned by Infinity, in Philadelphia and Boston, respectively. Unless the United States grants an extension of time, Westinghouse must divest these radio stations within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Westinghouse does not divest these stations within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires the defendants to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, WMMR–FM and WBOS–FM will be operated independently as viable, ongoing businesses, and kept separate and apart from Westinghouse's and Infinity's other Philadelphia and Boston radio stations, respectively. Further, the proposed Final Judgment requires the defendants to give plaintiff prior notice regarding future radio station acquisitions in Philadelphia and Boston.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Westinghouse is a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania. It currently owns, through its subsidiary CBS Inc., 41 radio stations in 13 metropolitan areas across the United States, including four located in the Philadelphia metropolitan area and two located in the Boston metropolitan area. Westinghouse's four radio stations in the Philadelphia area are KYW–AM, WMMR–FM, WOGL–FM and WPHT–AM; its two radio stations in the Boston area are WBZ–AM and WODS–FM. In 1995, its revenues from its Philadelphia stations were appropriately $55,300,000, and its revenues from its Boston stations were approximately $26,600,000.

Infinity is a Delaware corporation headquartered in New York, New York. Infinity owns 42 radio stations in 13 metropolitan areas across the United States, including two located in the Philadelphia metropolitan area and four

located in the Boston metropolitan area. Infinity's two radio stations in the Philadelphia area are WYSP–FM and WIP–AM; its four stations in the Boston area are WBCN–FM, WZLA–FM, WBOS–FM and WOAZ–FM. In 1995, its revenues from its Philadelphia stations were approximately $31,500,000, and its revenues from the Boston stations were approximately $46,000,000.

B. Description of the Events Giving Rise to the Alleged Violation

On June 20, 1996, Westinghouse agreed to purchase Infinity for approximately $4.9 billion. As is more fully discussed below, Westinghouse would control more than 40 percent of the radio advertising revenues in Philadelphia and in Boston, and could exercise substantial control over access to certain target audiences sought by advertisers in those metropolitan areas. The proposed acquisition by Westinghouse of Infinity, and the threatened loss of competition that would be caused thereby, precipitated the Government's suit.

C. Anticompetitive Consequences of the Proposed Merger

1. Sale of Radio Advertising Time in the Philadelphia and Boston MSAs

The Complaint alleges that the provision of advertising time on radio stations serving the Philadelphia, Pennsylvania Metro Survey Area (''MSA'') and the Boston, Massachusetts MSA each constitute a line of commerce and section of the country, of relevant market, for antitrust purposes. These MSAs are the standard geographical units for which Arbitron furnishes radio stations, advertisers and advertising agencies in Philadelphia and Boston with data to aid in evaluating radio audience size and composition. Local and national advertising that is placed on radio stations within the Philadelphia and Boston MSAs is aimed at reaching listening audiences in those MSAs, and radio stations outside of those MSAs do not provide effective access to those audiences. Thus, advertisers would not buy enough advertising time from radio stations located outside of the Philadelphia MSA to defeat a small but significant non-transitory increase in radio advertising prices within that MSA. Likewise, advertisers would not buy enough advertising time from radio stations located outside of the Boston MSA to defeat a small but significant non-transitory increase in radio advertising prices within that MSA.

Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations generate almost all of their revenues from the sale of advertising time to local and national advertisers.

Many local and national advertisers purchase radio advertising time in Philadelphia and Boston because they find such advertising preferable to advertising in other media to meet certain of their specific needs. For such advertisers, radio time: may be less expensive and, on a per-dollar basis, more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products of services); may reach target audiences that cannot be reached as effectively through other media; or may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, may local and national advertisers in Philadelphia and Boston who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Philadelphia and Boston, the existence of such advertisers would not prevent radio stations from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability price discriminate between different customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. Harm to Competition

The Complaint alleges that Westinghouse's proposed acquisition of Infinity would lessen competition substantially in the provision of radio advertising time in the Philadelphia and Boston MSAs. Westinghouse presently controls approximately 28 percent of all radio advertising revenues in Philadelphia and approximately 15 percent of all radio advertising revenues in Boston. Infinity presently controls approximately 16 percent of all radio advertising revenues in Philadelphia and more than 25 percent of all radio advertising revenues in Boston. Westinghouse's market shares would rise to approximately 45 percent in Philadelphia and to more than 40 percent in Boston after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Exhibit A annexed hereto, the pre-merger HHI in Philadelphia is approximately 1876, which would rise to 2800 after the merger, with a change of about 924. In Boston, the pre-,merger HHI is approximately 1875, which would rise to 2638 after the merger, with a change of about 763. These substantial increases in concentration are likely to reduce competition and lead to higher prices and lower quality of service in each of these markets.

Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience and whether the characteristics of its audience have a high correlation to the target audience of the advertisers. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations, which leads to better prices and services. Today, several Westinghouse and Infinity stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Philadelphia and Boston, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate this competition, most critically affecting advertisers seeking to reach male listeners between the ages of 18 and 54 in Philadelphia and Boston.

During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing prices after assessing the number and attractiveness of alternative radio stations that can meet a particular advertiser's specific target audience needs.

In Philadelphia and Boston, advertisers that must reach male listeners within certain age ranges can help ensure competitive rates by ''playing off'' Infinity stations against Westinghouse stations. Because the direct competition between the Westinghouse and the Infinity stations would be eliminated by the proposed merger, and because advertisers seeking

to reach male listeners between the ages of 18 and 54 would have inferior alternatives to the merged entity, the acquisition would give Westinghouse the ability to raise prices and reduce quality. This is particularly true because of the merged entity's ability to charge different prices to different advertisers.

If Westinghouse raised prices or lowered services to those advertisers who buy time on Westinghouse and Infinity stations because of their strength in delivering access to certain audiences, non-Westinghouse radio stations in Philadelphia and Boston would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as Westinghouse, because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

New entry into the Philadelphia and Boston radio advertising markets is highly unlikely in response to a price increase by the merged entity. No unallocated radio broadcast frequencies exist in Philadelphia and Boston. Also, stations located in adjacent communities cannot boost their power so as to enter the Philadelphia and Boston MSAs without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission (''FCC'') regulations.

For these reasons, the plaintiff concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston MSAs, eliminate actual competition between Westinghouse and Infinity, and result in increased prices and reduced quality of service for buyers of radio advertising time in those markets, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Philadelphia and Boston MSAs. It requires the divestiture of WMMR–FM in Philadelphia and WBOS–FM in Boston. The divestitures will preserve choices for advertisers, particularly for those seeking to reach male listeners between the ages of 18 and 54. They will also help ensure that radio advertising rates do not increase and that services do not decline in Philadelphia and Boston as a result of the acquisition. This relief will reduce the market share Westinghouse would have achieved through the merger from about 45 percent to about 37 percent in the Philadelphia MSA, and from over 40 percent to 36.5 percent in the Boston MSA.

Unless the United States grants an extension of time, defendants must divest WMMR–FM and WBOS–FM within six months after the Final Judgment has been filed, or within five (5) business days after notice of entry of this Final Judgment, whichever is later. Until the divestitures take place, these stations, now owned by Westinghouse and Infinity, respectively, will be maintained as independent competitors to the other stations in the Philadelphia and Boston MSAs, respectively, including the other Westinghouse and Infinity stations in those markets.

If Westinghouse fails to divest either or both of these stations within the time period specified in the Final Judgment, or any extension thereof, the Court, upon application of the plaintiff, shall appoint a trustee nominated by the plaintiff to effect the required divestiture or divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of WMMR–FM and WBOS–FM, and shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the plaintiff, the defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that defendants maintain WMMR–FM and WBOS–FM separate and apart from their other stations, pending divestiture. The Judgment also contains provisions to ensure that these stations will be preserved, so that they will remain viable, aggressive competitors after divestiture.

The proposed Final Judgment also requires defendants to notify the plaintiff before acquiring any significant interest in another Philadelphia or Boston radio station. Such acquisitions could raise competitive concerns but might be too small to be otherwise reported under the Hart-Scott-Rodino (''HSR'') premerger notification requirements.

Moreover, defendants are also required to notify the plaintiff before they enter into any Joint Sales Agreements (''JSAs''), where one station takes over another station's advertising time, or enter into any Local Marketing Agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, or any other comparable arrangements, in the Philadelphia or Boston areas. Agreements whereby defendants sell advertising for or manage other Philadelphia or Boston area radio stations would effectively increase their market share in such MSA. Despite their clear competitive significance, JSAs probably would not be reportable to the plaintiff under the HSR Act. Thus, this provision in the decree ensures that the plaintiff will receive notice of, and be able to stop, any agreements that could have anticompetitive effects in the Philadelphia or Boston markets.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of the proposed acquisition of Infinity by Westinghouse. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of defendants in the Philadelphia and Boston MSAs, including their entry into any JSAs, LMAs or any other agreements related to the sale of advertising time.

IV. Remedies Available to Potential Private Litigants

Secion 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the

provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the plaintiff will be filed with the Court and published in the Federal Register.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. The plaintiff is satisfied, however, that the divestiture of WMMR–FM and WBOS–FM and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Philadelphia and Boston MSAs. Thus, the proposed Final Judgment would achieve the relief the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Case. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the distance of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest,''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed merger.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: November 14, 1996.

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Responses to Comment filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel,* 648 F.2d at 666 (citations omitted)(emphasis added); *see BNS,* 858 F.2d at 463; *United States* v. *National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[3] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom, Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette Co.,* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,

Dando B. Cellini,

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530, (202) 307–0829.

EXHIBIT A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Dando B. Cellini, hereby certify that, November 15, 1996, I caused a copy of the foregoing Competitive Impact Statement filed this day in *United States* v. *Westinghouse Broadcasting Corporation and Infinity Broadcasting Corporation*, Civil Action No. 1:96CV02563 (NHJ), to be served on defendants Westinghouse Broadcasting Corporation and Infinity Broadcasting Corporation by having a copy mailed, first class, postage prepaid, to:

Joe Sims, Jones, Day, Reavis & Pogue, 1450 G St., N.W., Washington, D.C. 20005, Counsel for Westinghouse Electric Corporation

Daniel M. Abuhoff, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022, Counsel for Infinity Broadcasting Corporation.

Dated: November 15, 1996.

Dando B. Cellini,

[FR Doc. 96–30550 Filed 11–29–96; 8:45 am]

BILLING CODE 4410––M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 91–38

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 91–38. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 31, 1997. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarify the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7933, FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 91–38 provides an exemption from the prohibited transaction provisions of ERISA for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that compliance with the exemption's conditions are taking place, DOL has required that records regarding the exempted transactions be maintained for six years.

II. Current Actions

This existing collection of information should be continued because without the exemption, individuals or entities which are parties in interest of a plan that invests in a bank collective investment fund would not be able to engage in transactions with the collective investment fund and would, thus, create a potential hardship to those affected. For DOL to grant an exemption, however, it needs to assure that the plan's participants and beneficiaries are protected. It, therefore, included certain conditions in the exemption, and required that records be kept for six years from the date of the transaction so that it can be determined whether these conditions have been followed. Without such records, DOL and other interested parties, such as participants, would be unable to effectively enforce the terms of the exemption and ensure user compliance.

Type of Review: Extension

Agency: Pension and Welfare Benefits Administration

Title: Prohibited Transaction Class Exemption 91–38

OMB Number: 1210–0082

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals

Frequency: On occasion

Estimated Total Burden Hours: 1

Respondents, proposed frequency of response, and annual hour burden: Under ERISA regulation section 2520.103–9, banks sponsoring collective investment funds are required to

maintain certain records each year for preparing the annual report or to be supplied to the plan sponsor to prepare the annual report. In addition, banks are highly regulated by state and federal law, and their books and records are subject to periodic examination by state and federal agencies. Because of the ERISA annual reporting requirements and the heavy state and federal regulation, the Department has assumed that the records required by this class exemption are the same records kept in the normal course of business by banks. Therefore, the burden of this exemption is minimal, and the Department has assigned one hour to it.

Total Burden Cost (capital/start-up): $0.00

Total Burden Cost (operating/maintenance): $0.00

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 1996.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 96–30605 Filed 11–29–96; 8:45 am]

BILLING CODE 4510–29–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 90–1

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 90–1. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 31, 1997. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarify the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–7933, FAX (202) 219–4745.

FOR FURTHER INFORMATION CONTACT:

I. Background

Prohibited Transaction Class Exemption 90–1 provides an exemption from certain of ERISA's prohibited transaction provisions for transactions involving insurance company pooled separate accounts in which employee benefit plans participate. The general exemption allows persons who are parties in interest of a plan that invests in a pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that compliance with the exemptions conditions are taking place, DOL has required that records regarding the exempted transactions be maintained for six years.

II. Current Actions

This existing collection of information should be continued because without the exemption, individuals or entities which are parties in interest of a plan that invests in an insurance company pooled separate account would not be able to engage in transactions with the separate account creating a potential hardship to those affected. For the Department to grant an exemption, however, it needs to assure that the plan's participants and beneficiaries are protected. It, therefore, included certain conditions in the exemption, and required that records be kept for six years from the date of the transaction so that it can be determined whether these conditions have been followed. Without such records the Department and other interested parties, such as participants, would be unable to effectively enforce the terms of the exemption and insure user compliance.

Type of Review: Extension

Agency: Pension and Welfare Benefits Administration

Title: Prohibited Transaction Class Exemption 90–1

OMB Number: 1210–0083

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals

Frequency: On occasion

Estimated Total Burden House: 1

Respondents, proposed frequency of response, and annual hour burden: Under ERISA regulation section 2520.103–9, insurance companies administering pooled separate accounts are required to maintain certain records each year for preparing the annual report or to be supplied to the plan sponsor to prepare the annual report. In addition, insurance companies are highly regulated by State law, and their books and records are subject to periodic examination by State agencies. Because of the ERISA annual reporting requirements and the heavy State regulation, the Department has assumed that the records required by this class exemption are the same records kept in the normal course of business by insurance companies. Therefore, the burden of this exemption is minimal, and the Department has assigned one hour to it.

Total Burden Cost (capital/start-up): $0.00

Total Burden Cost (operating/maintenance): $0.00

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 1996.

Gerald B. Lindres,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 96–30606 Filed 11–29–96; 8:45 am]

BILLING CODE 4510–29–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 77–10

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 77–10. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 31, 1997. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarify the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7933, FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 77–10 enables a multiple employer plan to share office space and administrative services and goods, to lease office space or provide administrative services or to sell or lease goods to a participating employer, or participating employer association, or to another multiple employer plan, provided certain conditions are met. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act).

II. Current Actions

This existing collection of information should be continued because without the exemption, participating unions or employers would not be able to share or lease office space or to share or obtain administrative services or goods from a plan in cases where violations of section 406(b)(2) of ERISA would otherwise occur. Plans which would be denied the opportunity to utilize such services might incur additional administrative costs as well as possibly lose a source of income. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. The exemption has one basic information collection condition. A plan which shares office space, administrative services or goods or which provides administrative services or goods is required to maintain during the time of the transactions and for six years from the time of termination such records as are necessary to enable the Labor Department, plan participants and beneficiaries, participating employers and others to determine whether the conditions of the exemption have been met. The records should indicate the potential conflict of interest present in a transaction, such as where a plan trustee involved in the decision is also an officer of a contributing employer who would benefit from the provision of certain services.

Type of Review: Extension

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 77–10.

OMB Number: 1210–0081.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Respondents, proposed frequency of response, and annual hour burden: The recordkeeping requirements of this exemption are similar to those included in Part C of Prohibited Transaction Class Exemption 76–1 (PTE 76–1). The Department assumes that anyone utilizing this exemption would also need to use PTE 76–1. The Department estimates that the recordkeeping burden of this class exemption, in effect, has been incorporated in the burden for PTE 76–1. Therefore, the Department estimates the burden hours for this exemption to be one hour.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 1996.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 96–30607 Filed 11–29–96; 8:45 am]

BILLING CODE 4510–29–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Date: November 18, 1996.

TIME AND DATE: 3:00 p.m., Monday, November 18, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *McClanahan v. Wellmore Coal Corp.*, Docket No. VA 95–9–D.

No earlier announcement of the scheduling of this meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–30731 Filed 11–27–96; 12:43 pm]

BILLING CODE 6735–01–M

Date: November 25, 1996.

TIME AND DATE: 10:00 a.m., Thursday, December 5, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Walker Stone Co.*, Docket No. CENT 94–97–M (Issues include whether the judge was correct in holding 30 CFR § 56.14105 to be inapplicable because the phrase ''repairs or maintenance of machinery or equipment'' contained therein does not encompass the act of removing from a rock crusher rocks which are jamming it.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706. 150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–30732 Filed 11–27–96; 12:43 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: December 9, 1996, from 9:00 a.m. to 10:30 a.m.

ADDRESSES: United States Capitol Building, LBJ Room (S–211).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Opening Remarks

Workshops for House Committee Clerks

Task Force on the Impact of Technology on Archival

Documentation

Modern Records Survey

Other current issues and new business

The meeting is open to the public.

This notice is published less than 15 calendar days before the meeting because of scheduling difficulties.

Dated: November 25, 1996.

L. Reynolds Cahoon,

Assistant Archivist for Policy and IRM Services.

[FR Doc. 96–30601 Filed 11–29–96; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Inservice Testing Inspection Procedure 73756; Workshops

The U.S. Nuclear Regulatory Commission (NRC) will conduct four public workshops pertaining to the July 27, 1995, revision to NRC Inspection Procedure (IP) 73756, ''Inservice Testing of Pumps and Valves.'' The workshops will be conducted by the Mechanical Engineering Branch, Division of Engineering, Office of Nuclear Reactor Regulation, in conjunction with the Regional Offices.

The workshops will be conducted from 8:30 a.m. to 5:00 p.m. at the following locations on the following dates:

January 21, 1997

Hilton Hotel (block of rooms reserved), 3003 Corporate W Drive, Lisle, Illinois 60532, 630–505–0900

Region III Contact: Andrew Dunlop, 630–829–9726

January 23, 1997

NRC Region IV Offices, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064

Region IV Contact: Dale A. Powers, 817–860–8195

February 4, 1997

Valley Forge Hilton, 251 West DeKalb Pike, King of Prussia, PA 19406, 610–337–1200/800–TRY-VFPA

Region I Contact: Kenneth Kolaczyk, 610–337–5327

February 6, 1997

Richard B. Russell Building, Auditorium (Lower Plaza), 75 Spring Street, S.W., Atlanta, Georgia 30303, 404–331–3333

Region II Contact: McKenzie Thomas, 404–331–5599

The public is invited to submit questions or specific topics for discussion at the workshops. Questions or topics should be submitted to Patricia Campbell, U.S. Nuclear Regulatory Commission, Mail Stop O7E23, Washington, D.C. 20555. For further information, the following individuals may be contacted: Patricia Campbell, 301–415–1311; Joseph Colaccino, 301–415–2753.

The agenda of the workshops is as follows:

Public Workshops on Inservice Testing Inspection Procedure 73756

8:30–9:00 a.m.

Welcoming, Introductions (Regional representatives)

9:00–10:00 a.m.

Presentation on the content of IP 73756, GL 89–04, Supplement 1, NUREG–1482, NUREG/CR–6396 (P. Campbell/J. Colaccino)

10:00–10:15 a.m.

Break

10:15–10:30 a.m.

Presentation on Generic Letter 96–05

Periodic Verification of Motor-Operated Valves

OM Code Case OMN–1 as an Alternative to Stroke

Timing MOVs (T. Scarbrough/S. Tingen/Region) [1]

10:30–11:00 a.m.

Presentation on Types of Findings from Recent IST Inspections (J. Colaccino—from Symposium paper, updated with any additional inspections since July 1996, with assistance from Regional representatives)

11:00 a.m.–12:00 Noon

Questions and Answers Breakout Session (NRR and Regional representatives)

Noon–1:00 p.m.

Lunch Break

1:00–3:00 p.m.

Questions and Answers Session (Panel of NRR and Regional representatives)

3:00–3:15 p.m.

Break

3:15–5:00 p.m. Questions and Answers Session Continued (Panel)

Signed at Rockville, Maryland, this 25th day of November, 1996.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Chief, Mechanical Engineering Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 96–30592 Filed 11–29–96; 8:45 am]

BILLING CODE 7590–01–P

[1] This presentation is narrowly focused to provide a summary only and to make the IST engineers aware that the NRC has identified an acceptable alternative to the current Code requirements for stroke timing MOVs. A more detailed discussion of the generic letter will be provided at the Motor-Operated Valve Users' Group Meeting tentatively scheduled for February 3, 4, and 5 in Atlanta.

PENSION BENEFIT GUARANTY CORPORATION

Payment of Premiums; Late Payment Penalty Charges

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of Policy.

SUMMARY: The Pension Benefit Guaranty Corporation is adopting a new two-tiered policy on penalties for late payment of premiums due for 1996 and later plan years. The new policy, which lowers penalties from 5% per month to 1% per month if a premium payer corrects an underpayment before being contacted by the PBGC, is designed to promote voluntary compliance. The PBGC is also adopting a temporary voluntary compliance program to provide penalty relief with respect to premiums due for earlier plan years.

DATES: The new policy is effective with respect to premiums owed for plan years beginning on or after January 1, 1996. The voluntary compliance program applies with respect to premiums owed for pre-1996 plan years. To take advantage of the program, premium payers must take action by April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD). For questions about specific premium filings under the voluntary compliance program, call 202–326–4061 (202–326–4179 for TTY and TDD); for other questions about specific premium filings, call 703–827–3676 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4007 of the Employee Retirement Income Security Act of 1974 authorizes the PBGC to assess a late payment penalty charge for underpayment or late payment of premiums. The amount of the penalty may not exceed 100% of the premium that is not timely paid.

The PBGC's premium payment regulation provides that the penalty accrues at the rate of 5% of the unpaid amount each month, subject to a floor of $25 on the total amount. The PBGC may grant a waiver of all or a portion of the penalty upon a demonstration of good cause. The regulation also requires the payment of interest on premium underpayments.

The general guidelines in the new penalty policy and voluntary compliance program discussed below affect only penalties. They do not affect interest.

New Penalty Policy

The new penalty policy applies for plan years beginning on or after January 1, 1996. The PBGC will assess a penalty of 1% per month if the premium is paid on or before the date the PBGC issues a written notice to the premium payer that there is or may be a premium delinquency. If the premium is paid after the PBGC notification date, the penalty rate will be 5% per month for all months. The minimum total penalty continues to be $25. PBGC notification may take various forms, including a premium bill, a letter initiating a premium compliance review (*i.e.*, audit), or a letter questioning a failure to make a premium filing.

Voluntary Compliance Program

The PBGC is adopting a temporary voluntary compliance program for premiums owed for pre-1996 plan years. The penalty rate will be 1% per month (subject to the existing $25 minimum total penalty), rather than the current 5% per month.

There are two ways to take advantage of the voluntary compliance program:

Option 1: Pay the underpaid amount with an appropriate premium filing by April 30, 1997.

Option 2: Notify the PBGC by April 30, 1997, of an intention to participate in the voluntary compliance program, and pay the underpaid amount with the appropriate premium filing by June 30, 1997. (Any penalties and interest will continue to accrue until payment.) The notification must be in writing and identify the plan.

To be eligible for the program, the payment under Option 1 or the notification under Option 2 (as applicable) must precede the PBGC notification date. All notices, original or amended premium forms, and payments under the voluntary compliance program should be clearly marked ''VCP PROGRAM'' and filed at the following address: Pension Benefit Guaranty Corporation, ATTN: VCP PROGRAM, P.O. Box 64880, Baltimore, MD 21264–4880 (if filing by mail) or First National Bank of Maryland, ATTN: VCP PROGRAM, 110 South Paca Street, Mail Code: 109–320/Lockbox #64880, Baltimore, MD 21201 (if filing by delivery service).

Assessment and Waiver of Penalties

The PBGC may waive all or part of a late payment penalty upon a demonstration of good cause. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and the late payment resulted from circumstances beyond that person's control.

Issued in Washington, DC, this 27th day of November, 1996.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this statement of policy.

James J. Keightley

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 96–30778 Filed 11–29–96; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (AMREP Corporation, Common Stock, $.10, Par Value) File No. 1–4702

November 25, 1996.

AMREP Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'') and Pacific Stock Exchange, Inc. (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the application is made for the purpose of reducing costs for the Company. Because of the small volume of trading, the Company has decided to delist from the CHX and PSE. The Security is and will continue to be listed on the New York Stock Exchange, Inc. (''NYSE'').

Any interested person may, on or before December 17, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–30563 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22348; File No. 811–2892]

Boston Mutual Life Variable Account A; Notice of Application

November 22, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANT: Boston Mutual Life Variable Account A (''BML Account'').

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company, as defined by the 1940 Act.

FILING DATE: The application was filed on March 25, 1996, and amended and restated on July 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, James F. Sarcia, Boston Mutual Life Insurance Company, 120 Royall Street, Canton, Massachusetts 02021–1028.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. BML Account, a unit investment trust, is a separate account of the Boston Mutual Life Insurance Company (''Boston Mutual''). On December 29, 1978, BML Account filed with the Commission a notification of registration as an investment company on Form N–8A, and a registration statement on Form S–6 (File No. 2–63340) to register under the Securities Act of 1933 interests in individual flexible purchase payment variable annuity contracts issued by Boston Mutual through BML Account. The registration statement was declared effective on May 1, 1981.

2. Boston Mutual deposited $100,000 of ''seed money'' in BML Account. All of that seed money was invested in Money Market Management, Inc., a money market investment company.

3. Boston Mutual decided to withdraw from the variable annuity business after fewer than 100 of its variable annuity contracts were sold. Full refunds were offered to all contractholders and by early 1982 all contractholders had accepted refunds. Boston Mutual has not issued any variable annuity contracts through BML Account since 1982, and does not intend to offer variable annuity contracts issued through BML Account for sale in the future.

4. On December 7, 1995, the Board of Directors of Boston Mutual authorized the liquidation of Boston Mutual's seed money in the BML Account, and authorized certain offices to execute and file deregistration and liquidation documents with the appropriate authorities.

5. BML Account disposed of its portfolio securities through the liquidation of Boston Mutual's seed money by redemption, for $100,000 in cash, of 100,000 shares of Money Market Management, Inc. No brokerage commissions were charged. The proceeds ($100,000) were returned to Boston Mutual on December 20, 1995.

6. BML Account currently has no assets or liabilities, and no securityholders or accountholders. BML Account is not a party to any litigation or administrative proceeding, and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding up its affairs.

7. Within the last 18 months, BML Account has not transferred any of its assets to a separate trust.

8. BML Account represents that it is current with all of its filings under the 1940 Act.

9. BML Account has ceased to be a legal separate account of Boston Mutual under Massachusetts law. Boston Mutual is in the process of withdrawing or terminating BML Account's legal existence in any states in which BML Account is registered.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30565 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Kirby Corporation, Common Stock, $0.10 Par Value) File No. 1–7615

November 25, 1996.

Kirby Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. (''NYSE''). Trading in the Security on the NYSE commenced at the opening of business on October 15, 1996, and concurrently therewith such stock was suspended from trading on the Amex. In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for its Security.

Any interested person may, on or before December 17, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–30564 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26613]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 22, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 16, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (70–8313)

Maine Yankee Atomic Power Company (''Maine Yankee''), 329 Bath Road, Brunswick, Maine 04011, an indirect nuclear generating subsidiary of Northeast Utilities (''NU'') and of New England Electric System (''NEES''), both registered holding companies, has filed a declaration under Sections 6(a) and 7 of the Act.

By orders dated January 17, 1991 and January 12, 1994 (HCAR Nos. 25244 and 25973, respectively) Maine Yankee was authorized to issue and sell, no later than December 31, 1996, short-term notes (''Notes'') under bank lines of credit, and/or commercial paper (''Commercial Paper'') up to an aggregate amount at any one time outstanding of $21 million. As of September 30, 1996, Maine Yankee had no issued and outstanding amounts under these lines of credit nor did it have any Commercial Paper obligations.

Maine Yankee now proposes to extend its authority to issue and sell Notes and Commercial Paper in an aggregate outstanding amount of $21 million, through December 31, 2001.

Maine Yankee has existing bank lines of credit permitting the issuance of notes aggregating $21 million, including $8 million with The Bank of New York and $13 million with The First National Bank of Boston. The Notes will be demand or other short-term obligations under bank lines of credit. The Notes will mature in twelve months or less from the date of issuance. The effective interest cost of the Notes will not exceed the effective interest cost of borrowings at the prime rate, as in effect from time-to-time at such banks. Commitment fees will not exceed ½ of 1% of the lines of credit from such banks.

The Commercial Paper will mature in twelve months or less from the date of issuance and will be issued through dealers in commercial paper and sold to institutional investors. The Commercial Paper may be backed by Maine Yankee's available lines of credit or revolving credit agreements. Maine Yankee will pay a fee to the dealers in the Commercial Paper, estimated to be ⅛ of 1% per annum, on a discount basis, of the amounts borrowed, as compensation for their services with regard to the issuance of the Commercial Paper. The interest rate on the Commercial Paper will vary depending upon the interest rates prevailing in the relevant market at the time of issuance.

The Notes and Commercial Paper will provide interim financing for Maine Yankee's construction program, for working capital and for other general corporate purposes.

PSI Energy, Inc. (70–8727)

PSI Energy, Inc. (''PSI''), 1000 Main Street, Plainfield, Indiana 46168, an electric utility subsidiary of Cinergy Corp., a registered holding company (''Cinergy''), has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and rule 54 thereunder.

By order dated November 21, 1995 (HCAR No. 26412) (''1995 Order''), the Commission authorized PSI to enter into a business venture with H.H. Gregg (''Gregg''), a retail vendor of household electronic appliances and related consumer goods, through December 31, 1996, involving an appliance sales program (''Pilot Program''). Pursuant to the 1995 Order, PSI was authorized to market Gregg's electronic goods and appliances at retail, on a best-efforts, consignment basis, to PSI's customers at a limited number of its local offices. PSI was also authorized to sell extended service warranties covering any items purchased. Further, the Pilot Program contemplated that PSI might arrange customer financing through a bank or other financial institution for a fee.

Pursuant to the 1995 Order, PSI has been conducting the Pilot Program through four of its local offices, in Bedford, Connersville, Greencastle, and Huntington, Indiana. PSI has also been marketing to customers Gregg's extended service warranties. In addition, as contemplated, PSI has arranged (i.e., brokered) customer financing with third-party financial institutions in exchange for a fee from the third-party financier.

The initial proposal estimated that the Pilot Program would:

(1) result in total sales revenues of approximately $2.6 million;

(2) utilize the full-time employee equivalent of three or four employees; and (3) involve approximately $320,000 of expenditures (consisting primarily of advertising and sales expenses, expenses associated with the use of local offices and related facilities, and expenses associated with employees' time).

The interim financial results of the Pilot Program have not met PSI's expectations, with revenues less than and expenses more than original estimates. PSI states that a principal reason why revenues to date have not matched expectations is because of local competition with other appliances and home electronics dealers. PSI states that advertising expenses were higher than anticipated partly due to the rush to open stores in time for the 1995 Christmas shopping season, but states that, since April of this year, the advertising strategy has been modified, and monthly advertising expenses have fallen back into line with original estimates. In addition, PSI entered into a settlement agreement with the Indiana Office of Utility Consumer Counselor providing, among other things, that 20% of the gross margins from all sales revenues to which PSI is entitled as a result of its participation in the Pilot Program will be allocated to PSI's retail electric customers through PSI's quarterly fuel adjustment clause.

Finally, initial non-recurring start-up costs also exceeded estimates.

PSI now requests authorization to continue the Pilot Program with certain minor modifications for an additional year in order to advance the program goals for which authorization for the Pilot Program was originally sought. Specifically, PSI states that it continues to believe that the energy industry is transforming into a competitive industry, and that marketing appliances and electronic goods (whether in collaboration with Gregg or some other third-party vendor or by PSI on its own) to PSI's retail customers, on the limited basis currently in effect, will provide incremental benefits to PSI in this emerging environment by among other things (1) promoting a company brand-name identity, thereby facilitating the eventual marketing to customers by PSI or its associate companies of other energy-related and demand-side management products; (2) more fully utilizing existing employees and offices to hold down costs; and (3) strengthening ties to customers.

PSI states that although interim costs of the Pilot Program have exceeded estimates, many of these costs are non-recurring start-up costs (e.g., local office redesign, employee training, acquisition of point-of-sale software). Therefore, the investments PSI has made and the hands-on experience it has gained will benefit it significantly in the extended Pilot Program. To further contain 1997 program costs, Gregg has proposed certain program modifications, including increased price discounts, advertising support, and increased Gregg staff support and training for store personnel, that will increase the potential profitability of the program.

The renewed Pilot Program would be subject to the same terms and conditions contained in the 1995 Order except that: PSI may continue to conduct the program in collaboration with Gregg; alternatively, PSI may conduct the program on its own or in collaboration with other appliances or home electronics vendors.[1] In any event, PSI, whether on its own or together with third-party vendors, would market household appliances and other consumer electronic goods (including marketing extended service warranties and arranging for customer financing from third-party financial institutions) from not more than five of PSI's local offices.

Furthermore, PSI requests authorization to market extended service warranties to its customers, covering the cost of repairs for their household appliances/electronic goods, whether or not purchased from PSI as part of the extended program. Based on its experience to date, PSI may wish to use the full-time equivalent of up to five employees (out of the approximately 2230) to carry out the program.

Consolidated Natural Gas Co., et al. (70–8883)

Consolidated Natural Gas Company (''CNG''), CNG Tower, Pittsburgh, Pennsylvania, 15222–3199, a registered holding company, and its wholly owned non-utility subsidiary, CNG Energy Services Corporation (''Energy Services'') (collectively, ''Applicants''), One Park Ridge Center, Pittsburgh, Pennsylvania, 15244–0746, have filed an application-declaration, as amended, under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 43, 45, 54 and 90 thereunder.

Energy Services, which markets natural gas and engages in the power generation business, seeks Commission authorization to invest, through December 31, 2001, up to $250 million to expand its business to market electricity and other energy commodities and to engage in fuel management and other incidental related activities. CNG and Energy Services also seek Commission authorization to provide up to $250 million in guarantees or other credit support to subsidiaries that market energy commodities (''Subsidiaries'').

The Applicants propose that Energy Services and the Subsidiaries engage in all forms of brokering and marketing transactions, including electricity, natural gas, coal, oil, other hydrocarbons, wood chips, wastes and other combustibles, at wholesale and retail. All proposed activities will be conducted by personnel of Energy Services.

The Subsidiaries might be corporations, partnerships, limited liability companies, joint ventures or other entities in which Energy Services might have a 100% interest, a majority equity or debt position, or a minority equity or debt position. The Applicants also propose that Energy Services and the Subsidiaries provide incidental related services, such as fuel management, storage and procurement.

The Applicants contemplate that Energy Services and the Subsidiaries engage in the proposed activities without regard to locations or identities of clients or sources of revenues. Energy Services and the Subsidiaries will not make retail sales of electricity or natural gas, however, in states in which such sales are not authorized or permitted under applicable state laws or regulations.

The Applicants request that the Commission reserve jurisdiction over any activities by Energy Services or the Subsidiaries outside the United States subject to completion of the record.

Finally, the applicants request that the Commission authorize Energy Services and the Subsidiaries to acquire or construct physical assets that are incidental and reasonably necessary in the day-to-day conduct of marketing operations, such as oil and gas storage facilities, gas, oil or coal reserves, or a pipeline spur needed for deliveries of fuel to an industrial client. The Applicants represent, however, that Energy Services and the Subsidiaries will not acquire assets or make retail sales of energy commodities that would result in a ''public utility company'' within the definition of the Act.

Energy Services and the Subsidiaries will take appropriate measures in the normal course of their business to mitigate the risks associated with electricity and fuel purchases or sales contracts. Such measures may include matches between long-term firm or variable price electricity sales contracts and long-term firm or variable price fuel purchase contracts. Purchases of fuel or fuel reserves or options on fuel reserves might also be used to hedge fuel price risks.

Energy Services and the Subsidiaries may purchase or sell commodity-based derivative instruments, such as electricity or gas futures contracts and options on electricity or gas futures, similar to those traded on the New York Mercantile Exchange, and gas and oil price swap agreements and other commodity-based derivative instruments.

Energy Services and the Subsidiaries will seek to manage a portfolio of energy contracts involving purchases, sales and trades of electricity and other energy commodities. Energy Services and the Subsidiaries will seek to hedge the risks associated with these contracts through a combination of physical assets, balanced physical purchases and sales, purchases and sales on futures markets, or other derivative risk management tools.

Energy Services intends to engage in transactions involving gas, electricity and other fuel capacity rights, rate swaps and other commodity-based derivative products that may be developed for use in the energy markets in which it will participate in the

[1] PSI will not acquire any ownership interest in Gregg or such other third-party vendors; nor would PSI establish any new subsidiaries to implement the extended program.

ordinary course of its business as an energy company.

Energy Services will not deal in such derivative products for purposes of speculation, but rather would use them only to reduce price-risk exposure through hedging.

Energy Services might also engage in energy commodities marketing activities with the gas utility companies or other affiliates in the CNG system on the same market terms that would be available to non-affiliate clients.

Energy Services proposes to raise funds for the activities through (i) sales of common stock, $1.00 par value, to CNG for up to $10,000 per share, (ii) open account advances, and (iii) long-term loans from CNG. The open account advances and long-term loans will have the same effective terms and interest rates as related funds borrowed by CNG.

In particular, open account advances would be made under letter agreement with Energy Services and pursuant to a note issued by it and would be repaid within one year with interest equal to the effective rate of interest of the weighted average effective rate for CNG commercial paper and/or revolving credit funds. In the absence of such funds, the interest rate would be based on the Federal Funds effective rate of interest quoted daily by the Federal Reserve Bank of New York.

Loans to Energy Services would be evidenced by long-term non-negotiable notes that mature within thirty years with the interest equal to the cost of comparable funds borrowed by CNG. In the absence of such funds, the interest will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown.

CNG will obtain the funds required for Energy Services through internal cash generation, issuance of long-term debt securities, funds borrowed under credit agreements or through other authorizations approved by the Commission.

New England Electric System, et al. (70–8921)

New England Electric System (''NEES''), a registered holding company, and its power marketing subsidiary company, NEES Energy, Inc. (''NEES Energy'') (together, ''Applicants''), both located at 25 Research Drive, Westborough, Massachusetts 01582, and NEES Energy's proposed power marketing subsidiary, AllEnergy Marketing Company, L.L.C. (''AllEnergy LLC''), 3 University Office Park, 95 Sawyer Road, Waltham, Massachusetts 02154, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 22, 45, 54, 90, 91 and 104 thereunder.

By orders dated May 23, 1996 (HCAR No. 26520) and August 28, 1996 (HCAR No. 26563) (''Orders''), the Commission approved the formation of one or more marketing companies (''Marketing Companies'') by NEES in Massachusetts, New Hampshire, Rhode Island, Connecticut, Maine, Vermont, Maryland, Delaware, Pennsylvania, New Jersey, and New York to engage in wholesale marketing of electric power and related transactions. Additionally, the Orders authorized the Marketing Companies in New Hampshire and Massachusetts to participate in those states' pilot programs for retail electric power sales. Finally, the Orders authorized the formation of Marketing Companies in Connecticut, Maine and Vermont to engage in the business of wholesale and retail marketing of energy. The Commission reserved jurisdiction over retail electric sales by Marketing Companies in Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, New Hampshire and Massachusetts, except to the extent that electric retail marketing is permitted under the New Hampshire and Massachusetts pilot programs. Pursuant to the Orders, NEES has formed NEES Energy, a Massachusetts corporation, and Granite State Energy, Inc., a New Hampshire corporation, to undertake marketing activities consistent with the Commission's Orders.

NEES Energy now proposes to enter into a joint venture with a subsidiary of Eastern Enterprises (''Eastern''), an exempt gas public utility holding company, to engage in the marketing of energy and related services and products. NEES Energy proposes to invest, from time-to-time, not exceeding $50 million in, and be a voting member of AllEnergy LLC, a limited liability corporation formed under the laws of Massachusetts on September 18, 1996 pursuant to a Limited Liability Company Agreement (''LLC Agreement''), subject to Commission authorization. NEES Energy proposes to own not exceeding a 50% voting interest in AllEnergy LLC. The remaining 50% voting interest in AllEnergy LLC will be owned initially by AllEnergy Marketing Company, Inc. (''Eastern Sub''), a wholly owned subsidiary of Eastern.

NEES proposes to provide initial financing, through December 31, 2001, for NEES Energy's investment in AllEnergy LLC by making capital contributions and/or loans to NEES Energy from time-to-time, provided that such NEES financing shall not be in excess of an aggregate of $50 million, including any short-term loans and any amounts provided by NEES and/or NEES Energy which are used by AllEnergy LLC to acquire the assets or securities of third parties, or to otherwise invest in a subsidiary, pursuant to the authority requested, below, but excluding any guarantees from NEES and/or NEES Energy. Any such loans will be in the form of non-interest bearing subordinated notes payable in twenty years or less from the date of issue. NEES Energy may prepay any or all of such outstanding notes, in whole or in part, at any time and from time-to-time without premium or penalty.

AllEnergy LLC will engage in the business of marketing and selling: (1) energy commodities, including electricity, natural gas, oil and other energy sources as well as options, futures contracts, forward contracts, collars, spot contracts or swap contracts related to the choice, purchase or consumption of any such energy commodity and any other related financial products; and (2) incidental and reasonably necessary products and services related to the choice, purchase or consumption of any such energy commodity, whether or not sold or provided on a bundled basis with natural gas, electricity, oil, or other energy source, such as, but not limited to, audits, power quality, fuel supply, repair, maintenance, construction, design, engineering and consulting.

AllEnergy LLC will employ various risk-reduction measures to limit potential losses that could be incurred through AllEnergy LLC activities. These measures may include energy commodity hedging transactions. AllEnergy LLC will not engage in speculative trading in the energy market.

While AllEnergy LLC's initial efforts will focus on the Northeast region, it may expand its business to all 50 states, and, subject to Commission approval, to Canada. AllEnergy LLC will engage in brokering and retail marketing of electric power and natural gas within a state or other jurisdiction only to the extent permitted or authorized under such state's or other jurisdiction's laws or programs.

AllEnergy LLC also proposes to form one or more subsidiaries in order, among other things, to pursue its business in a particular target state. It will make an initial equity contribution in an amount not to exceed $100,000 in any one subsidiary. The form of the

initial investment, together with the formalities of the subsidiary's formation, may vary depending on the type of entity organized. It may involve the acquisition of common stock, a partnership interest, membership interest or an interest pursuant to an organizational agreement.

AllEnergy LLC may have opportunities to acquire businesses to complement its business, such as, but not limited to, engineering services and the propane gas business. AllEnergy LLC will not acquire any utility assets or gas distribution facilities, as those terms are defined under the Act, regulations and orders issued thereunder, and will, therefore, not be either an electric or gas utility under the Act.

AllEnergy LLC proposes to acquire a propane gas marketing business operating in the Eastern United States for a price not exceeding $3.5 million. The terms of the acquisition will likely require, without limitation: (1) the payment or cancellation of the acquired entities debt prior to the acquisition; (2) execution of agreements by key employees of the acquired entity to continue employment; (3) the assignment of material contracts, contract rights and other rights and commitments of the acquired entity to AllEnergy LLC; and (4) the making of customary representations and warranties by the acquired entity and AllEnergy LLC, respectively.

The LLC Agreement provides that in the event an AllEnergy LLC member defaults in making a required capital contribution to AllEnergy LLC, the non-defaulting member may, at its discretion, advance to AllEnergy LLC on behalf of the defaulting member all or a portion of such required capital contribution (''Member Default Loan''). The defaulting member is responsible for repaying the Member Default Loan to the member making such loan in accordance with the LLC Agreement. In the event that: (1) the non-defaulting member elects not to make such a Member Default Loan; or (2) the Member Default Loan is not repaid, then the member's percentage interests in AllEnergy LLC shall, at the election of the non-defaulting member, be adjusted to reflect the failure of the defaulting member to either make the required capital contribution, or repay the Member Default Loan, as the case may be, in accordance with a formula set forth in the LLC Agreement.

Members of AllEnergy LLC may effect a transfer of all or a portion of their interest in accordance with terms of the LLC Agreement. Such transfers may include required regulatory transfers, transfers to affiliates, transfers to another member of AllEnergy LLC, and transfers to third parties. The LLC Agreement provides that, in the event an AllEnergy LLC member receives an offer to purchase its interest and intends to transfer its interest pursuant to such offer, or must make a required regulatory transfer of all or a portion of its interest, the other member shall have a right to purchase such interest at the offer price, or at the fair market value of the transferred portion of such interest, in the case of a required regulatory transfer.

The LLC Agreement provides a mechanism whereby either NEES Energy or Eastern Sub may trigger a withdrawal of either party from AllEnergy LLC by means of a buy/sell transaction (''Buy/Sell Provision''). The Buy/Sell Provision permits either party to withdraw by giving the other party a notice of intention to withdraw indicating a cash price at which the withdrawing party would be willing to either buy or sell its interest in AllEnergy LLC. The party receiving such notice may then either buy the other party's AllEnergy LLC interest, or sell its own AllEnergy LLC interest to such other party, at such price. The Buy/Sell Provision is intended as a means of addressing disputes between NEES Energy and Eastern Sub in connection with AllEnergy LLC which the parties are unable to resolve.

AllEnergy LLC staffing is expected to begin with a small group of employees. It is intended that four employees of New England Power Service Company (''NEPSCO'') will be assigned to AllEnergy LLC on a full-time basis. To the extent any more NEPSCO personnel are assigned to AllEnergy LLC, they will become employees of AllEnergy LLC. Other than such four NEPSCO employees, AllEnergy LLC will have its own employees and only rely on NEPSCO or an Eastern subsidiary for administrative services such as accounting, tax, legal, information services, insurance, and personnel management. All costs associated with these NEPSCO services, and with services of the above four NEPSCO employees assigned to AllEnergy LLC on a full-time basis, would be fully reimbursed on a cost basis by AllEnergy LLC in accordance with Rules 90 and 91 of the Act. Reimbursements for these costs will be on a thirty-day cycle basis.

AllEnergy LLC intends to engage in short-term borrowing from third parties under rule 52(b) of the Act. The borrowing will be solely for the purpose of financing AllEnergy LLC's existing business. The interest rates and maturity dates of any debt security issued to an associate company of AllEnergy LLC will be designed to parallel the effective cost of capital of that associate company. The Applicants may also be required to supply guarantees or other credit support agreements for AllEnergy LLC in the ordinary course of its business including, without limitation, in connection with its execution of office leases, or of long term gas or electrical supply contracts. The Applicants request authorization to provide such guarantees or credit support in amounts not to exceed $20 million in the aggregate and inclusive of guarantees or credit support provided in connection with short-term borrowing, above.

Columbia Gas System, Inc., et al. (70–8965)

Columbia Gas System, Inc. (''Columbia''), 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191–3420, a registered holding company, and Columbia Gas of Maryland, Inc. (''Columbia Maryland''), 200 Civic Center Drive, Columbus, Ohio, 43215, a natural gas subsidiary company of Columbia, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 43 thereunder.

The application-declaration seeks Commission authorization for Columbia Maryland to refinance long-term debt.

By order dated December 22, 1994 (HCAR No. 26201), Columbia Maryland was authorized through 1996 to sell to Columbia securities (''Old Notes'') in an aggregate amount of up to $5.5 million. By order dated January 25, 1996 (HCAR No. 26462) (''Order''), Columbia and Columbia Maryland were authorized to change the type of securities Columbia Maryland would sell to Columbia (''New Notes'') and, in order to refinance all previously issued Old Notes, to increase the amount of New Notes to be sold to $19.5 million.

The Order authorized the exchange of Old Notes by Columbia Maryland for New Notes on or around December 31, 1995 as well as the future issuance of New Notes to meet the capital needs of Columbia Maryland in 1996. However, due to various administrative delays, the exchange of Old Notes never occurred.

The application-declaration now seeks Commission authorization for Columbia Maryland, on or around December 31, 1996, to exchange Old Notes sold to Columbia, which total approximately $18.0 million, for New Notes.

The New Notes will have a weighted average interest rate below that of the Old Notes. The maturities and interest

rates of the New Notes will mirror the seven series of debentures that were issued by Columbia upon emergence from bankruptcy (HCAR No. 26361). The New Notes will be governed by the terms of a loan agreement in certificated form and will be secured or unsecured.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30531 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22350; 812–10352]

Medallion Financial Corp.; Notice of Application

November 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Medallion Financial Corp.

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 61(a)(3)(B) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order approving applicant's 1996 Eligible Director stock option plan (the ''Director Plan'') and the grant of certain stock options thereunder.

FILING DATE: The application was filed on September 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 205 East 42nd Street, Suite 2020, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Director Plan and pursuant to the Director Plan, the automatic grant of options to purchase shares of applicant's common stock to each director who is not an employee, officer, or interested person (as defined in section 2(a)(19) of the Act) of applicant (''Eligible Director'') and to each new Eligible Director of applicant who may be elected or appointed in the future to applicant's board of directors. The Director Plan and a stock option plan for applicant's officers and employees, including employee directors, (the ''Employee Plan'') were approved by applicant's shareholders and board of directors at meetings held on May 22, 1996. Applicant will implement the Director Plan subsequent to receiving an order of the SEC (''Approval Date'').

2. Applicant's principal focus is the origination and servicing of loans financing the purchase of taxicab medallions and related assets. Applicant also originates and services commercial installment loans secured by retail dry cleaning and coin operated laundromat equipment and other targeted industries. Further, applicant also operates a taxicab rooftop advertising business. Applicant operates its businesses through four subsidiaries, Medallion Funding Corp., Edwards Capital Corp., Transportation Capital Corp., and Medallion Taxi Media, Inc. The first three companies are registered investment companies and licensed as small business investment companies by the Small Business Administration. Applicant is managed by its executive officers under the supervision of its board of directors and has retained FMC Advisers, Inc. (the ''Sub-Adviser'') as an investment adviser.

3. Each Eligible Director of applicant receives $10,000 a year for each year he serves, $2,000 for each board meeting attended, $1,000 for each committee meeting attended, $250 for each telephonic meeting in which he participates and reimbursement for related expenses. The Eligible Directors receive no other compensation for their services to applicant.

4. Under the two Plans, an aggregate of 850,000 shares of applicant's common stock have been reserved for issuance to applicant's directors, officers, and employees (750,000 shares are reserved under the Employee Plan and 100,000 under the Director Plan). The shares reserved for issuance under the two Plans constitute 10.3% of the 8,250,000 shares of applicant's common stock outstanding as of August 31, 1996 with the shares reserved for issuance under the Employee Plan constituting 9.09% and the shares reserved for issuance under the Director Plan constituting 1.21%. Eligible Directors are not eligible to receive stock options under the Employee Plan. Applicant has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted pursuant to the Employee Plan.

5. The Director Plan provides for ''Initial Grants'' and ''Automatic Grants.'' With respect to the Initial Grants, on the Approval Date the Eligible Directors serving at such time will be granted options to purchase the number of shares of common stock determined by dividing $100,000 by the current market value of the common stock, multiplied by the fraction that represents the portion of a full three-year term that the director has initially been elected to serve. After the Initial Grants have been made, all subsequent grants of options to Eligible Directors upon their election, reelection, or appointment to the board will be Automatic Grants. With respect to the Automatic Grants, at each annual meeting of applicant's shareholders after the Approval Date, each eligible director elected or re-elected to a three-year term will automatically be granted an option to purchase the number of shares of common stock determined by dividing $100,000 by the current market value of the common stock on the date of such election. Upon the election or appointment of an Eligible Director other than at an annual shareholder meeting, each such Eligible Director will automatically be granted an option to purchase that number of shares determined by (a) dividing $100,000 by the current market value of the common stock on the date of election and (b) multiplying the resulting quotient by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36.

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

6. Options granted under the Director Plan become exercisable at each annual meeting of shareholders (but not in the event applicant holds an annual meeting of shareholders in 1996) with respect to that number of shares that is determined by multiplying the number of shares covered by such option by a fraction, the numerator of which will equal the number of whole months elapsed since the most recent to have occurred of either (a) the date of the grant or (b) the last annual meeting of shareholders, and the denominator of which will be the number of whole months for which such director was elected. The exercise price of the options would be 100% of the current market value of applicant's common stock on the Nasdaq Stock Market at the date of grant, or if the stock is not so quoted at such time, then equal to the current net asset value of the common stock as determined in good faith by members of the board of directors not eligible to participate in the Director Plan.

7. Eligible Directors holding exercisable options under the Director Plan who cease to be eligible directors for any reason, other than death, may exercise the rights they had under such options at the time they ceased to be an eligible director for three months following the date on which such director ceased to be an eligible director. No additional options held by such directors shall become exercisable thereafter. Upon the death of a director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of death, to exercise in whole or in part any rights which were available to the director at the time of his or her death. The Director Plan will expire ten years after the Approval Date and each option will expire five years from the date of grant.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no such market exists, the current net asset value of such voting securities; (c) the proposal to issue such options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a) of the Investment Advisers Act of 1940, except to the extend permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Director Plan and the Initial and the Automatic Grants would meet the requirements of section 61(a). In addition, in support of its application, applicant states that its directors are actively involved in the oversight of applicant's affairs and that applicant relies on the judgment and experience of its directors. Further, applicant states that is directors have extensive and varied financial, regulatory, political, and legal experience which enhance applicant's ability to accomplish its investment objectives. Applicant states that the Director Plan will provide incentives to the Eligible Directors to remain on the board and devote their best efforts to the success of applicant's business.

5. Applicant submits that the terms of the Director Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. On the Approval Date, the number of applicant's voting securities that would result from the exercise of all options issued or issuable to applicant's directors, officers, and employees under both Plans is 850,000 shares of 10.3% of applicant's outstanding shares on August 31, 1996. Applicant submits that given the small number of shares of common stock issuable upon the exercise of options which may be granted under the Director Plan should not have a substantial dilutive effect on the net asset value of applicant's common stock. Further, the options will vest in three annual installments commencing with the first annual shareholders' meeting after the Eligible Director's election, appointment, or re-election, and only if the Eligible Director continues to serve on applicant's board of directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30612 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22347; File No. 812–10358]

NASL Series Trust, et al.

November 22, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for Exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: NASL Series Trust (''Trust''), The Manufacturers Life Insurance Company (''Manulife''), The Manufacturers Life Insurance Company of America (''Manulife America''), Manulife Series Fund, Inc. (''Manulife Series Fund''), Manufacturers Adviser Corporation (''Manufacturers Adviser''), North American Security Life Insurance Company (''Security Life''), First North American Life Assurance Company (''FNAL''), and NASL Financial Services, Inc. (''Financial Services'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 17(b) of the 1940 Act, granting an exemption from the provisions of Section 17(a) thereof, and pursuant to Rule 17d–1 of the 1940 Act, permitting certain transactions.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to permit the merger of each of the investment portfolios of Manulife Series Fund and into portfolios of the Trust that are existing or will be established (the ''Reorganization'').

FILING DATE: The application was filed on September 19, 1996, and amended on November 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 17, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o James D. Gallagher, Esq., 116 Huntington Avenue, Boston, Massachusetts 02116 and Sheri L. Kocen, Esq., 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end, series investment company registered pursuant to the 1940 Act. Shares of the Trust are sold only to insurance companies and their separate accounts as the underlying medium for variable annuity and variable life insurance contracts. Security Life, FNAL, and Manulife America and their separate accounts are the only shareholders of the Trust.

2. Manulife is a Canadian mutual life insurance company.

3. Manulife America, an indirect wholly-owned subsidiary of Manulife, is a stock life insurance company, organized under the laws of Pennsylvania, and redomesticated under the laws of Michigan.

4. Manulife Series Fund, a Maryland corporation, is an open-end, series, management investment company registered pursuant to the 1940 Act. Shares of Manulife Series Fund are sold only to Manulife America and its separate accounts as the underlying medium for variable annuity and variable life insurance contracts.

5. Manufacturers Adviser, a direct wholly-owned subsidiary of Manulife America, is registered pursuant to the Investment Advisers Act of 1940 (''Advisers Act'') as an investment adviser.

6. Security Life is a Delaware stock life insurance company.

7. FNAL, a wholly-owned subsidiary of Security Life, is a New York stock life insurance company.

8. Financial Services, a wholly-owned subsidiary of Security Life, is registered pursuant to the Advisers Act as an investment adviser and pursuant to the Securities Exchange Act of 1934 as a broker-dealer.

9. Applicants propose that each of the investment portfolios of Manulife Series Fund merge with and into an existing or to be established investment portfolio of the Trust. In the Reorganization, all of the assets and liabilities of each Manulife Series Fund portfolio will be transferred to a corresponding Trust portfolio having a substantially similar investment objective in exchange for shares of such Trust portfolio.

10. Shares of each Trust portfolio will be distributed to holders of shares of the respective corresponding Manulife Series Fund as follows:

Manulife series fund portfolio	Trust portfolio
Money-Market Fund	Money Market Trust
International Fund	International Stock Trust
Emerging Growth Equity Fund	Emerging Growth Trust
Balanced Assets Fund	Balanced Trust
Common Stock Fund	Common Stock Trust
Pacific Rim Emerging Markets Fund	Pacific Rim Emerging Markets Trust
Real Estate Securities Fund	Real Estate Securities Trust
Capital Growth Bond Fund	Capital Growth Bond Trust
Equity Index Fund	Equity Index Trust

11. Applicants represent that the total value of all shares of each Trust portfolio issued in the Reorganization will equal the total value of the net assets of the corresponding Manulife Series Fund portfolio being acquired by such Trust portfolio. The number of full and fractional shares of a Trust portfolio received by a shareholder of the corresponding Manulife Series Fund will be equal in value to the value of that shareholder's shares of the corresponding Manulife Series Fund portfolio as of the close of regularly scheduled trading on the New York Stock Exchange on the date of the Reorganization.

12. On September 27, 1996, the Board of Directors of Manulife Series Fund and the Board of Trustees of the Trust authorized and approved the Reorganization. The Reorganization will be submitted to a vote of the shareholders of the Manulife Series Fund for approval at a special meeting of shareholders scheduled to be held on December 20, 1996. The sole shareholder of the Manulife Series Fund at the record date for that meeting, October 23, 1996, was Manulife America. Manulife America will vote all shares of Manulife Series Fund in accordance with and in proportion to timely instructions received from owners of the variable contracts issued by it, the values of which were invested in shares of the Manulife Series Fund through the separate accounts at the record date. The Reorganization must be approved by a majority of the outstanding voting shares of each Manulife Series Fund portfolio. Under Massachusetts law, the Reorganization does not require the approval of the shareholders of the Trust.

13. Financial Services currently serves as investment adviser to the Trust. Manufacturers Adviser currently serves as investment manager of Manulife Series Fund. Following consummation of the Reorganization and pursuant to agreements with Financial Services: (a) Manufacturers Adviser will serve as subadviser to the six of the Trust portfolios—Money Market, Common Stock, Pacific Rim Emerging Markets, Real Estate Securities, Capital Growth Bond, and Equity Index Trusts; (b) Rowe Price-Fleming International, Inc. will serve as subadviser to the International Stock Trust; (c) Founders Asset Management, Inc. will serve as subadviser to the Balanced Trust; and (d) Warburg, Pincus Counsellors, Inc. will serve as

subadviser to the Emerging Growth Trust.

14. Manufacturers Adviser pays all expenses of Manulife Series Fund attributable to the Emerging Growth Equity Fund, Balanced Assets Fund, Capital Growth Bond Fund, Money-Market Fund, Common Stock Fund, and Real Estate Securities Fund except for investment management fees, brokerage commission, taxes, interest and other borrowing-related costs and extraordinary expenses. With respect to the International Fund, the Pacific Rim Emerging Markets Fund, and the Equity Index Fund, the respective portfolio pays investment management fees and the other expenses noted above, plus up to .50 percent, .65 percent, and .15 percent, respectively, of any additional expenses in connection with the operation of these portfolios.

15. Financial Services is responsible for performing or paying for various administrative services for the Trust. Advisory fees are reduced, or Financial Services reimburses the Trust, if the total of all expenses (excluding advisory fees, taxes, brokerage commission, interest, litigation and indemnification expenses, and other extraordinary expenses) applicable to a Trust portfolio exceeds an annual rate of .75 percent for the International Stock Trust and Pacific Rim Emerging Markets Trust, .15 percent for the Equity Index Trust, or .50 percent for all other Trust portfolios. The expense limitations continue in effect from year to year unless terminated upon notice to the Trust.

16. In determining whether to approve the Reorganization and recommend its approval to shareholders, the Board of Directors of Manulife Series Fund (including the directors who are not ''interested persons'' of the Manulife Series Fund, with the advice and assistance of independent legal counsel) considered various factors, including: (a) The advantages to shareholders of investing in a series fund with a modern strategy of offering investment opportunities that address investor needs at multiple risk/reward levels; (b) the capability of Financial Services to offer flexibility and the potential for greater and more diverse investment opportunities; (c) the multiple manager approach by which Financial Services monitors and evaluates subadviser performance, investment compliance, and capabilities with the goal of maintaining high quality and an appropriate balance of investment alternatives; (d) expense ratios and available information regarding the fees and expenses of each Manulife Series Fund portfolio and each corresponding Trust portfolio, as well as of similar funds; (e) the fact that Financial Services has agreed to limit the total expenses of certain of the Trust portfolios for one year following the Reorganization to a level no higher than the existing levels of total expense of the corresponding Manulife Series Fund portfolios; (f) the sophistication and specialization of the new subadvisers for certain of the Trust portfolios; (g) the compatibility of the investment objectives, policies, restrictions, and portfolios of each Manulife Series Fund portfolio and each corresponding Trust portfolio; (h) the advantages to each Manulife Series Fund portfolio of investing in potentially larger asset pools with greater diversification; (i) the historical performance of the Manulife Series Fund portfolios and the NASL Money Market Trust, as well as of each portfolio's respective investment adviser and subadviser where relevant; (j) the terms and conditions of the Reorganization and whether the Reorganization would result in dilution of shareholder or contractholder interests; (k) portfolio transaction policies of the Manulife Series Fund portfolios and the Trust portfolios; (l) any direct and indirect costs incurred by each Manulife Series Fund portfolio and each corresponding Trust portfolio as a result of the Reorganization; (m) tax consequences of the Reorganization; and (n) possible alternatives to the Reorganization.

17. In determining whether to approve the Reorganization and recommend its approval to shareholders, the Board of Directors of Manulife Series Fund concluded that the participation of each Manulife Series Fund portfolio in the Reorganization is in the best interests of such portfolio, as well as its shareholders and contract holders whose contract values are invested in shares thereof, and that the interest of existing shareholders and contractholders will not be diluted as a result of such participation. That conclusion was based on various consideration, including that the Reorganization will: (a) Enable contractholders to take advantage of an investment management approach known as managing to the ''efficient frontier'' in which investors allocate their assets among a broad mix of investment choices consistent with their risk tolerance levels with the goal of maximizing their risk adjusted investment return; (b) allow shareholders to receive the investment advisory services of Financial Services and its multiple manager approach to portfolio management; and (c) permit shareholders of the Money-Market Fund portfolio of Manulife Series Fund to pursue substantially the same investment goals in a larger fund immediately following the consummation of the Reorganization.

18. Although the expense ratios of five of the Trust's portfolios are higher than the expense ratios of the corresponding Manulife Series Fund portfolios, the Board of Directors of Manulife Series Fund determined that the higher expense ratios are consistent with current industry standards and justified in light of the change in portfolio management of such portfolios and certain agreements with Financial Services to limit for a period of one year following the consummation of the Reorganization certain expense ratios.

19. The Board of Trustees of the Trust determined to approve the Reorganization because it would result in an increase in the total assets of the Trust, and would provide initial assets for new Trust portfolios to be offered after the Reorganization.

Applicants' Legal Analysis

Section 17(a)

1. Section 17(a) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly from selling or purchasing any security or other property to or from such investment company.

2. Section 2(a)(3) of the 1940 Act, in part, defines an ''affiliated person'' of another as ''the person directly or indirectly controlling, controlled by, or under common control with, such other person.'' Section 2(a)(9) of the 1940 Act defines ''control'' in part to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.''

3. The Trust and Manulife Series Fund may be deemed to be affiliated persons of each other or affiliated persons of affiliated persons under Section 2(a)(3) of the 1940 Act. Section 17(a), therefore, may prohibit the transactions required to effect the Reorganization.

4. Section 17(b) of the 1940 Act provides that the Commission may grant an order of exemption from the provisions of Section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction

is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed pursuant to the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

5. Applicants request, pursuant to Section 17(b) of the 1940 Act, an exemption from the provisions of Section 17(a) to permit the Reorganization.

6. The exchange of assets of the Manulife Series Fund portfolios for shares of capital stock of the Trust portfolios will be accomplished on the basis of the net asset value of the respective portfolios; Applicants assert that the Reorganization will therefore not dilute the interests of existing shareholders or contract owners.

7. In determining whether to approve the Reorganization, the Board of Directors of Manulife Series Fund and the Board of Trustees of the Trust found, after considering the factors summarized above, that the terms of the transactions proposed to accomplish the Reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned.

8. The proposed Reorganization has been reviewed by the Board of Directors of Manulife Series Fund and the Board of Trustees of the Trust for consistency with the policies of both the Manulife Series Fund and the Trust. Although the Manulife Series Fund and the Trust have different investment advisers, Applicants assert that they are substantially similar investment vehicles.

9. Applicants assert that the Reorganization is consistent with the general purposes of the 1940 Act and will not result in any of the abuses that the 1940 Act was designed to prevent.

Rule 17d–1

10. Section 17(d) of the 1940 Act prohibits an affiliated person of a registered investment company from effecting any transaction in which the company is a joint participant in contravention of Commission rules.

11. Rule 17d–1(a) prohibits an affiliated person of any registered investment company, acting as principal, from participating in or effecting any transaction in a ''joint enterprise or other joint arrangement'' in which the company is a participant without prior Commission approval.

12. Rule 17d–1(b) provides that when the Commission is passing upon exemptive applications it is to ''consider whether the participation . . . in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the [1940] Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.''

13. The expenses of the Reorganization (other than registration fees payable for the registration of shares of each Trust portfolio issued in connection with the Reorganization, which will be payable by such Trust portfolio) will be borne by Financial Services and one or more insurance companies that are affiliates of Manulife Series Fund or the Trust.

14. Applicants assert that the bearing of expenses of the Reorganization by Financial Services and one or more insurance companies that are affiliates of Manulife Series Fund or the Trust could be regarded as a joint enterprise. Applicants therefore request exemptive relief pursuant to Rule 17d–1 of the 1940 Act.

15. As summarized above, Applicants assert that the terms of the proposed transactions are consistent with the policies, provisions, and purposes of the 1940 Act because they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment objectives and policies of each portfolio of Manulife Series Fund and of the Trust participating in the proposed transactions. The participation in the Reorganization by each portfolio will be at respective net asset value, and not on a basis different from or less advantageous than that of other participants. Contract owners of each Manulife Series Fund portfolio will have the opportunity to provide voting instructions regarding approval of the Reorganization.

16. Applicants also assert that the participation by affiliates of Manulife Series Fund and the Trust in the transaction is consistent with the requirements of Rule 17d–1. Applicants note that to the extent that expenses of the Reorganization are borne by affiliated insurance companies rather than Financial Services, no benefit will accrue to such affiliates. Moreover, Applicants note that payment of expenses of the Reorganization by Financial Services and the affiliated insurance companies will reduce expenses that would otherwise be payable by the Manulife Series Fund portfolios.

Conclusion

For the reasons summarized above, Applicants submit that the terms of the Reorganization meet the conditions for exemptive relief established by Section 17(b) of the 1940 Act and Rule 17d–1 thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30529 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37973; International Series Release No. 1031; File No. SR–AMEX–96–36]

November 22, 1996.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc., Relating to the Policy of the Amex Regarding Information Obtained Pursuant to the SEC's Memorandum of Understanding With the CONSOB

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 2, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. Amex submitted Amendment No. 1 to the filing on November 12, 1996.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the Amex is submitting this rule filing to adopt an official Exchange policy concerning the circumstances and conditions under which the Exchange, in order to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities, may obtain access to information regarding activity on the Italian securities market obtained by the SEC pursuant to the Commission's Memorandum of Understanding (''MOU'') with the Commissione Nazionale per le Societa e law Bortsa (''CONSOB'').

[1] On November 12, 1996, Amex submitted Amendment No. 1 to its proposed rule filing, making several clarifications to the original filing. *See* Letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Michael Walinskas, Senior special Counsel, Division, Commission , dated November 7, 1996.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex does not have a surveillance sharing agreement with the Milan exchange which is an unincorporated association and is not able under Italian law to enter into such an arrangement. Therefore, the purpose of the proposed rule change is to enable the Amex to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC pursuant to the SEC's MOU with CONSOB. The Exchange's proposed policy details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC. By adopting this policy, therefore, the Exchange believes it will be in a position to list derivative products containing Italian component securities because it will be able to have access to information on the underlying securities which it may need for enforcement or market surveillance purposes.[2]

The Exchange's proposed policy provides that the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The SEC, in turn, pursuant to the MOU, may request the CONSOB's assistance in gaining access to such information. The Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Exchange. The Exchange will also undertake to maintain the confidentiality of the information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate. In this regard, two articles of the MOU detail the agreement on confidentiality:

Article 7: Permissible Use of Information

1. The requesting Authority may use the information furnished solely:

(a) for purposes stated in the request, including ensuring compliance with or enforcement of the legal provisions specified in the request; or

(b) for purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding; assisting with a self-regulatory enforcement proceeding or market surveillance; and assisting in a proceeding, including a proceeding whose purpose is to permit a subsequent criminal prosecution or conducting any investigation related thereto for any general charge applicable to the violation of the provision specified in the request.

2. To use the information furnished for any purpose other than those stated in paragraph 1 of this Article, the requesting Authority must first inform the requested Authority of its intention and provide it the opportunity to oppose the use. If, under such conditions, the requested Authority does not oppose the use of the information for purposes other than those stated in paragraph 1 of this Article, it may subject to the use of the information to certain conditions. If use of the information is opposed by the requested Authority, the authorities intent to consult pursuant to Article 9 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Article 8: Confidentiality of Requests

1. Each Authority shall keep confidential, to the extent permitted by law, requests made within the framework of this Understanding, the contents of such requests, and any other matters arising during the operation of this Understanding, including consultations between the Authorities.

2. The requesting Authority shall keep confidential any information received pursuant to this Understanding to the same extent as such information would be kept confidential in the territory of the State of the requested Authority, except in the case where the information provided must be disclosed in the course of its use pursuant to Article 7 above.

3. The Authorities may, by mutual arrangement, make an exception to the principles set forth in paragraphs 1 and 2 above, to the extent permitted by the law applicable to each Authority.

By adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, the Exchange will be able to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange believes that the proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] The Commission notes that all Amex-listed securities, including options and other derivative securities products, must meet all applicable listing and maintenance standards. This filing only addresses trading requirements relating to necessary surveillance sharing procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File Number SR–AMEX–96–36 and should be submitted by December 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30613 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

(Release No. 34–37968; File No. SR–CBOE–96–66)

November 20, 1996.

Self-Regulatory Organizations; Notice of Filing and Summary Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Changing the Designated Reporting Authority for the Exercise Settlement Values of Yield-Based Options on Treasury Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule filing changes the designated reporting authority for the exercise settlement values of yield-based options on Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the designated reporting authority for closing exercise settlement values of yield-based options on Treasury securities (referred to herein as ''interest rate options'') from the Federal Reserve Bank of New York (''FRBNY'') to GovPX (''GovPX'') a leading independent provider of financial data. On October 3, 1996, the FRBNY announced that it was discontinuing dissemination of its Composite 3:30 p.m. Quotations for U.S. Government Securities. FRBNY disseminated its last Composite Quotation on Tuesday, October 15, 1996. In accordance with the designation of FRBNY as the reporting authority for exercise settlement values of interest rate options in Interpretation and Policy .01 under Rule 23.1, CBOE had previously used FRBNY quotations to determine the exercise settlement values of interest rate options on the yield of the most-recently auctioned 90-day, five-year, ten-year and thirty-year government securities (IRX, FVX, TNX, and TYX, respectively).

Since FRBNY is no longer disseminating these values, CBOE has determined to designate GovPX as the replacement reporting authority, and proposes to amend Interpretation and Policy 23.1.01 to reflect this designation and to make a conforming amendment to Interpretation and Policy 23.1.02. CBOE will use the 3:00 p.m. (Eastern time) yield quotations disseminated by GovPX on the last trading day prior to the expiration of interest rate options as the basis for the exercise settlement values that it will report to OCC in accordance with CBOE rules.

CBOE has been advised that yield quotations disseminated by GovPX are based on quotations of bids and offers in the Treasury securities market that GovPX obtains from five of the six inter-dealer brokers in that market (Garban, Hilliard Farber, Liberty, RMJ, and Tullett). The bids and offers from these five inter-dealer brokers represent the best bids and offers for each Treasury security obtained from 38 primary dealers.[1] At 3:00 p.m. each day GovPX selects the best bid and best offer for each Treasury security from those provided by the five inter-dealer brokers. GovPX then disseminates that best bid and offer, and a average, for each Treasury security. CBOE uses that average as its exercise settlement value for expiring interest rate options.[2] CBOE understands that FRBNY itself is now using GovPX yield quotes for its own internal purposes, instead of the Composite Quotes that it used to obtain from a daily survey of dealers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objective of Section 6(b)(5) in particular in that by providing a reliable source for determining the exercise settlement values of interest rate options when the reporting authority previously relied upon for this purpose has discontinued reporting such values, it will facilitate exercise transactions in these securities and will therefore protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

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[3] 17 CFR 200.30–3(a)(12).

[1] Inter-dealer brokers are brokers' brokers. They broker transactions between primary dealers in Treasury securities. In this role they are well placed to observe market conditions.

[2] Telephone conversation between Eileen Smith, CBOE, and Steve Youhn, SEC, and Heather Seidel, SEC, on November 19, 1996.

[3] 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been put into effect summarily under Section 19(b)(3)(B) of the Act and publication of notice is being made, pursuant to the requirement of Section 19(b)(3)(B) of the Act that proposed rule changes put into effect summarily be filed thereafter in accordance with the provisions of Section 19(b)(1).[4] The rule change was put into effect summarily pursuant to Section 19(b)(3)(B) of the Act because such action was necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds.[5] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–66 and should be submitted by December 23, 1996.

[4] The Commission notes that the proposed rule change was summarily approved on October 17, 1996. Telephone conversation between Michael Meyer, outside counsel to CBOE, and Howard Kramer, Senior Associate Director, SEC, on October 17, 1996.

[5] The Commission notes that the change ensured that there was a settlement value available for the yield-based options on Treasury securities. *See* discussion *supra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30530 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37976; File No. SR–NSCC–96–15]

November 25, 1996.

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change To Process Corporate Reorganizations Involving Elections Through NSCC's Continuous Net Settlement System

On August 7, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 9, 1996, and October 1, 1996, NSCC amended the proposed rule change.[2] Notice of the proposal was published in the Federal Register on October 21, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Through its CNS Reorganization Processing System, NSCC offers its members a service whereby they can process within NSCC's CNS system transactions in certain securities undergoing corporate reorganizations (hereinafter collectively referred to as ''tender offers''). With this rule change, NSCC will expand this service to allow its members to obtain a guarantee of performance pursuant to the terms of tender offers which require shareholders to make an election between two types of assets (*e.g.*, stock or cash) through NSCC's CNS system.

Generally, a person who wishes to participate in a tender offer must notify the tenderer of its decision prior to the expiration of the tender offer. All shares to be exchanged in the tender offer must be delivered to the tenderer prior to the end of the protect period, which is typically three days after the end of the expiration of the offer.[4] However, participants with long positions at NSCC (''long participants'') are dependent upon the delivery of the securities by participants with short positions at NSCC (''short participants'') prior to the end of the protect period. If short participants do not deliver in time, the long participants are not able to participate in the offer.

Under its current service, NSCC guarantees to participants with long positions in some securities subject to a tender offer the delivery of funds or securities pursuant to the terms of the tender offer. If a long participant has elected to use this service and to have NSCC guarantee the delivery pursuant to the terms of the tender offer, certain short participants will be liable for delivery to the long participant of the consideration the long participant would have received pursuant to the terms of the tender offer. The rule change expands this service and provides members with long positions in securities subject to a tender offer with an election as to consideration to receive protection for receipt of the tender offer consideration.

Once NSCC receives timely notification of a tender offer and starting two business days prior to the expiration of an offer, long participants and short participants with positions in the subject security will receive information regarding the offer each business day on the CNS reorganization information report. On the day prior to the expiration of the protect period in a tender offer with an option as to the consideration to be received, long participants will be permitted to elect their preferences (*e.g.*, cash or securities) by submitting electronic instructions to NSCC through DTC's PTS Terminal system. Such participants will receive a preliminary protection report. On the same day, NSCC will issue a report to short participants advising them of their potential liability in the security if delivery is not made by the next business day.

If enough short participants deliver securities prior to the close of business of the day the protect period expires, NSCC will redeliver these securities to long participants. Such participants can then participate in the tender offer outside the facilities of NSCC. If not enough short participants deliver securities to meet all delivery

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Julie Beyers, Associate Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (August 8, 1996, and September 27, 1996, as revised October 1, 1996).

[3] Securities Exchange Act Release No. 37818 (October 11, 1996), 61 FR 54695.

[4] The purpose of the protect period is to accommodate persons who purchase securities on the expiration date with the intention of participating in the tender offer. Such persons generally will not receive the securities to forward to the tenderer until the settlement date three business days later.

obligations to the long participants, NSCC will issue to the remaining long participants a final protection report and will issue to the remaining short participants a final liability report, both of which will reflect open positions remaining as of the close of business of that day.

At the expiration of the protect period, NSCC will establish two CNS subaccounts representing the alternative forms of consideration for each security subject to a tender offer. All open positions for which a long participant has made an election will be moved into the appropriate CNS reorganization subaccount. The short participants will immediately be charged a mark based on the difference between the market value of the subject securities and the consideration, and NSCC will retain such funds.[5] In addition, the long positions and short positions will continue to be marked to the market daily. Positions in a CNS subaccount will be frozen until the payable date for the tender offer (*i.e.*, short participants may not deliver in the securities).

On payable date, the subaccounts will be closed. NSCC will credit the general CNS account of long participants with either the securities or cash that they have elected to receive. NSCC will debit the general account of short participants with either the cash or securities they have been assigned to deliver. NSCC also will credit the account of short participants with the marks to the offer price being retained by NSCC.

Some offers have limits on how many of the subject securities the offeror will accept or what percentage of consideration will be paid in cash or securities. At the end of the protect period of such offers, the offeror will reject on a pro rata basis excess securities. NSCC will similarly only hold short participants liable to the extent securities would have been accepted by the tenderer.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to facilitate the prompt and accurate settlement of securities transactions. The Commission believes that NSCC's proposal is consistent with this goal because the proposal provides an incentive to short participants to meet their settlement obligations on a timely basis. Short participants that fail to meet their delivery obligations as required become liable for the economic benefits long participants lose in connection with tender offers. Furthermore, by processing the deliver and receive obligations created through the guarantee through NSCC's CNS system, the proposal will allow such obligations to be netted against other obligations of the participants. By reducing the number of settlement obligations through the netting process, the proposal facilitates the prompt and accurate settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular 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 change (File No. SR–NSCC–96–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30614 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[5] In the case of a long participant selecting cash as consideration, the corresponding short participant will be charged the difference between the cash offered in the tender offer and the market price of the securities. In the case of a long participant selecting securities as consideration, the corresponding short participant will be charged the difference between the market value of the subject securities and the market value of the consideration securities.

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[Release No. 34–37974; File No. SR–PHLX–96–42]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Limiting Time for Submission of Settlement Offers

November 22, 1996.

On September 27, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends PHLX Rule 960.7, ''Offers of Settlement,'' to limit the time when a respondent may submit a written settlement offer to the PHLX's Business Conduct Committee (''BCC'') to within 120 calendar days immediately following the date of service of the statement of charges upon the respondent.

Notice of the proposed rule change was published for comment in the Federal Register on October 23, 1996.[3] No comments were received on the proposal. This order approves the proposed rule change.

Currently, PHLX Rule 960.7 allows a respondent in any proceeding under the PHLX's disciplinary rules to submit a written settlement offer to the Exchange's BCC at any time during the course of the proceeding. The Exchange proposes to amend PHLX Rule 960.7 to limit the time when a respondent may submit a written settlement offer to the BCC to within 120 calendar days immediately following the date of service of the statement of charges upon the respondent in accordance with PHLX Rule 960.11, ''Service of Notice and Extension of Time Limits.'' Under the proposal, the Exchange may schedule a hearing during the 120-day period immediately following the date of service of the statement of charges or as soon as practicable thereafter.

The purpose of the proposal is to adopt a time limit during which respondents involved in a disciplinary matter before the PHLX's BCC may submit settlements offers. Because PHLX Rule 960.7 currently allows settlement offers to be submitted at any time, the BCC was concerned that respondents could intentionally submit inadequate offers of settlement for the sole purpose of delaying a scheduled hearing until the offer is reviewed by the full BCC. The proposal will allow the BCC to schedule hearings after the 120-day period knowing that there will not be last minute requests for continuances based upon late offers of settlement.

Under proposed Interpretation and Policy .01, the BCC may schedule a hearing during the 120-day period immediately following the date of service of the statement of charges on the respondent.[4] The BCC will continue to have the ability to entertain settlement offers after the 120-day period if its review does not delay the scheduled hearing in the matter.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to prevent

[7] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] Securities Exchange Act Release No. 37838 (October 17, 1996), 61 FR 55062.

[4] Under PHLX Rule 960.5, ''Hearing,'' a respondent must be given at least 15 business days notice of the time of a hearing.

fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by allowing for more expeditious completion of disciplinary matters.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[5] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 6(b)(7) of the Act because it provides a fair procedure for disciplining members.[6] Specifically, by limiting the time allowed for the submission of settlement offers, the Commission believes that the proposal should facilitate the PHLX's efforts to provide prompt, effective, and meaningful discipline for violations of Exchange rules and the federal securities laws. In addition, by minimizing opportunities for delay, the proposal should help to preserve evidence and the availability of witnesses, thereby enhancing the quality, consistency, and fairness of the Exchange's disciplinary proceedings and enabling the PHLX to better enforce compliance by its members with the Exchange's rules and the federal securities laws. By facilitating the prompt resolution of disciplinary proceedings, the proposal also will promote efficiency in the use of the Exchange's resources.

The PHLX states that because PHLX Rule 960.7 currently allows settlement offers to be submitted at any time, the Exchange's BCC was concerned that respondents could intentionally submit inadequate offers of settlement for the sole purpose of delaying a scheduled hearing until the offer is reviewed by the full BCC. The Commission believes that the proposed time limit for submitting settlement offers should allow the PHLX's disciplinary proceedings to progress promptly by preventing members from submitting inadequate settlement offers in order to delay a hearing.

At the same time, the Commission believes that the proposal protects members' rights to fair procedures in Exchange disciplinary proceedings. Specifically, the proposal allows respondents to submit settlement offers[7] up to 120 days following the date of service of a statement of charges upon the respondent.[8] Although a hearing may be scheduled during the 120-day period, PHLX Rule 960.5 provides that a respondent must be given at least 15 business days notice of the time of a hearing. Accordingly, the Commission believes that the proposal preserves a respondent's right to submit settlement offers and provides a respondent with adequate time to submit settlement offers, thereby providing a fair procedure for the disciplining of members, consistent with Section 6(b)(7).

Finally, the Commission notes that the rules of the Chicago Board Options Exchange, Inc. (''CBOE'') also provide a 120-day period for submitting settlement offers.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–96–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30526 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78f(b)(5) (1988).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] A respondent may submit more than one settlement offer during the 120-day period. Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on October 2, 1996.

[8] The proposal allows the BCC to consider settlement offers submitted after the 120-day period as long as consideration of an offer does not delay the hearing in the matter.

[9] *See* CBOE Rule 17.8(a), ''Offers of Settlement.''

[10] 15 U.S.C. § 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37977; File No. SR–PHLX–96–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Incorporated, Relating to Amending Floor Procedure Advice F–24, The Wheel

November 25, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 11, 1996,[1] the Philadelphia Stock Exchange Incorporated (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Floor Procedure Advice (''Advice'') F–24, AUTO–X Contra-Party Participation (''The Wheel''), to: (1) eliminate most of the sign-on and sign-off provisions; (2) rotate the Wheel in two, five and ten lot increments, depending on the size of the trading crowd's AUTO–X guarantee, as opposed to ten lot increments, as is currently stated in Advice F–24; (3) permit two Floor Officials to require all assigned ROTs to participate on the Wheel; and (4) update the text with minor revisions. The Wheel is an automated mechanism for assigning floor traders (Specialists and Registered Option Traders (''ROTs'')) on a rotating basis, as contra-side participants to AUTO–X orders. AUTO–X is the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') system,[3] which provides customers with automatic executions of

[1] On November 20, 1996, the PHLX filed Amendment No. 1 with the Commission. Amendment No. 1 constitutes a substantive change in the proposal in that it redesignates the proposal as a ''noncontroversial'' rule filing under Rule 19b–4(e)(6) rather a 19b–4(e)(5). The amendment also states that the Exchange intends to monitor the operation of the Wheel for excessive sign-on and sign-off practices by ROTs, and that Wheel participation is mandatory for specialists. *See* Letter from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, PHLX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated November 19, 1996.

[2] The Exchange has requested that this proposal be implemented on December 13, 1996. The Exchange has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of the filing.

[3] AUTOM is an electronic order routing system for options orders.

eligible option orders at displayed markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Wheel provisions were approved by the Commission in 1994 as Advice F–24.[4] These provisions do not currently appear in any other Exchange rules.[5] The purpose of the Wheel is to increase the efficiency and liquidity of order execution through AUTO–X by including all floor traders in the automated assignment of contra-parties to incoming AUTO–X orders. The Wheel is intended to make AUTO–X more efficient, as contra-side participation will be assigned automatically, and no longer be entered manually. The Wheel is also intended to promote liquidity by including ROTs, as opposed to solely specialists, as a contra-side to AUTO–X orders.

The Exchange does not believe that the proposed amendments will impair the price or time of the AUTO–X executions or the quality of markets for PHLX-listed options. The Wheel affects only who the contra-side participant may be, not the process, price or time of the actual execution. The Exchange does not believe that the market making and AUTO–X burden of the specialists will be increased by Wheel implementation, even if a particular Wheel only consists of specialist participation. For example, the Exchange does not believe that a specialist, alone on the Wheel, would disseminate wider markets, because the specialist would only be impairing his own business and reputation as a specialist. Also, AUTO–X volume represents a small percentage of Exchange options volume. In addition, the Exchange notes that quote spread parameters help ensure that markets remain within certain limits. In fact, with the Wheel in effect, specialists will be freed of the manual process of inserting ROTs at parity as contra-side participants, which may better enable specialists to monitor and perhaps improve markets.

Due to technical delays associated with balancing various option automation projects, the Wheel has not yet been implemented, but is currently scheduled for implementation by the end of 1996. The Exchange continues to believe that the Wheel offers important benefits to AUTO–X participants, as stated above.

Currently, respecting AUTO–X orders, as stated in the proposal to adopt the Wheel, floor trader contra-side participation defaults to the account of the specialist if no step is taken to manually add the participation of an ROT. The specialist is the party who manually enters ROT participation. ROTs are eligible for participation when they have established priority or parity at the execution price. Consequently, before contra-side information can be added, the trading crowd has to resolve among itself which floor trader(s) had priority or parity at the execution price. Quite often, several floor traders are on parity, thus requiring keypunch entries for each such trader. The more contra-side participants that must be added to a trade, the more of a delay there is in processing the participant information to the trade and the more the process becomes prone to keypunch errors and additional manual paperwork. The implementation of the proposed rule change to the Wheel will automatically include eligible ROTs in AUTO–X executions according to a specific rotation procedure, thus reducing the *manual* inclusion of ROTs as contra-side participants. An additional result of the change will be that ROTs on parity who are not signed-on the Wheel will not participate in AUTO–X trades. The Exchange believes that the inability of ROTs at parity to participate in AUTO–X trades absent Wheel participation will be a strong incentive for Wheel sign-on.

Several changes to the Wheel are proposed at this time, as listed above. First, certain sign-on and sign-off provisions are being deleted in order to encourage maximum participation on the Wheel. Currently, in order to be placed on the Wheel for an entire trade day, PHLX requirements state that the respective ROT must sign-on, in person on the trading floor for that listed option by no later than 9:30 AM on that day. If not signed on by 9:30 A.M., an ROT may be added to the Wheel for all or any portion of the half-day session, commencing at 12:30 P.M., by signing-on in person at any time during that morning session. An ROT may sign-off the Wheel at any time during the trade day. An ROT signed-on for an entire day may sign-off up to twice during that day and still be eligible to sign-on again on that day, but a third sign-off in the same day will cause that ROT to become ineligible for the Wheel for the remainder of that trade day. An ROT who has signed-on for the half-day session may sign-off once during that session and still be eligible to sign-on again for that session, but a second sign-off during that half-day session will cause that ROT to be ineligible for the Wheel for the remainder of that session.

The limitations on the number of sign-ons and sign-offs per day as well as the requirement that an ROT sign-on by 9:30 A.M. are being deleted. The Exchange does not want to limit Wheel participation by imposing stringent sign-on/sign-off requirements. However, the Exchange realizes that if experience gained through operation of the Wheel demonstrates that such requirements are needed, the Options Committee will consider such changes. Certain provisions concerning sign-on and sign-off will remain in effect. ROTs will continue to be subject to certain log-on requirements, including that an ROT sign-on in person on the trading floor in individual listed options. Sign-offs are effective immediately for all options for which the ROT is on the Wheel, and a sign-off shall be effective immediately upon being processed for deletion in the system. Also, no two associated or dually affiliated ROTs may be on the Wheel for the same option at the same time. In addition, to address the concern expressed by the Commission that ROTs fulfill their market making obligations, the Exchange will monitor the operation of the Wheel for indications of excessive sign-on and sign-off practices by ROTs, through terminal access to sign-on and sign-off information for each ROT and the next-day reports.

The Exchange emphasizes that the specialist's obligations respecting AUTO–X and the Wheel are obligatory and central to the specialist function. Floor Procedure Advice (''Advice'') A–13 requires specialists to engage AUTO–X within three minutes of completing an opening or reopening rotation. This means that AUTO–X participation is required for specialists. Advice F–24 concerning the Wheel also specifically states that specialists on the options floor are required to participate on the

[4] Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994).

[5] Separately, the Exchange intends to incorporate the Wheel provisions, as amended, into an AUTOM Rule.

Wheel in assigned issues. Also, the mandatory nature of the Wheel for specialists was stated in the original proposed rule change to adopt the Wheel and in the Commission's approval order.[6]

Second, the purpose of amending the Wheel rotation and assignment process is to expand the number of automatic participants to each AUTO–X trade. Currently, paragraph (e) details the rotation of trades among Wheel participants. Specifically, the specialist receives the first execution of the day in each respective listed option. Thereafter, the Wheel would have rotated among participants in ten-lot increments. For those AUTO–X orders greater than ten contracts, each additional ten-lot or remaining portion thereof would have been assigned to the next individual Wheel participant. Under the proposal, the Wheel will rotate in increments depending upon the size of the crowd's AUTO–X guarantee, as follows:

1–10 contracts	Every 2 contracts.
11–25 contracts	Every 5 contracts.
26 and more	Every 10 contracts.

For customer orders, Phlx Rule 1033(a) requires that markets be firm for ten contracts, which serves as the minimum AUTO–X guarantee. The fact that the Wheel will begin its rotation in a random place each day after the specialist's first execution of the day is being added into the provision. The maximum size of an AUTO–X guarantee is 50 contracts.[7] The remainder of the provision remains unchanged, such that if there are five or more ROTs signed onto the Wheel, the specialist will receive every fifth execution, in addition to being assigned to the first AUTO–X order in the option.

The Options Committee has determined that this rotation process should encourage Wheel participation and allot trades more fairly by dividing each trade among more participants, such that each participant will participate in a greater number and variety of AUTO–X executions. As an example of the proposed rotation process, in AQL, for which the guarantee is ten contracts, a ten lot AUTO–X order would be split evenly among five Wheel participants, or where there are only two participants, the split would be six contracts and four contracts, respectively. A 50 lot AUTO–X order received in FNM options would also be split among five participants, due to its 50-up guarantee. The Exchange notes that the size of the AUTO–X guarantee is displayed in the trading crowd along with the markets for the option as well as published periodically as an Exchange memorandum to the options membership.

Thirdly, paragraph (d) currently permits a Floor Official to modify the aforementioned sign-on/sign-off procedures in extraordinary circumstances. The Exchange is proposing to add the ability of two Floor Officials to require Wheel participation in extraordinary circumstances. This ability is limited to ROTs assigned in that option and situations where liquidity is required. Stating that two Floor Officials may require *all* assigned ROTs to sign-on the Wheel is intended to prevent unfairly singling out certain ROTs; where liquidity is needed, all assigned ROTs should be obligated to participate on the Wheel. This new requirement is consistent with the affirmative market making obligations imposed by Rule 1014. Thus, implementing the Wheel should promote just and equitable principles of trade and investor protection.

Lastly, the Exchange is proposing to modify certain language in Advice F–24 for clarity, such as adding paragraph headings.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Act in general, and in particular, with Section 6(b)(5), in that the amendments are designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest, by promoting ROT participation as contra-parties to AUTO-X trades and reducing opportunities for keypunching errors through increased automation. The Exchange believes that the proposed amendments to Wheel procedures should encourage Wheel participation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a ''noncontroversial'' rule change pursuant to paragraph (e)(6) of Rule 19b–4.[9] Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (e)(6) of Rule 19b–4 thereunder.

The proposed rule change was originally submitted to the Commission on November 11, 1996. However, the submission of substantive Amendment No. 1 on November 20, 1996 delays the statutorily required implementation date to December 20, 1996.[11] The Commission is shortening the 30 day delayed implementation period to allow the rule change to be implemented on December 13, 1996. The Commission believes that accelerated implementation is appropriate in order to prevent any longer delay to the PHLX's implementation of the Wheel, a program that has already been delayed for two years since its original approval. The Commission believes that further delay would not be beneficial to the protection of investors or the public interest.

At any time within 60 days of the filing of such proposed rule change,[12] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[6] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) at n.9.

[7] Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 18, 1996).

[8] 15 U.S.C. 78f(b).

[9] 17 CFR 240.19b–4(e)(6).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] The Commission notes that any substantive amendment to a proposed rule change filed under section (e)(6) of Rule 19b–4 causes the thirty day delayed implementation period to be restarted, from the date of the filing of the amendment. *See* Securities Exchange Act Release No. 35123 (December 28, 1994), 59 FR 66692 (December 28, 1994).

[12] The 60 day abrogation period commences from November 20, 1996, the date of the submission of substantive Amendment No. 1.

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–96–49 and should be submitted by December 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–30611 Filed 11–29–96; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2420]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its January 9, 1995—December 15, 1995 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III (c) of the guidelines published in the Federal Register on March 23, 1979.

Dated: July 30, 1996.

Frank R. Provyn,

Managing Director, Office of International Conferences.

United States Delegation to the Telecommunications Standardization Advisory Group (TSAG) and Joint Meeting of Telecommunications Standardization Advisory Group and the Radiocommunications Advisory Group (RAG), International Telecommunication Union (ITU), Geneva, January 23, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Douglas V. Davis, Attorney Adviser, International Bureau, Federal Communications Commission

Ali Ghovanlou, Senior Telecommunications Adviser, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

William Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

Richard P. Brandt, DB Consulting, Annandale, New Jersey

Raymond B. Crowell, Director, Industry and Government Planning, COMSAT Corporation, Bethesda, Maryland

Gary Fishman, Technical Standards Director, AT&T, Bedminster, New Jersey

Otto J. Gusella, Executive Director, Alliance for Telecommunications Industry Solutions (ATIS), Washington, D.C.

George Helder, Consultant, Picturetel Corporation, Moraga, California

Richard Holleman, Director, Standards Practices, IBM Corporation, Purchase, New York

Anita Kaufman, MCI Corporation, Rye Brook, New York

Roger Nucho, Director of Standards, Bell Atlantic, Arlington, Virginia

Arthur Reilly, BELLCORE, Red Bank, New Jersey

Robert J. Smith, Director, Science and Technology, NYNEX Corporation, Cambridge, Massachusetts

Martin Sullivan, Director, BELLCORE, Red Bank, New Jersey

United States Delegation to the 38th Session of the Subcommittee on Ship Design and Equipment, International Maritime Organization (IMO) London, January 23–27, 1995

Representative

Gordon D. Marsh, Captain, Chief, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Department of Transportation

Alternative Representative

Wayne Lundy, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Department of Transportation

Advisers

Roger K. Butturini, Lieutenant Commander, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Department of Transportation

Philip R. Alman, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Department of Transportation

Private Sector Advisers

Gregory Shark, American Bureau of Shipping, New York, NY 10048

Paul Leblanc, McDermott Incorporated, P.O. Box 188, Morgan City, LA 70381–0188

United States Delegation to the Working Party on Gas, Fifth Session, Economic Commission for Europe (ECE), Geneva, January 23–25, 1995

Representative

Frederic Maerkle, Chief, Energy Consuming Countries Division, Office of International Energy Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

William R. Falkner, United States Mission, Geneva

Private Sector Adviser

R. Allan Bradley, Senior Vice President, Coastal Pan American Corporation, Houston, Texas

Thomas C. Briggs, Vice President-Regulatory Affairs, Enron-Europe, Ltd., London, England

United States Delegation to the 40th Session of the Sub-Committee on Radiocommunications, International Maritime Organization (IMO), London, January 16–20, 1995

Representative

Benjamin M. Chiswell III, Captain, Chief, Telecommunications Management Division, U.S. Coast Guard, Department of Transportation

Alternate Representative

Joseph D. Hersey, Jr., Electronics Engineer, U.S. Coast Guard, Department of Transportation

Advisers

Roy Soluri, Hydrographic/Topographic Center, Defense Mapping Agency, Bethesda, MD

Jim Ayres, Physical Scientist, Scientific Adviser for Hydrography, Headquarters, Defense Mapping Agency, Fairfax, VA

Richard Swanson, International Bureau, Federal Communications Commission

Dan Lemon, Chief, Search and Rescue Coordination Branch, U.S. Coast Guard, Department of Transportation

Private Sector Advisers

Robert J. Oslund, Director of External Affairs, COMSAT Maritime Services, Clarksburg, MD

John C. Fuechsel, Springfield, VA

Marshall E. Gilbert, Rear Admiral, Gilbert and Associates, Arlington, VA

United States Delegation to the Meeting of Experts on Pollution and Energy, Twenty-Ninth Session, Economic Commission for Europe (ECE), Geneva, January 16–19, 1995

Representative

Thomas Baines, Senior Technical Adviser, Office of Mobile Sources, Office of Air and Radiation, Environmental Protection Agency, Ann Arbor, Michigan

Private Sector Advisers

Donald C. Dowdall, Caterpillar Incorporated, Peoria, Illinois

Marcel Halberstadt, American Automobile Manufacturers Association, Detroit, Michigan

Robert A. Jorgensen, Engine Manufacturers Association, Chicago, Illinois

United States Delegation to the Twenty-Third Session of the Working Group on International Contract Practices, United Nations Commission on International Trade Law (UNCITRAL), New York, January 9–20, 1995

Representative

James Byrne, George Mason School of Law, Arlington, Virginia

Alernate Representative

Boris Kozolchyk, School of Law, University of Arizona, Tucson, Arizona

Adviser

Harold S. Burman, Office of Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Private Sector Adviser

James G. Barnes, Baker & McKennzie, Chicago, Illinois

United States Delegation to the Sub-Committee on Flag State Implementation (FSI), Third Session, International Maritime Organization, London, February 20–24, 1995

Representative

Norman W. Lemley, Director, Oil Pollution Act (OPA) Staff, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

George M. Williams, Captain, Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Larry G. Gibson, Captain, Chief Marine Investigation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

John M. Holmes, Chief, Compliance and Enforcement Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Gregory Shark, Regulatory Affairs Office, American Bureau of Shipping, New York, New York

John S. Spencer, Vice President, Technology and Business Development, American Bureau of Shipping, Houston, Texas

Douglas B. Stevenson, Director, Center for Seafarers' Rights, New York, New York

United States Delegation, Permanent Consultative Committee I, Inter-American Telecommunications Commission (CITEL), Organization of American States (OAS), Tegucigalpa, Honduras, February 20–24, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Douglas V. Davis, Attorney Adviser, Federal Communications Commission

Robert Stevens, International Bureau, Federal Communications Commission

Private Sector Advisers

Raymond Crowell, Director, Industry and Government Planning, COMSAT World Systems, Bethesda, Maryland

David Fine, Assistant Vice President, Government and International Relations, Southwestern Bell, Washington, D.C.

Ileana Fleites-LaSalle, Senior Market Planner, AT&T, Holmdel, New Jersey

Otto J. Gusella, Executive Director, Alliance for Telecommunications Industry Solutions, Washington, D.C.

Andrew J. Haire III, Senior Manager, International Regulatory Affairs, MCI Communications Corporation, Washington, D.C.

Thomas J. Plevyak, Manager, International Studies, Bell Atlantic, Arlington, Virginia

Arthur Reilly, Bellcore, Red Bank, New Jersey

M.N. Woinsky, Senior Manager, Northern Telecom Inc., Morristown, New Jersey

United States Delegation to the 27th Session of the Subcommittee on Standards of Training and Watchkeeping (STW), International Maritime Organization, London, February 6–10, 1995

Representative

Joseph J. Angelo, Deputy Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Christopher M. Young, Acting Chief, Vessel Manning Branch, Merchant

Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Scott Glover, Commander, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Taylor Jones, Director, Office of Maritime Labor, Training, And Safety, Maritime Administration, Department of Transportation
J. Ashley Roach, Office of The Assistant Legal Advisor For Oceans, International Environmental And Scientific Affairs, Office of the Legal Adviser, Department of State
Cynthia Stowe, Lieutenant, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Richard Swanson, International Liaison Staff, Federal Communications Commission

Private Sector Advisers

Joe Cox, Vice President, American Institute of Merchant Shipping, Washington, D.C.
William Eglinton, Seafarers International Union, Piney Point, Maryland
Theophilius B. Houston, Jr., President, Houston Marine Training Service, Kenner, Louisiana
Edward V. Kelly, Vice President, American Maritime Officers, Washington, D.C.
William H. Moore, American Bureau of Shipping, New York, New York

United States Delegation to Study Group 15 (Transmission Systems and Equipment), Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, February 6–17, 1995

Representative

Gary M. ereno, Director for CITEL and ITS–TS Standards Policy, International Communications aand Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Robert Konrath, Telecommunications Attache, United States Mission, Geneva
Gary Rekstad, Electronics Engineer, National Communications System

Private Sector Advisers

Spiros Demolitsas, Standards Engineer, COMSAT Laboratories, Clarksburg, Maryland
Thomas Hanson, Senior Engineering Associate, Corning Inc., Corning, New York
Fred W. Huffman, Standards Engineer, MCI Communications Corporation, Piscataway, New Jersey
David J. Lindbergh, Coordinator for Standards, Picturtel Corporation, Danvers, Massachusetts
Ronald R. Murphy, Technical Staff, Bellcore, Red Bank, New Jersey
Richard Schaphorst, President, Delta Information Systems, Horsham, Pennsylvania
Anthony Schiano, Senior Engineer, AT&T, Bedminster, New Jersey

United States Delegation to the United Nations Intergovernmental Negotiating Committee (INC) for a Framework Convention on Climate Change, Eleventh Session, New York, February 6–17, 1995

Representative

Rafe Pomerance, Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Daniel A. Reifsnyder, Director, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Congressional Staff Advisers

Catherine Van Way, Counsel, Committee on Commerce, United States House of Representatives
Shirley Neff, Professional Staff, Minority Committee on Energy and Natural Resources, United States Senate
David Garman, Professional Staff, Majority Committee on Energy and Natural Resources, United States Senate

Advisers

Susan Biniaz, Assistant Legal Advisor for Oceans, Environment and Science, Office of the Legal Advisor, Department of State
Jonathan C. Pershing, Science Officer, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Linnea Bohn, Environment Officer, United States Mission to the United Nations
Thomas F. Hourigan, International Environmental Policy Analyst, Office of International Donor Programs, Agency for International Development
Michael Kaplan, Office of Multilateral Development Banks, Department of Treasury
Daniel L. Albritton, Director, Aeronomy Laboratory, National Oceanic and Atmospheric Administration, Department of Commerce
Edward R. Williams, Director, Office of Environmental Analysis, Policy, Planning and Analysis, Department of Energy
Dirk Forrister, Special Assistant for Environment, Office of the Secretary, Department of Energy
Paul M. Stolpman, Director, Office of Atmospheric Programs, Department of Energy
Abraham E. Haspel, Deputy Assistant Secretary, Office of Economic and Environmental Policy, Department of Energy
Dennis Tirpak, Director, Global Climate Change Division, Office of Policy, Planning and Evaluation, Environmental Protection Agency
Gary R. Evans, Special Assistant for Global Change, Science and Education, Office of the Secretary, Department of Agriculture

United States Delegation to the Sub-Committee on Containers and Cargoes, 34th Session, International Maritime Organization, London, March 27–31, 1995

Representative

Peter A. Popko, Commander, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Robert Gauvin, Standards Development Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Frank K. Thompson, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Roy H. Barrett, Deputy Director, Food Safety and Technical Services, Foreign Agricultural Service, United States Department of Agriculture

Private Sector Advisers

James J. McNamara, Captain, President, National Cargo Bureau, Inc., New York, New York

Edward P. Boyle, Captain, Technical Consultant, National Cargo Bureau, Inc., New York, New York

Jack A. Coleman, Technical Consultant, North American Export Grain Association, Washington, District of Columbia

George Smith, Technical Section—Containers, ABS Industrial Verification, Inc., Houston, Texas

United Sttes Delegation to the International Maritime Organization (IMO), 26th Session, Sub-Committee on Lifesaving, Search and Rescue (LSR), London, March 27–31, 1995

Representative

Robert L. Markle, Jr., Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Danny E. Lemon, Search and Rescue Division, Office of Navigation Safety and Waterway Services, United States Coast Guard, Department of Transportation

Advisers

Kurt J. Heinz, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Rajiv Khandpur, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

James Karl Nelson, Jr., Associate Professor and Program Director, Master of Engineering Program, Clemson University, Charleston, South Carolina

Elizabeth M. Lynn, Associate Professor of Communications, GMI Engineering and Management Institute, Flint, Michigan

William R. Kuenzel, Director of Marketing and Sales, SMR Technologies, Inc., Sharon Center, Ohio

United States Delegation to the International Civil Aviation Organization (ICAO), Communications/Operations Divisional Meeting, Montreal, March 27–April 7, 1995

Representative

Ronald Morgan, Director, Office of System Architecture and Program Evaluation, Federal Aviation Administration, Department of Transportation

Alternate Representative

Anthony Broderick, Associate Administrator for Regulation and Certification, Federal Aviation Administration, Department of Transportation

Advisers

Richard Arnold, Integrated Product Team Leader for Global Positioning System and Navigation, Federal Aviation Administration, Department of Transportation

Gregory Burke, Division Operations Manager Communications system Engineering, Systems Engineering Service, Federal Aviation Administration, Department of Transportation

Frank Colson, Executive Director, Department of Defense Policy Board on Federal Aviation, United States Air Force, Department of Defense

Victor Foose, Manager, Spectrum Planning and International Division, Office of Spectrum Policy and Management, Federal Aviation Administration, Department of Transportation

Brandy Lohse, Electronics Engineer, Spectrum Planning and International Division, Office of Spectrum Policy and Management, Federal Aviation Administration, Department of Transportation

Norman Solat, International Technical Program Manager, Federal Aviation Administration, Brussels, Belgium

James Williams, Navigation Systems Program Manager, Aircraft Certification Service, Federal Aviation Administration, Department of Transportation

Private Sector Adviser

Raymond Hilton, Director, Air Traffic Management, Airline Transport Association of America, Washington, District of Columbia

United States Delegation to the Working Party on the Facilitation of International Trade Procedures and its Subgroups, Economic Commission for Europe (ECE), Geneva, March 20–24, 1995

Representative

Bernestine Allen, Chief, International Cooperation and Trade Division, Office of International Transportation and Trade, Department of Transportation

Advisers

Vicki Hodziewich, Customs Attache, United States Mission to the European Union, Brussels

Zia Kazimi, International Transportation Specialist, Office of International Transportation and Trade, Department of Transportation

Roy G. Saltman, Computer Scientist, Computer Systems Laboratory, National Institute of Standards and Technology, Department of Commerce

Private Sector Advisers

Irvin W. Chmielewski, Pan American EDIFACT Board Rapporteur, Electronic Data Systems, Troy, Michigan

Robert T. Crowley, Chairman, American National Standards Institute's X–12 Committee, C.W. Consultants, Lodi, New Jersey

Nicole Willenz Gardner, Vice Chair of WP4 Group of Experts, Price Waterhouse, Washington, D.C.

Robert Hurd, Chairman, WP4 Message Design Guidelines Group, Washington Publishing Company, Gaithersburg, Maryland

William H. Kenworthey, Jr., Chair, ISO/IEC/JTC1/SC14 WG4, Chair, X3L8/ANSI, Consultant, Silver Spring, Maryland

Jeffrey B. Ritter, Legal Adviser and Co-Rapporteur on Legal Questions, Electronic, Commerce, Law and Information Policy Strategies, Columbus, Ohio

Gaile L. Spadin, PAEB Database, Publications and Maintenance Administrator, EDIFACT Technical Assessment Group Secretariat, Data Interchange Standards Association, Inc., Alexandria, Virginia

United States Delegation to Study Group 3 (Tariff and Accounting Principles), Sub-Working Parties 2/3 and 3/3, Telecommunication Standardization Sector, International Telecommunication Union, Atlanta, March 20–24, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information

Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Donald P. Casey, Director, Regulatory, AT&T Easy Link, Parsippany, New Jersey
Robert Madden, Manager, American Telephone and Telegraph Company, Morristown, New Jersey
Marcel Scheidegger, MCI International, Rye Brook, New York
Richard W. Stone, Cable and Wireless Communications, Vienna, Virginia

United States Delegation to the Thirty-Nineth Session of the Commission on the Status of Women, United Nations Economic and Social Council (ECOSOC), New York, March 15–April 4, 1995

Representative

The Honorable Madeleine K. Albright, Ambassador, United States Permanent Representative to the United Nations

Alternate Representative

Marjorie Margolies-Mezvinsky, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State

Public Members

The Honorable Maria Antonietta Berriozabal, United States Principal Representative on the Commission of Women, Organization of American States, San Antonio, Texas
Jacqueline Veronica Biggins, former Senior Adviser to the President and Director of Presidential Personnel, Atlanta, Georgia
Lynn Cutler, Senior Vice President of Public Affairs, The Kamber Group, Former Vice Chair, Democratic National Committee, Washington, D.C.
Arthenia L. Joyner, Founding Partner, Stewart, Joyner, Jordan-Holmes and Holmes, P.A. and Chair, Hillsborogh County Aviation Authority, Tampa, Florida
Dorothy V. Lamm, Columnist, Psychiatric Social Worker and Health Care Advocate, Denver, Colorado
Linda Tarr-Whelan, President/CEO, Center for Policy Alternatives, Washington, D.C.

Senior Advisers

Melinda L. Kimble, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State
The Honorable Ambassador Victor Marreo, United States Representative to the Economic and Social Council, New York
The Honorable Sally Shelton, Assistant Administrator, Global Affairs, Agency for International Development

Advisers

Judith Heumann, Assistant Secretary, Department of Education
Sarah Kovner, Special Assistant to the Secretary, Department of Health and Human Services
Margaret Lycette, Director, Women in Development, Agency for International Development
Ellen Marshall, Acting Coordinator for Population, Bureau of Population, Refugees, and Migration, Department of State
Liza Morris, Office of Multilateral Development Banks, Department of the Treasury
Jean Nelson, General Counsel, Environmental Protection Agency
Karen Nussbaum, Director, Women's Bureau, Department of Labor
Bisa Williams-Manigualt, United States Mission to the United Nations, New York
Mary Curtin, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Kathleen Hendrix, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Sharon Kotok, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Jeffrey Meer, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State

Private Sector Advisers:

Virginia Trotter-Betts, President, American Nurses Assn., Nashville, Tennessee.
Anne L. Bryant, Executive Director, American Association of University Women, Washington, D.C.
Connie E. Evans, President, Women's Self-Employment Project for Low-Income, Women/Micro-Entrepreneurs, Chicago, Illinois
Adrienne German, International Women's Health Coalition, New York, N.Y.
Gloria Johnson, President, Coalition of Labor Union Women, Washington, D.C.
Ashley Maddox, Population Reference Bureau, Washington, D.C.
Laila Al-Marayati, M.D., President, Muslim Women's League and Founding Member, Women's Coalition Against Ethnic Cleansing, Glendale, California.
Gay J. McDougall, Executive Director, International Human Rights Law Group, Washington, D.C.
Muriel F. Siebert, Muriel Siebert & Co., Inc., Siebert Entrepreneurial Philanthropic Plan, New York, N.Y.
Maely T. Tom, Senior Vice-President, Cassidy and Associates, Sacramento, California.

United States Delegation to the Thirty-Ninth Session of the Commission on the Status of Women, United Nations Economic and Social Council (ECOSOC), New York, March 15–April 4, 1995

Representative

The Honorable Madeleine K. Albright, Ambassador, United States Permanent Representative to the United Nations.

Alternate Representative

Marjorie Margolies-Mezvinsky, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State

Public Members

The Honorable Maria Antonietta Berriozabal, United States Principal Representative on the Commission of Women Organization of American States, San Antonio, Texas
Jacqueline Veronica Biggins, former Senior Adviser to the President and Director of Presidential Personnel, Atlanta, Georgia
Lynn Cutler, Senior Vice President of Public Affairs, The Kamber Group, Former Vice Chair, Democratic National Committee, Washington, D.C.
Athenia L. Joyner, Founding Partner, Stewart, Joyner, Jordan-Holmes and Holmes P.A. and Chair, Hillsborough County Aviation Authority, Tampa, Florida
Dorothy V. Lamm, Columnist, Psychiatric Social Worker and Health Care Advocate, Denver, Colorado.
Linda Tarr-Whelan, President/CEO, Center for Policy Alternatives, Washington, D.C.

Senior Advisers

Melinda L. Kimble, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State
The Honorable Ambassador Victor Marrero, United States Representative to the Economic and Social Council, New York
The Honorable Sally Shelton, Assistant Administrator Global Affairs, Agency for International Development.

Advisers

Judith Heuman, Assistant Secretary, Department of Education
Sarah Kovner, Special Assistant to the Secretary, Department of Health and Human Services
Margaret Lycette, Director, Women in Development, Agency for International Development

Ellen Marshall, Acting Coordinator for Population, Bureau of Population, Refugees, and Migration, Department of State
Liza Morris, Office of Multilateral Development Banks, Department of the Treasury
Jean Nelson, General Counsel, Environmental Protection Agency
Karen Nussbaum, Director, Women's Bureau, Department of Labor
Bisa Williams-Manigualt, United States Mission to the United Nations, New York
Mary Curtin, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Kathleen Hendrix, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Sharon Kotok, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
Jeffrey Meer, Office of the Conference Secretariat, Bureau of global Affairs, Department of State

Private Sector Advisers:

Virginia Trotter-Betts, President, American Nurses Assn., Nashville, Tennessee.
Anne L. Bryant, Executive Director, American Association of University Women, Washington, D.C.
Connie E. Evans, President, Women's Self-Employment Project for Low-Income Women/Micro-Entrepreneurs, Chicago, Illinois
Adrienne Germain, International Women's Health Coalition, New York, N.Y.
Gloria Johnson, President, Coalition of Labor Union Women, Washington, D.C.
Ashley Maddox, Population Reference Bureau, Washington, D.C.
Laila Al-Marayati, M.D., President, Muslim Women's League and Founding Member, Women's Coalition Against Ethnic Cleansing, Glendale, California.
Gay J. McDougall, Executive Director, International Human Rights Law Group, Washington, D.C.
Muriel F. Siebert, Muriel Siebert & Co., Inc., Siebert Entrepreneurial Philanthropic Plan, New York, N.Y.
Maely T. Tom, Senior vice-president, Cassidy and Associates, Sacramento, California

United States Delegation to the Committee on Forestry (COFO), 12th Session and Ministerial Session, Food and Agriculture Organization, Rome, March 13–17, 1995

Representative

The Honorable Adela Backiel, Deputy Under Secretary for Natural Resources and Environment, Department of Agriculture

Alternate Representative

Jack Ward Thomas, Chief, Forest Service, Department of Agriculture

Advisers

Stephanie J. Caswell, Senior Conservation Officer, Bureau of Oceans, International Environmental and Scientific Affairs, Department of State
Mary J. Coulombe, Director, International Forestry Policy and Planning Staff, Forest Service, Department of Agriculture
Thomas A. Forbord, Permanent Representative, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Willard I. Johnson, Director, Office of Environment and Natural Resources, Bureau for Global Programs, Field Support and Research, Agency for International Development
Julia M. Morris, International Organization Liaison, International Forestry Policy and Planning Staff, Forest Service, Department of Agriculture
Francis J. Vacca, Attache for Food and Agricultural Affairs, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Advisers

Marvin Brown, State Forester, National Association of State Foresters, Washington, District of Columbia
Michael Brock Evans, Vice President for National Issues, National Audubon Society, Washington, District of Columbia
John Heissenbuttel, Vice President for International Forestry, American Forests and Paper Association, Washington, District of Columbia

United States Delegation Permanent Consultative Committee III, Inter-American Telecommunications Commission (CITEL), Organization of American States (OAS), Porlamar City, Isla De Margarita, Venezuela, March 13–17, 1995

Representative

John T. Gilsenan, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Audrey Allison, Private Radio Bureau, Federal Communications Commission
William Hatch, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Cecily Holiday, International Bureau, Federal Communications Commission
Kristi Kendall, International Bureau, Federal Communications Commission
Damon Ladson, International Bureau, Federal Communications Commission
Warren Richards, Executive Director, World Radiocommunications Conference 1995, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
Thomas Walsh, International Bureau, Federal Communications Commission

Private Sector Advisers

Christine DiLapi, Systems Engineer, Motorola Satellite Communications Division, Chandler, Arizona
Mario Florian, Director, Latin American, Orbital Communications Corporation, Dulles, Virginia
Diane Garfield, Engineer, Stanford Telecommunications, Bethesda, Maryland
Benito Gutierrez-Luaces, Jet Propulsion Laboratories, Washington, D.C.
Donald Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Allan Renshaw, Starsys Global Positioning, Inc., Lanham, Maryland
Glenn Richards, Fisher, Wayland, Washington, D.C.
Paul Rinaldo, Manager, Technical Relations, American Radio Relay League, Washington, D.C.
Lawrence Williams, Director of External Affairs, Teledesic Corporation, Washington, D.C.
Richard Wright, Computer Sciences Corporation, Sterling, Virginia

United States Delegation Development Study Group 1, Telecommunication Development Sector, International Telecommunication Union, Geneva, March 6–17, 1995

Representative

Doreen F. McGirr, Senior Counsellor, Office of Telecommunications Development, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

Mindel De La Gorre, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission
John Mack, Director, Africa and Middle East, Office of Satellites and Cable, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Roxanne McElvane, Attorney Adviser, Telecommunications Division, International Bureau, Federal Communications Commission
Thomas Wasilewski, Telecommunications Policy Specialist, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Michael Behrens, AT&T Basking Ridge, New Jersey
Rhonda Crane, Federal Government Affairs Director, American Telephone and Telegraph, Washington, D.C.
Gregg Daffner, Vice President, Market Development and Regulatory Affairs, PanAmSat, Greenwich, Connecticut
Richard Everett, Director, Developing Country Programs, IRIDIUM, Inc., Washington, D.C.
Lynne Gallagher, President, Telecom/Telematique International, Washington, D.C.
Jane Hurd, President, Severance International, Inc., Washington, D.C.
Tedros Lemma, Worldspace, Washington, D.C.
Jean Prewitt, Podesta Associates, Washington, D.C.
Martin Sullivan, Director, Standards Management, Bellcore, Red Bank, New Jersey
Craig Robert Vielguth, Bellcore, Livingston, New Jersey
Ernest Wallace, COMSAT Corporation, Bethesda, Maryland

United States Delegation to the Steering Committee, Nuclear Energy Agency (NEA), Organization for Economic Cooperation and Development (OECD), Paris, March 6–7, 1995

Representative

Terry R. Lash, Director, Office of Nuclear Energy, Department of Energy

Alternate Representative

Janet Gorn, International Relations Officer, International Programs, Nuclear Regulatory Commission

Advisers

Eric Beckjord, Director, Office of Research, Nuclear Regulatory Commission
Collette Brown, Division of International Programs, Office of Nuclear Energy, Department of Energy
Carol Lee, Science Adviser for Energy, United States Mission to the Organization for Economic Cooperation and Development, Paris
Kristen Suokko, Director, Division of International Programs, Office of Nuclear Energy, Department of Energy

Private Sector Adviser

Allen G. Croff, Oak Ridge National Laboratory, Oak Ridge, Tennessee

United States Delegation to the Steering Committee, 90th Session, Nuclear Energy Agency (NEA), Organization for Economic Cooperation and Development (OECD), Paris, March 6–7, 1995

Representative

Terry R. Lash, Director, Office of Nuclear Energy, Department of Energy

Alternate Representative

Janet Gorn, International Relations Officer, International Programs, Nuclear Regulatory Commission

Advisers

Eric Beckjord, Director, Office of Research, Nuclear Regulatory Commission
Collette Brown, Division of International Programs, Office of Nuclear Energy, Department of Energy
Carol Lee, Science Adviser for Energy, United States Mission to the Organization for Economic Cooperation and Development, Paris
Kristen Suokko, Director, Division of International Programs, Office of Nuclear Energy, Department of Energy

Private Sector Adviser

Allen G. Croff, Oak Ridge National Laboratory, Oak Ridge, Tennessee

United States Delegation to the Sub-Committee on Flag State Implementation (FSI), Third Session, International Maritime Organization, London, February 20–24, 1995

Representative

Norman W. Lemley, Director, Oil Pollution Act (OPA) Staff, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

George M. Williams, Captain, Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Larry G. Gibson, Captain, Chief Marine Investigation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
John M. Holmes, Chief, Compliance and Enforcement Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Gregory Shark, Regulatory Affairs Office, American Bureau of Shipping, New York, New York
John S. Spencer, Vice President, Technology and Business Development, American Bureau of Shipping, Houston, Texas
Douglas B. Stevenson, Director, Center for Seafarers' Rights, New York, New York

United States Delegation, Study Group 11 (Signalling and Switching), Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, April 25–May 12, 1995

Representative

Gary M. Fereno, Director for CITEL and ITU–T Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Gregory Bain, Electronics Engineer, National Communications System, Washington, D.C.
Donald Choi, Electronics Engineer, Defense Information Systems Agency, Reston, Virginia
Leslie A. Collica, Computer Scientist, National Institute of Standards and Technology, Department of Commerce Gaithersburg, Maryland
Wendell Harris, Assistant Chief, Common Carrier Bureau, Federal Communications Commission

Private Sector Advisers

Edward Chien, President, Personal Telecommunication Technologies, Inc., Milpitas, California
Larry Greenstein, Senior Scientist, Alcatel Data Network, Reston, Virginia
Elmer R. Hapeman, Switching Engineer, BELLCORE, Red Bank, New Jersey
Thomas Henderson, Principal Engineer, COMSAT Corporation, Clarksburg, Maryland
Harry Hetz, Manager, Standards Management, Bell Atlantic, Arlington, Virginia
Jay R. Hilton, Manager, Technical Standards, GTE Telephone Operations, Irving, Texas
Drois Lebovits, Staff Manager, AT&T, Bedminster, New Jersey
George Swallow, Principal Engineer, Light Stream Inc., Billerica, Massachusetts

Anthony Toubassi, Advisory Engineer, MCI Corporation, Richardson, Texas
Lawrence A. Young, Director, Technical Standards, Ameritech Services, Hoffman Estates, Illinois

United States Delegation to the Standing Committee 80th Session and the Statistical Committee, International Lead and Zinc Study Group (ILZSG), London, April 19–21, 1995

Representative

David A. Larrabee, Lead and Zinc Industry Specialist, Office of Metals, Materials and Chemicals, Department of Commerce

Alternate Representative

Michael Glover, Economic Officer, United States Embassy, London

Private Sector Adviser

Richard Bauer, Jr., Vice President, Eastern Alloys, Maybrook, New York

United States Delegation, Study Group 14 (Modems and Transmission Techniques), Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, April 19–27, 1995

Representative

Gary M. Fereno, Director for CITEL and ITU–T Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Adviser

Nicholas E. Andre, Electronics Engineer, National Communications System, Washington, D.C.

Private Sector Advisers

Elaine J. Baskin, Technical Editor, Communication Standards Review, Palo Alto, California
Richard Brandt, President, D.B. Consultants, Annandale, New Jersey
Judith E. Harkins, Director, Technology Assessment, Gallaudet University, Washington, D.C.
Andrea J. Saks, Association of the Deaf Communities, London, United Kingdom
Lester Staples, Vice President and Chief Technical Officer, Datarace Corporation, San Antonio, Texas

United States Delegation to the Third Plenary Meeting of the United Nations Commission on Sustainable Development of the Economic and Social Council (ECOSOC), New York, April 11–28, 1995

Ex-Officio Head of Delegation

The Honorable J. Brian Atwood, Administrator, United States Agency for International Development (high level session)

Representatives

The Honorable Ambassador Mark G. Hambley, Special Representative to the UN Commission on Sustainable Development, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (Plenary segment)

Alternate Representatives

Eileen Claussen, Special Assistant to the President, Office of Global Environment Affairs, National Security Council, Executive Office of the President (high level session)
The Honorable Ambassador Robert Pringle, Director, Office of Ecology and Terrestrial Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (Plenary segment)
The Honorable Timothy E. Wirth, Under Secretary for Global Affairs, Department of State (high level session)

Advisers

Adela Backiel, Deputy Under-Secretary, Natural Resources and the Environment, United States Department of Agriculture (high level session)
Ann Carey, Natural Resources Conservation Service, United States Department of Agriculture (plenary segment)
Mary Coloumbe, Office of International Forestry Policy and Planning, Forest Service, United States Department of Agriculture (plenary segment)
The Honorable Ambassador Elinor G. Constable, Assistant Secretary of State, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (high level session)
Robert Ford, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (plenary segment)
The Honorable Lynn Goldman, Assistant Administrator, Office of Pesticides and Toxic Substances, Environmental Protection Agency (high level session)
David Hales, Deputy Assistant Administrator, Director, Center for the Environment, United States Agency for International Development (high level session)
David Harwood, Special Advisor, Office of the Under Secretary for Global Affairs, Department of State (plenary session)
George Herrfurth, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State (plenary segment)
John P. McGuinness, Office of Economic and Social Affairs, Bureau of International Organization Affairs, Department of State
Franklin Moore, Center for Environment, United States Agency for International Development (plenary segment)
Trigg Talley, Office of International Activities, Environmental Protection Agency (plenary segment)
Bisa Williams-Manigault, Advisor, United States Mission to the United Nations, New York

Private Sector Advisors

Norine Kennedy, Director of Environmental Affairs, U.S. Council for International Business, New York
Sharyle Patton, Citizens Network for Sustainable Development, New York

United States Delegation to the Committee on Commodity Problems (CCP), Intergovernmental Group on Tea, 11th Session, United Nations Food and Agriculture Organization (FAO), Rome, April 10–13, 1995

Representative

Francis J. Vacca, Agricultural Attache and Alternate Permanent Representative, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Advisers

Martin Kushner, Chairman, Tea Association of the USA, Inc., Marietta, Georgia
Joseph P. Simrany, President, Tea Association of the USA, Inc., New York City, New York
Joseph Wertheim, Chairman of the Foreign Affairs Committee, Tea Association of the USA, Inc., Westport, Connecticut

United States Delegation, Study Group 9 (Fixed Service), Radiocommunication Sector, International Telecommunication Union, Geneva, May 30–June 2, 1995

Representative

Alex C. Latker, Attorney Adviser, International Policy Division, Common Carrier Bureau, Federal Communications Commission

Adviser

Gerald F. Hurt, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce, Annapolis, Maryland

Private Sector Advisers

Ferdinand Ivanek, Communications Research, Palo Alto, California
Eugene Rappoport, Manager of Radio Standards, AT&T Communications, Bedminster, New Jersey

United States Delegation, Study Group 4 (Fixed Satellite Service), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, May 30–June 2, 1995

Representative

Michael Mitchell, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce

Advisers

Donna Bethea, Electrical Engineer, International Bureau, Satellite and Radio Division, Federal Communications Commission
Clifford Guffee, Chief, Design Division, Telecommunications Directorate, Office of Engineering and Technology Operations, United States Information Agency

Private Sector Advisers

Robert Combs, Stanford Telecommunications, Reston, Virginia
Farzad Ghazvinian, Teledesic Corporation, Kirkland, Washington
Robert Hedinger, AT&T, Bedminster, New Jersey
Donald M. Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Edward F. Miller, Teledesic Corporation, Kirkland, Washington
Richard B. Stone, Jr., Motorola Satcom, Chandler, Arizona
David E. Weinreich, Department Manager, COMSAT Laboratories, Clarksburg, Maryland

United States Delegation, Study Group 4 (Fixed Satellite Service), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, May 30–June 2, 1995

Representative

Michael Mitchell, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce

Advisers

Donna Bethea, Electrical Engineer, International Bureau, Satellite and Radio Division, Federal Communications Commission
Clifford Guffee, Chief, Design Division, Telecommunications Directorate, Office of Engineering and Technology Operations, United States Information Agency

Private Sector Advisers

Robert Combs, Stanford Telecommunications, Reston, Virginia
Farzad Ghazvinian, Teledesic Corporation, Kirkland, Washington
Robert Hedinger, AT&T, Bedminster, New Jersey
Donald M. Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Edward F. Miller, Teledesic Corporation, Kirkland, Washington
Richard B. Stone, Jr., Motorola Satcom, Chandler, Arizona
David E. Weinreich, Department Manager, COMSAT Laboratories, Clarksburg, Maryland

United States Delegation to the World Meteorological Organization Congress, 12th Session, Geneva, May 29–June 21, 1995

Representative

D. James Baker, Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Representative

Elbert W. Friday, Jr., National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce
Richard Greenfield, Director, Division of Atmospheric Sciences, National Science Foundation

Advisers

Howard L. April, Chief, International Affairs Branch, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce
Ronald D. McPherson, Director, National Meteorological Center, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce
Verne R. Schneider, Assistant Chief Hydrologist for Technical Support, United States Geological Survey, Department of the Interior
Kay Weston, Program Analyst, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce
Evelyn K. Wheeler, Office of Technical and Specialized Agencies, Bureau of International Organizations, Department of State
Gregory W. Withee, Deputy Assistant Administrator, National Satellite, Data, and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce
Martin C. Yerg, Jr., Chief, International Activities Office, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

David D. Houghton, Professor, Department of Atmospheric and Oceanic Sciences, University of Wisconsin, Madison, Wisconsin

United States Delegation to Study Group 7 (Science Services), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, May 24–26, 1995

Representative

David Struba, Spectrum Management Specialist, Spectrum Management Program, National Aeronautics and Space Administration

Advisers

Shayla Davidson, Johnson Space Center, National Aeronautics and Space Administration, Houston, Texas
Dean Lloyd, National Weather Service, Department of Commerce, Silver Spring, Maryland

Private Sector Advisers

Rodger Andrews, Computer Sciences Corporation, Sterling, Virginia
Robert Combs, Standford Management Office, Goddard Space Flight Center, Greenbelt, Maryland
Joseph Deskevich, Systems Management Office, Goddard Space Flight Center, Greenbelt, Maryland
Benito Gutierrez-Luaces, Jet Propulsion Laboratory, Washington, D.C.
Steven Kaltenmark, Computer Sciences Corporation, Sterling, Virginia
John Kiebler, MITRE Corporation, Greenbelt, Maryland
Harold Kimball, Professional Services Group, Computer Sciences Corporation, Sterling, Virginia
John Miller, Standford Telecommunications, Seabrook, Maryland
Robert Taylor, Taylor Telecommunication and Computers, Rosharon, Texas

United States Delegation to the Telecommunication Standardization Sector (TSS), Study Group 1, International Telecommunication Union (ITU), Geneva, May 16–26, 1995

Representative

Douglas V. Davis, Senior Attorney, International Bureau, Federal Communications Commission

Advisers

Carol Edgar, Computer Scientist, National Institute of Standards and Technology, Department of Commerce, Gaithersburg, Maryland
Granger Kelly, Electrical Engineer, Interoperability and Standards Office, Defense Communication Agency, Department of Defense

Private Sector Advisers

Anita Kaufman, Senior Staff Specialist, MCI International, Rye Brook, New York
Thanos Kipreos, Director, Technical and Regulatory Affairs, Telecommunications Industry Association (TIA), Arlington, Virginia
Frank LaPorta, Manager, AT&T Bedminster, New Jersey
Ben C. Levitan, Engineer, Aeronautical Radio, Incorporated (ARINC), Annapolis, Maryland
Robert Madden, Engineering Supervisor, AT&T Bell Laboratories, Holmdel, New Jersey
Robin Rossow, System Engineer, Bellcore, Red Bank, New Jersey
Herman Silbiger, Communications Consultant, APPLICOM, Tinton Falls, New Jersey
Robert J. Smith, Director, International Standards, NYNEX Corporation, White Plains, New York
Blake Wattenbarger, AT&T Bell Laboratories, Holmdel, New Jersey
Michele Zelazny, Manager, International Business Development, MCI International, Inc., Rye Brook, New York

United States Delegation to Study Group 7 (Science Services), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, May 24–26, 1995

Representative

David Struba, Spectrum Management Specialist, Spectrum Management Program, National Aeronautics and Space Administration

Advisers

Shayla Davidson, Johnson Space Center, National Aeronautics and Space Administration, Houston, Texas
Dean Lloyd, National Weather Service, Department of Commerce, Silver Spring, Maryland

Private Sector Advisers

Rodger Andrews, Computer Sciences Corporation, Sterling, Virginia
Robert Combs, Standford Management Office, Goddard Space Flight Center, Greenbelt, Maryland
Joseph Deskevich, Systems Management Office, Goddard Space Flight Center, Greenbelt, Maryland
Benito Gutierrez-Luaces, Jet Propulsion Laboratory, Washington, D.C.
Steven Kaltenmark, Computer Sciences Corporation, Sterling, Virginia
John Kiebler, MITRE Corporation, Greenbelt, Maryland
Harold Kimball, Professional Services Group, Computer Sciences Corporation, Sterling, Virginia
John Miller, Standford Telecommunications, Seabrook, Maryland
Robert Taylor, Taylor Telecommunication and Computers, Rosharon, Texas

United States Delegation to the Annual Session of the Executive Board, United Nations Children's Fund (UNICEF), New York, May 22–26, 1995

Representative

The Honorable Marian Wright-Edelman, United States Representative to the UNICEF Executive Board

Alternate Representatives

Ralph E. Bresler, Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
The Honorable William H. Foege, Alternate U.S. Representative to the UNICEF Executive Board, Atlanta, Georgia
The Honorable Ambassador Victor Marrero, United States Representative to the Economic and Social Council of the United Nations, New York

Advisers

Kenneth Bart, Office of International and Refugee Health, Department of Health and Human Services
Thomas Beck, Office of International Donor Programs, Bureau of Program and Policy Coordination, United States Agency for International Development
Robert Clay, Office of Health, Bureau of Global Programs, Field Support, and Research, United States Agency of International Development
Carol S. Fuller, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Virginia Graham, United States Mission to the United Nations, New York
John Hope, United States Mission to the United Nations, New York
Lorraine Soisson, Office of International Donor Programs, Bureau of Program and Policy Coordination, United States Agency for International Development
David Tyler, Office of the Executive Director, Bureau of Consular Affairs, Department of State
Linda Vogel, Director, Office of International Health, Department of Health and Human Services

Private Sector Advisers

Gwendolyn C. Baker, President, United States Committee for UNICEF, New York
James D. Weill, General Counsel, Children's Defense Fund, Washington, D.C.

United States Delegation to the Telecommunication Standardization Sector (TSS), Study Group 1, International Telecommunication Union (ITU), Geneva, May 16–26, 1995

Representative

Douglas V. Davis, Senior Attorney, International Bureau, Federal Communications Commission

Advisers

Carol Edgar, Computer Scientist, National Institute of Standards and Technology, Department of Commerce, Gaithersburg, Maryland
Granger Kelly, Electrical Engineer, Interoperability and Standards Office, Defense Communication Agency, Department of Defense

Private Sector Advisers

Anita Kaufman, Senior Staff Specialist, MCI International, Rye Brook, New York
Thanos Kipreos, Director, Technical and Regulatory Affairs, Telecommunications Industry Association (TIA), Arlington, Virginia
Frank LaPorta, Manager, AT&T, Bedminster, New Jersey
Ben C. Levitan, Engineer, Aeronautical Radio, Incorporated (ARINC), Annapolis, Maryland
Robert Madden, Engineering Supervisor, AT&T Bell Laboratories, Holmdel, New Jersey
Robin Rossow, System Engineer, Bellcore, Red Bank, New Jersey
Herman Silbiger, Communications Consultant, APPLICOM, Tinton Falls, New Jersey
Robert J. Smith, Director, International Standards, NYNEX Corporation, White Plains, New York
Blake Wattenbarger, AT&T Bell Laboratories, Holmdel, New Jersey
Michele Zelazny, Manager, International Business Development, MCI International, Inc., Rye Brook, New York

United States Delegation to the Joint Working Group on Insurance Services with the Committee on Capital Movements and Invisible Transactions (CMIT) and 55th Plenary Session, Insurance Committee, Organization for Economic Cooperation and Development (OECD), Paris, May 15–19, 1995

Representative

M. Bruce McAdam, International Trade Specialist, Office of Finance, International Trade Administration, Department of Commerce

Alternate Representatives

Kathleen M. Reddy, United States Mission to the Organization for Economic Cooperation and Development, Paris

Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, Department of Commerce

Private Sector Advisers

Brian K. Atchinson, Superintendent of Insurance, Department of Professional and Financial Regulation, Augusta, Maine

Kevin T. Cronin, Washington Counsel, National Association of Insurance Commissioners, Washington, D.C.

James M. Crowley, Vice President for International Government and Industry Affairs, CIGNA Worldwide Incorporated, Philadelphia, Pennsylvania

Claude Gallello, Managing Director, Willis Corroon International/ Americas, New York, New York

United States Delegation to the Steel Committee, 46th Session, Organization for Economic Cooperation and Development (OECD), Paris, May 10–11, 1995

Representative

Gordana Earp, Deputy Assistant United States Trade Representative for Industry, Office of the United States Trade Representative, Executive Office of the President

Alternate Representative

Robert C. Reiley, Director, Office of Materials, Machinery and Chemicals, Department of Commerce

Advisers

Elizabeth Patience, Import Compliance Specialist, Import Administration, Department of Commerce

Jane Richards, International Economist, Office of International Labor, Department of Labor

Joseph Spetrini, Deputy Assistant Secretary for Import Administration, International Trade Administration, Department of Commerce

Private Sector Advisers

Frank Fenton, Senior Vice President, Public Policy, American Iron and Steel Institute, Washington, D.C.

John J. Sheehan, Legislative Director, United Steelworkers of America, Washington, DC

United States Delegation to the Maritime Safety Committee (MSC65), 65th Session, International Maritime Organization, London, May 9–17, 1995

Representative

James C. Card, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Joseph J. Angelo, Associate Program Director, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Linda Sue Johnson, Attorney Advisor, Office of International Environmental Law, National Oceanic and Atmospheric Administration, Department of Commerce

Norman. W. Lemley, Director, OPA 90 Staff, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Gordon D. Marsh, Captain, Chief, Marine Technical and Hazardous Materials Division, United States Coast Guard, Department of Transportation

Joseph Ashley Roach, Office of the Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, Office of the Legal Adviser, Department of State

Private Sector Advisers

Edward V. Kelly, Vice President, American Maritime Officers, Washington, D.C.

James J. McNamara, President, National Cargo Bureau, Inc., New York, New York

James M. Morgan, Captain, Manager, Vessel Operations, Arco Marine, Inc., Long Beach, California

Robert J. Oslund; Director of External Affairs, COMSAT Maritime Services, Clarksburg, Maryland

Robert Somerville, President, American Bureau of Shipping, New York, New York

United States Delegation to the Nineteenth Antarctic Treaty Consultative Meeting, Seoul, May 8–19, 1995

Representative

R. Tucker Scully, Director, Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

John Behrendt, United States Geological Survey, Department of Interior, Denver, Colorado

Robert Hofman, Marine Mammal Commission, Washington, D.C.

Robert Kushen, Office of the Legal Adviser, Department of State

Thomas Laughlin, National Oceanic and Atmospheric Administration, Department of Commerce

Carol Roberts, Division of Polar Programs, National Science Foundation

Robert S. Senseney, Division of Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

Ron Naveen, Oceanites Foundation, Cooksville, Maryland

Beth Marks, The Antarctica Project, Washington, D.C.

United States Delegation to the Maritime Transport Committee (MTC), Organization for Economic Cooperation and Development (OECD), Paris, May 3–4, 1995

Representative

Charles A. Mast, Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

Robert D. Bourgoin, General Counsel, Federal Maritime Commission

Ralph Edwards, International Economist, Office of International Activities, Maritime Administration, Department of Transportation

Private Sector Advisers

Philip J. Loree, Chairman, Federation of American Controlled Shipping, New York, New York

Donald L. O'Hare, Vice President, Sea-Land Corporation, Iselin, New Jersey

United States Delegation, Development Study Group 2, Telecommunication Development Sector, International Telecommunication Union, Geneva, May 1–12, 1995

Representative

Doreen F. McGirr, Senior Counsellor, Office of Telecommunications Development, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

John Mack, Director, Africa and Middle East, Office of Satellites and Cable, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Bruce Barnett, Telecommunications Policy Specialist, National Telecommunications and Information Administration, Department of Commerce
Roxanne McElvane, Attorney Adviser, Telecommunications Division, International Bureau, Federal Communications Commission

Private Sector Advisers

Rhonda Crane, Director, International Public Affairs, American Telephone and Telegraph, Washington, D.C.
Raymond Crowell, Director, Industry and Government Planning, COMSAT Corporation, Bethesda, Maryland
Gregg Daffner, Vice President, Market Development and Regulatory Affairs, PanAmSat, Greenwich, Connecticut
Jane Hurd, President, Severance International, Inc., Washington, D.C.
Marlee R. Norton, National Telephone Cooperative Association, Washington, D.C.

United States Delegation to the Fifth Regular Meeting of the International Copper Study Group (ICSG), Lisbon, June 27–30, 1995

Representative

Robert C. Reiley, Director, Office of Metals, Materials, and Chemicals, Department of Commerce

Alternate Representative

Darnall Steuart, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Advisers

V. Anthony Cammarota, Jr., Senior Technical Adviser, Bureau of Mines, Department of the Interior
Daniel Edelstein, Copper Specialist, Bureau of Mines, Department of the Interior
Jonathan Kessler, United States Embassy, Lisbon

Private Sector Advisers

Ivan L. Jeffery, President, Crescent Brass Manufacturing Corporation, Reading, Pennsylvania
Arthur R. Miele, President, Phelps Dodge Sales, Phelps Dodge Corporation, Phoenix, Arizona
Allan B. Silver, Chairman, Recyclers of Copper Alloy Products, Nashua, New Hampshire

United States Delegation to the 89th Session of the Council Working Party Six on Shipbuilding, and the Subgroup on Supply and Demand, Organization for Economic Cooperation and Development (OECD), Paris, June 26–28, 1995

Representative

Donald Phillips, Assistant United States Trade Representative for Industry, Office of the United States Trade Representative, Executive Office of the President

Alternate Representative

Charles A. Mast, Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Ralph Edwards, International Economist, Office of International Activities, Maritime Administration, Department of Transportation

Private Sector Adviser

Thomas P. Jones, Jr., Chairman, Shipbuilders Council of America, Alexandria, Virginia

United States Delegation to the 1995 Session of the Council, International Telecommunication Union (ITU), Geneva, June 21–30, 1995

Representative

Earl S. Barbely (Councillor), Director, Telecommunications and Information Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Carol C. Darr, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Douglas V. Davis, Attorney Adviser, International Policy Division, Common Carrier Bureau, Federal Communications Commission
John Dieffenderfer, Office of International Conferences, Bureau of International Organization Affairs, Department of State
Robin Frank, Attorney Adviser, Office of the Assistant Legal Adviser for Economic, Business and Communications, Office of the Legal Adviser, Department of State
John Hitchcock, First Secretary, United States Mission, Geneva
Ann Jillson, Multilateral Affairs Officer, Office of Specialized Technical Agencies, Bureau of International Organization Affairs, Department of State
Richard Parlow, Associate Administrator, Office of Specturm Management, National Telecommunications and Information Administration, Department of Commerce
Richard E. Shrum, Deputy Coordinator for Multilateral Affairs, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
Leon Weintraub, Telecommunications Attaché, United States Mission, Geneva

United States Delegation to the Chemicals Group and Management Committee, 23rd Joint Meeting, Environment Policy Committee (EPOC), Organization for Economic Cooperation and Development (OECD), Paris, June 21–23, 1995

Representative

Lynn R. Goldman, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency

Alternate Representative

Day Mount, Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Diane D. Beal, Special Assistant for International Activities, Office of Pollution Prevention and Toxics, Environmental Protection Agency
Susan Biniaz, Assistant Legal Adviser for Oceans, Environment and Scientific Affairs, Office of the Legal Adviser, Department of State
Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics, Environmental Protection Agency
Irving Fuller, Counselor for International Activities, Office of Prevention, Pesticides and Toxic

Substances, Environmental Protection Agency
David Larrabee, Senior Industry Analyst, Metals Division, Office of Materials, Machinery and Chemicals, Department of Commerce
Anne E. Lindsay, Director, Policy and Special Projects Staff, Office of Pesticides Programs, Environmental Protection Agency
Breck Milroy, Office of International Activities, Environmental Protection Agency
David M. Ogden, Office of International Activities, Environmental Protection Agency

Private Sector Advisers

Kenneth Murray, Environment Affairs Manager, Exxon Biomedical Sciences, Incorporated, East Millstone, New Jersey
Robert Muth, Chairman, Lead Industries Association, New York, New York
Ellen Silbergeld, Senior Toxicologist, Environmental Defense Fund, Washington, District of Columbia

United States Delegation to the 1995 Session of the Council International Telecommunication Union (ITU), Geneva, June 21–30, 1995

Representative

Earl S. Barbely (Councillor), Director, Telecommunications and Information Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Carol C. Darr, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Douglas V. Davis, Attorney Adviser, International Policy Division, Common Carrier Bureau, Federal Communications Commission
John Dieffenderfer, Office of International Conferences, Bureau of International Organization Affairs, Department of State
Robin Frank, Attorney Adviser, Office of the Assistant Legal Adviser for Economic, Business and Communications, Office of the Legal Adviser, Department of State
John Hitchcock, First Secretary, United States Mission, Geneva
Ann Jillson, Multilateral Affairs Officer, Office of Specialized Technical Agencies, Bureau of International Organization Affairs, Department of State
Richard Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Richard E. Shrum, Deputy Coordinator for Multilateral Affairs, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
Leon Weintraub, Telecommunications Attache, United States Mission, Geneva

United States Delegation to the Chemicals Group and Management Committee, 23rd Joint Meeting, Environment Policy Committee (EPOC), Organization for Economic Cooperation and Development (OECD), Paris, June 21–23, 1995

Representative

Lynn R. Goldman, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency

Alternate Representative

Day Mount, Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Diane D. Beal, Special Assistant for International Activities, Office of Pollution Prevention and Toxics, Environmental Protection Agency
Susan Biniaz, Assistant Legal Adviser for Oceans, Environment and Scientific Affairs, Office of the Legal Adviser, Department of State
Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics, Environmental Protection Agency
Irving Fuller, Counselor for International Activities, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency
David Larrabee, Senior Industry Analyst, Metals Division, Office of Materials, Machinery and Chemicals, Department of Commerce
Anne E. Lindsay, Director, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency
Breck Milroy, Office of International Activities, Environmental Protection Agency
David M. Ogden, Office of International Activities, Environmental Protection Agency

Private Sector Advisers

Kenneth Murray, Environment Affairs Manager, Exxon Biomedical Sciences, Incorporated, East Millstone, New Jersey
Robert Muth, Chairman, Lead Industries Association, New York, New York
Ellen Silbergeld, Senior Toxicologist, Environmental Defense Fund, Washington, District of Columbia

United States Delegation to the Commission on Plant Genetic Resources, Sixth Session, Food and Agriculture Organization (FAO), Rome, June 19–30, 1995

Representative

Henry Shands, Associate Deputy Administrator for Genetic Resources, Agricultural Research Service, Department of Agriculture

Alternate Representatives

E. Wayne Denney, International Relations Adviser, Office of International Cooperation and Development, Foreign Agricultural Service, Department of Agriculture
Vanessa Laird, Assistant Legal Adviser, Oceans, International Environmental and Scientific Affairs, Office of the Legal Adviser, Department of State

Advisers

Robert Bertram, Agricultural Research and Biodiversity Officer, Office of Agriculture and Food Security, Agency for International Development
Thomas Forbord, Permanent Representative, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Jeffrey P. Kushan, Legislative and International Intellectual Property Specialist, United States Patent and Trademark Office, Department of Commerce
John Matuszak, Biodiversity Officer, Office of Ecology and Terrestrial Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Francis J. Vacca, Agricultural Attache, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Adviser

Michael J. Roth, Patent Counsel, Pioneer Hi-Bred International, Incorporated, Des Moines, Iowa

United States Delegation to the Working Party on Migration, 18th Session, Committee on Employment, Labor, and Social Affairs (ELSA), Organization for Economic Cooperation and Development (OECD), Paris, June 14–15, 1995

Representative

Roger Kramer, Director, Division of Immigration and Research, Bureau of

International Labor Affairs, Department of Labor

Private Sector Adviser

Demetrios Papademetriou, Director, Immigration Policy Programs, Carnegie Endowment for International Peace, Washington, District of Columbia

United States Delegation, Study Group 8 (Mobile, Radiodetermination, Amateur and Related Satellite Services), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, June 12–16, 1995

Representative

John Gilsenan, Director, Radio Spectrum Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Richard Engleman, Office of Engineering and Technology, Federal Communications Commission
Ricardo Layton, Chief, Global Positioning System Frequency Management, Space and Missile Command, Department of Defense, Los Angeles, California
Brian Ramsay, Spectrum Plans and Policies, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Richard Swanson, International Bureau, Federal Communications Commission

Private Sector Advisers

Christine DiLapi, Systems Engineer, Motorola Satellite Communications Division, Chandler, Arizona
Kenneth Engle, Satellite Communications Division, Motorola, Inc., Chandler, Arizona
Farzad Ghazvinian, Teledesic Corporation, Kirkland, Washington
Donald Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Edward Miller, Teledesic Corporation, Kirkland, Washington
Jayaram Ramasastry, QUALCOMM Inc., Washington, D.C.
Paul L. Rinaldo, Manager, Technical Relations, American Radio Relay League, Washington, D.C.
Eric Schimmel, Telecommunications Industry Association, Arlington, Virginia
Thomas M. Sullivan, Sullivan Telecommunications, Edgewater, Maryland
Leslie A. Taylor, Leslie Taylor Associates, Inc., Bethesda, Maryland

United States Delegation to Study Group 3 (Tariff and Accounting Principles) and Working Parties, Telecommunication Standardization Sector, International Telecommunication Union, Geneva, June 12–23, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Donald P. Casey, Director, Regulatory, AT&T Easy Link, Parsippany, New Jersey
Robert Madden, Manager, AT&T, Morristown, New Jersey
Philip Onstad, Consultant, International Communications Association, Edison, New Jersey
Marcel Scheidegger, MCI International, Rye Brook, New York
Richard W. Stone, Cable and Wireless Communications, Vienna, Virginia

United States Delegation to the Diplomatic Conference for the Adoption of the Draft Convention on the International Return of Stolen or Illegally Exported Cultural Objects of the International Institute for the Unification of Private Law (UNIDROIT), Rome, June 7–24, 1995

Representative

Harold S. Burman, Office of the Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Alternate Representatives

Elaine Johnston, Deputy General Counsel, The Smithsonian Institution
Maria Kouroupas, Executive Director, Cultural Property Advisory Committee, United States Information Agency
Ely Maurer, Assistant Legal Adviser for Educational, Cultural and Public Affairs, Office of the Legal Adviser, Department of State
Frank McManamon, Chief, Archaeological Assistance Division, National Park Service, Department of the Interior

Private Sector Adviser

Helen Wechsler, American Association of Museums, Washington, D.C.

United States Delegation to the Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries: Shipping, Third Session, Trade and Development Board, United Nations Conference for Trade and Development (UNCTAD), Geneva, June 6–9, 1995

Representative

Marie Murray, Deputy Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Appropriate Mission Officer, United States Mission to the European Office of the UN and Other International Organizations, Geneva

Private Sector Advisers

Philip J. Loree, Chairman, Federation of American Controlled Shipping, New York, New York
Donald L. O'Hare, Vice President, Sea-Land Corporation, Iselin, New Jersey

United States Delegation to the Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries: Shipping, Third Session, Trade and Development Board, United Nations Conference for Trade and Development (UNCTAD), Geneva, June 6–9, 1995

Representative

Marie Murray, Deputy Director, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Adviser

Appropriate Mission Officer, United States Mission to the European Office of the UN and Other International Organizations, Geneva

Private Sector Advisers

Philip J. Loree, Chairman, Federation of American Controlled Shipping, New York, New York
Donald L. O'Hare, Vice President, Sea-Land Corporation, Iselin, New Jersey

United States Delegation, Study Group 11 (Broadcasting Services—Television), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, June 1–7, 1995

Representative

John Reiser, Engineer, International Branch, Mass Media Bureau, Federal Communications Commission

Advisers

Larry W. Olson, Chief, International Branch, Mass Media Bureau, Federal Communications Commission
Steve Selwyn, Engineer, International Branch, Mass Media Bureau, Federal Communications Commission

Private Sector Advisers

John Corey, SBC, Inc., Chicago, Illinois
Robert S. Hopkins, Jr., ATSC, Washington, D.C.
Edward Reinhart, Consultant, McLean, Virginia
Troy Tepp, Consultant, Chicago, Illinois
Craig Todd, Dolby Laboratories, Inc., San Francisco, California

United States Delegation, Study Group 10 (Broadcasting Services—Sound), Radiocommunication Sector, International Telecommunication Union (ITU), Geneva, June 1–6, 1995

Representative

Larry W. Olson, Chief, International Branch, Mass Media Bureau, Federal Communications Commission

Advisers

John Reiser, Engineer, International Branch, Mass Media Bureau, Federal Communications Commission
Steve Selwyn, Engineer, International Branch, Mass Media Bureau, Federal Communications Commission

Private Sector Advisers

John Corey, SBC, Inc., Chicago, Illinois
Edward Reinhart, Consultant, McLean, Virginia
Troy Tepp, Consultant, Chicago, Illinois
Craig Todd, Dolby Laboratories, Inc., San Francisco, California

United States Delegation to the Informal Consultations of the Commission on the Status of Women, United Nations Economic and Social Council (ECOSOC), New York, July 31–August 4, 1995

Representative

The Honorable Victor Marrero, Ambassador, United States Representative to the United Nations Economic and Social Council

Alternate Representative

Melinda L. Kimble, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State

Advisors

Evan Bloom, Attorney-Advisor, Office of the Legal Advisor, Department of State
Mary T. Curtin, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
The Honorable Geraldine Ferraro, United States Representative to the United Nations Commission on Human Rights, New York
Sharon B. Kotok, Office of the Conference Secretariat, Bureau of Global Affairs, Depart of State
Margaret Pollock, Office of Economic and Social Affairs, Bureau of International Organization Affairs, Department of State
David P. Stewart, Attorney-Advisor, Office of Human Rights and Refugee Affairs, Office of the Legal Advisor, Department of State
Bisa Williams-Manigault, United States Mission to the United Nations, New York

Private Sector Advisor

Felice Gaer, Director, Jacob Baustein Institute for Human Rights, American Jewish Committee, New York

United States Delegation to the Sixth Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, July 18–August 8, 1995

Representative

Larry L. Snead, Office of Marine Conservation, Bureau of Oceans and International Environment and Scientific Affairs, Department of State

Alternate Representatives

Margaret Hayes, Office of the General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce
William E. Martin, Deputy Assistant Secretary for International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce

Congressional Staff Advisers

Bonnie Bruce, Subcommittee on Fisheries, Committee on Resources, House of Representatives
Earl W. Comstock, Legislative Director, Office of Senator Ted Stevens, United States Senate
Penny Dalton, Senior Staff Member, Committee on Commerce, Science, and Transportation, United States Senate
Charlotte De Fontaubert, Committee on Foreign Relations, United States Senate
Trevor McCabe, Legislative Assistant, Committee on Commerce, Science, and Transportation, United States Senate
Rebecca Metzner, Committee on Commerce, Science, and Transportation, United States Senate
Juli Trtanj, Committee on Commerce, Science, and Transportation, United States Senate
William B. Woolf, Legislative Assistant, Office of Senator Frank H. Murkowski, United States Senate

Advisers

William E. Dilday, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Robert A. Kushen, Attorney-Advisor, Office of the Legal Advisor, Department of State
Dean Swanson, Office of International Affairs, National Maritime Fisheries Service, Department of Commerce

Private Sector Advisers

David G. Burney, United States Tuna Foundation, San Diego, California
Lee G. Anderson, Chair, Mid-Atlantic Regional Fishery Management Council, Dover, Delaware
Sarah Chasis, Natural Resources Defense Council, New York, New York
C. Deming Cowles, Bering Sea Fishermen's Association, Pacific States Marine, Fisheries Commission, and Alaska Longline Fishermen's Association, Washington, D.C.
Rose B. Simmonds, Executive Director, Western Region, Western Pacific Regional Fishery Management Council, Honolulu, Hawaii
Michael H. Testa, Special Counsel, National Audubon Society, 32 Wildwood Drive, Great Neck, New York

United States Delegation to the Subcommittee on Fire Protection (FP), 40th Session, International Maritime Organization, London, July 17–21, 1995

Representative

Joseph N. Westwood-Booth, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Thaddeus G. Sliwinski, Lieutenant Commander, Chief, National Fire Protection Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Anthony DiSanto, Lieutenant, National Fire Protection Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety,

Security and Environmental Protection, United States Coast Guard, Department of Transportation
Albert G. Kirchner, Safety and Oversight Section, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Robert G. Bill, Factory Mutual Research Corporation, Norwood, Massachusetts
William M. Carey, Underwriter Laboratories, Inc., Northbrook, Illinois
Rupert Chandler, Hopeman Brothers, Inc., Waynesboro, Virginia
Phillip J. DiNenno, Vice President, Hughes Associates, Inc.
Joseph A. Senecal, Manager, Fenwal Safety Systems, Marlborough, Massachusetts

United States Delegation to the Fourth Meeting of Study Group 13 (General Network Aspects), Telecommunication Standardization Sector (TSS), International Telecommunication Union (ITU), Geneva, July 10–21, 1995

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Alternate Representative

Gary M. Fereno, Director for CITEL and ITU-T Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Randall S. Bloomfield, Electronics Engineer, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado
D. Wayne Hanson, Electrical Engineer, National Institute of Standards and Technology, Department of Commerce, Boulder, Colorado
Wendell R. Harris, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission
Richard O. Savoye, Electronics Engineer, National Communications Systems, Arlington, Virginia
Neil Seitz, Deputy Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

Robert Cubbage, Network Product Planner, ALCATEL Network Systems, Richardson, Texas
Glen H. Estes, Director, Pacific Bell, San Ramon, California
Vito Jokubaitis, Technical Industry Standards, AT&T, Bedminster, New Jersey

United States Delegation to the Twentieth Assembly of Parties of the International Telecommunications Satellite Organization (Intelsat), Copenhagen, Denmark, August 29–September 1, 1995

Representative

Ambassador Vonya B. McCann, United States Coordinator, Alternate Representative, International Communications Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

Michael T.N. Fitch, Deputy United States Coordinator, International Communications Information Policy, Bureau of Economic and Business Affairs, Department of State
Steven W. Lett, Director for Satellite and Cable Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

James L. Ball, Associate Chief for Policy, International Bureau, Federal Communications Commission
Michael Deich, Special Assistant to the President, National Economic Council, The White House
Michele Farquhar, Acting Deputy Assistant Secretary, National Telecommunications and Information Administration, Department of Commerce
Robin J. Frank, Attorney Adviser, Office of the Legal Adviser, Department of State
Jack M. Gleason, Director of International Policy, National Telecommunications and Information Administration, Department of Commerce
Olga Madruga-Forti, Senior Attorney-Adviser, International Bureau, Federal Communications Commission
Diane E.V. Steinour, Telecommunications Policy Specialist, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Stephen Ganote, Director-International and Federal Affairs, Comsat World Systems, Comsat Corporations, Bethesda, Maryland
John Mattingly, Vice President and General Manager, Comsat World Systems, Comsat Corporation, Bethesda, Maryland
Maury J. Mechanick, Vice President-International and Regulatory Affairs, Comsat World Systems, Bethesda, Maryland

United States Delegation to the Twenty-Fourth Annual Session of the South Pacific Applied Geoscience Commission (SOPAC), Suva, September 29–October 6, 1995

Representative

William A. Erb, Director, Division of Marine Science and Technology Affairs, Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Richard J. Podorny, Senior Adviser, Office of Sustainable Development, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

H. Gary Greene, Director, Moss Landing Marine Laboratories, Moss Landing, California
Donald R. Montgomery, Earth Science Flight Experiment Program Office, Caltech/Jet Propulsion Laboratory, Pasadena, California

United States Observer Delegation to the International Coffee Council, International Coffee Organization (ICO), London, September 25–29, 1995

Principal Observer

Michael Glover, Economic Officer, United States Embassy, London

Private Sector Observer

John T. Hays, President and Chief Executive Officer, Coast Kona Coffee Group, Inc., Honolulu, Hawaii

United States Delegation to Study Group Two (Network Operation), Telecommunications Standardization Sector, International Telecommunication Union (ITU), Geneva, September 19–29, 1995

Representative

Earl S. Barbely, Telecommunications and Information Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

John F. Copes, Attorney Adviser, International Bureau, Federal Communications Commission
Richard L. Swanson, Special Services Division, International Liaison Staff, Private Radio Bureau, Federal Communications Commission

Private Sector Advisers

Joseph Alfred, AT&T, Bedminster, New Jersey
T. Stephen Cheston, Director of International Government Relations, Iridium, Inc., Washington, DC
Steve Engelman, Senior Staff Member, MCI, Richardson, Texas
Fred Gaechter, Member, Technical Staff, North American Numbering Plan Administration, Bellcore, Livingston, New Jersey
Cathy Handley, Manager, Technical Industry Issues, U.S. West Communications, Denver, Colorado
Robert Madden, Manager, AT&T, Morristown, New Jersey
Mark Neibert, Director for International Standards Development, COMSAT World Systems, Bethesda, Maryland
Lawrence Young, Director, Technical Standards, Ameritech Services, Hoffman Estates, Illinois.

United States Delegation to the Telecommunications Standardization Advisory Group (TSAG), International Telecommunication Union (ITU), Geneva, September 19–22, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Douglas V. Davis, Attorney Adviser, International Bureau, Federal Communications Commission
William Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

Richard P. Brandt, DB Consulting, Annandale, New Jersey
Gary Fishman, Technical Standards Director, AT&T, Bedminster, New Jersey
Otto J. Gusella, Executive Director, Alliance for Telecommunications Industry Solutions (ATIS), Washington, D.C.
George Helder, Consultant, Picturetel Corporation, Moraga, California
Anita Kaufman, MCI Corporation, Rye Brook, New York
Mark Neibert, COMSAT Corporation, Bethesda, Maryland
Roger Nucho, Director of Standards, Bell Atlantic, Arlington, Virginia
Arthur Reilly, BELLCORE, Red Bank, New Jersey
Robert J. Smith, Director, Science and Technology, NYNEX Corporation, Cambridge, Massachusetts
Martin Sullivan, Director, BELLCORE, Red Bank, New Jersey

United States Delegation to Study Group Two (Network Operation), Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, September 19–29, 1995

Representative

Earl S. Barbely, Telecommunications and Information Standards, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

John F. Copes, Attorney Adviser, International Bureau, Federal Communications Commission
Richard L. Swanson, Special Services Division, International Liaison Staff, Private Radio Bureau, Federal Communications Commission

Private Sector Advisers

Joseph Alfred, AT&T, Bedminster, New Jersey
T. Stephen Cheston, Director of International Government Relations, Iridium, Inc., Washington, D.C.
Steve Engelman, Senior Staff Member, MCI, Richardson, Texas
Fred Gaechter, Member, Technical Staff, North American Numbering Plan Administration, Bellcore, Livingston, New Jersey
Cathy Handley, Manager, Technical Industry Issues, U.S. West Communications, Denver, Colorado
Robert Madden, Manager, AT&T, Morristown, New Jersey
Mark Neibert, Director for International Standards Development, COMSAT World Systems, Bethesda, Maryland
Lawrence Young, Director, Technical Standards, Ameritech Services, Hoffman Estates, Illinois

United States Delegation to the Telecommunications Standardization Advisory Group (TSAG), International Telecommunication Union (ITU), Geneva, September 19–22, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Douglas V. Davis, Attorney Adviser, International Bureau, Federal Communications Commission
William Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

Richard P. Brandt, DB Consulting, Annandale, New Jersey
Gary Fishman, Technical Standards Director, AT&T, Bedminster, New Jersey
Otto J. Gusella, Executive Director, Alliance for Telecommunications Industry Solutions (ATIS), Washington, D.C.
George Helder, Consultant, Picturetel Corporation, Moraga, California
Anita Kaufman, MCI Corporation, Rye Brook, New York
Mark Neibert, COMSAT Corporation, Bethesda, Maryland
Roger Nucho, Director of Standards, Bell Atlantic, Arlington, Virginia
Arthur Reilly, BELLCORE, Red Bank, New Jersey
Robert J. Smith, Director, Science and Technology, NYNEX Corporation, Cambridge, Massachusetts
Martin Sullivan, Director, BELLCORE, Red Bank, New Jersey

United States Delegation to the Working Party on the Facilitation of International Trade Procedures and its Subgroups, Economic Commission for Europe (ECE), Geneva, September 18–22, 1995

Representative

Bernestine Allen, Chief, International Cooperation and Trade Division, Office of International Transportation and Trade, Department of Transportation

Advisers

Bernadette Curry, Electronic Commerce/EDI Program Manager, Department of the Treasury
William R. Falkner, First Secretary, United States Mission, Geneva
Robert Mall, Customs Attaché, United States Mission to the European Union, Brussels
Roy G. Saltman, Computer Scientist, Computer Systems Laboratory, National Institute of Standards and Technology, Department of Commerce

Larry E. South, Team Manager, Defense Information Systems Agency, Department of Defense
Dennis Van Langen, Chief, Software Engineering Standards, Center for Standards, Defense Information Systems Agency, Department of Defense

Private Sector Advisers

Robert T. Crowley, Research Triangle Consultants, Lodi, New Jersey
Steven B. Gaylor, Harbinger EDI, Richardson, Texas
Robert Hurd, Washington Publishing Company, Gaithersburg, Maryland
Gaile L. Spadin, Data Interchange Standards Association, Inc., Alexandria, Virginia

United States Delegation to the Committee on Human Settlements, Fifty-Sixth Session, Economic Commission for Europe (ECE), Geneva, September 18–20, 1995

Representative

Paul A. Leonard, Deputy Assistant Secretary for Policy Development, Office of Policy Development and Research, Department of Housing and Urban Development

Private Sector Adviser

Mary Paumen, Housing Consultant, Malvern, Pennsylvania

United States Delegation to the Telecommunication Standardization Advisory Group (TSAG) and Radiocommunication Advisory Group (RAG), Joint Working Party on Refinement of the Radiocommunication Sector and the Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, September 15–18, 1995

Representative

John Gilsenan, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

William Luther, International Adviser, Field Operations Bureau, Federal Communications Commission
Richard D. Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Adviser

Gary Koerner, Defense Information Systems Agency, Department of Defense

Private Sector Advisers

Bohdan Bulawka, Government Relations Office, Motorola, Washington, D.C.
James Carroll, Program Director, Sachs/Freeman Associates, Inc., Landover, Maryland
Gary Fishman, Technical Standards Director, AT&T, Bedminster, New Jersey
Otto J. Gusella, Executive Director, Alliance for Telecommunications Industry Solutions (ATIS), Washington, D.C.
George K. Helder, Consultant, Picturetel Corporation, Moraga, California
Donald M. Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Harold G. Kimball, Consultant, Duillier, Switzerland
Mark Niebert, Director for International Standards Development, COMSAT World Systems, Bethesda, Maryland
Thomas Sullivan, Sullivan Telecommunications Associates, Edgewater, Maryland
Lawrence Young, Director, Technical Standards, Ameritech Services, Hoffman Estates, Illinois

United States Delegation to the Maritime Transport Committee (MTC), Organization for Economic Cooperation and Development (OECD), Paris, September 11–12, 1995

Representative

Stephen M. Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Ralph Edwards, International Economist, Office of International Activities, Maritime Administration, Department of Transportation

Private Sector Adviser

Donald L. O'Hare, Vice President, Sea-Land Corporation, Iselin, New Jersey

United States Delegation Permanent Consultative Committee I, Inter-American Telecommunications Commission (CITEL), Organization of American States (OAS), Washington, D.C., September 5–8, 1995

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Gary M. Fereno, Director for CITEL and ITU-T Standards Policy, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Susan Cronin, Economic Adviser, United States Mission to the OAS, Department of State
Douglas V. Davis, Attorney Adviser, International Bureau, Federal Communications Commission
Nancy Eskinazi, Telecommunications Policy Adviser, National Telecommunications and Information Administration, Department of Commerce
Robert Fenishel, Senior Engineer, Office of Technology Standards, National Communications System
James McGlinchy, Director, International Commodity Policy and Non-ferrous Metals, Office of the United States Trade Representative, Executive Office of the President
Joan Segerson, Counsellor, United States Mission to the OAS, Department of State
Robert Stevens, International Bureau, Federal Communications Commission

Private Sector Advisers

Patricia Cooper, Director, Regulatory Affairs, PANAMSAT, Greenwich, Connecticut
Raymond Crowell, Director, Industry and Government Planning, COMSAT World Systems, Bethesda, Maryland
David Fine, Vice President, Government and International Relations, Southwestern Bell, Washington, D.C.
Karen Gies, Policy Analyst, MCI Telecommunications, Inc., Washington, D.C.
Thomas J. Plevyak, Manager for Standards, Bell Atlantic, Arlington, Virginia
Arthur Reilly, Bellcore, Washington, D.C.

United States Delegation to the United Nations Fourth World Conference on Women, Beijing, September 4–15, 1995

Ex-Officio Head of Delegation (While in Attendance)

Hillary Rodham Clinton, The First Lady of the United States of America, Honorary Chair

Chair (Representative)

The Honorable Madeleine K. Albright, Ambassador, United States Permanent Representative to the United Nations

Co-Chairs (Alternate Representatives)

The Honorable Donna Shalala, Secretary of Health and Human Services, Department of Health and Human Services

Alternate Chair (Alternate Representative)

The Honorable Timothy E. Wirth, Under Secretary for Global Affairs, Department of State

Deputy Chair (Alternate Representative)

Marjorie Margolies-Mezvinsky, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State

Vice Chairs (Alternate Representatives)

J. Veronica Biggins, Executive Search Consultant, Heidrick & Struggles, Former Senior Advisor to the President and Director of Presidential Personnel, Atlanta, Georgia
The Honorable Geraldine Ferraro, United States Representative to the United Nations Commission on Human Rights, New York, New York
Thomas Kean, President, Drew University, Madison, New Jersey

Congressional Advisors

The Honorable Jane F. Harmon, United States House of Representatives
The Honorable Carolyn B. Maloney, United States House of Representatives
The Honorable Constance A. Morella, United States House of Representatives
The Honorable Nancy Pelosi, United States House of Representatives
The Honorable, Christopher H. Smith, Senior Congressional Delegate, United States House of Representatives
The Honorable Barbara F. Vucanovich, United States House of Representatives

Congressional Staff Advisors

Kristen F. Gilley, Professional Staff Member, Committee on International Relations, United States House of Representatives
Grover J. Rees III, Staff Director/Chief Counsel, Subcommittee on International Operations and Human Rights Committee on International Relations, United States House of Representatives
Mara E. Rudman, Minority Counsel, Committee on International Relations, United States House of Representatives

Senior Advisers

Scott S. Hallford, Charge d'Affaires, ad interim, American Embassy, Beijing
Melinda L. Kimble, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State
The Honorable Madeleine Kunin, Deputy Secretary, Department of Education
The Honorable Victor Marrero, Ambassador, United States Representative to the United Nations Economic and Social Council
The Honorable Sally Shelton, Assistant Administrator, United States Agency for International Development

Advisers

Evan Bloom, Office of the Legal Advisor, Department of State
Iris Burnett, Chief of Staff, United States Information Agency
Bonnie Campbell, Director, Violence Against Women Office, Department of Justice
Nils Daulaire, Deputy Assistant Administrator, Health and Population, United States Agency for International Development
Kathleen Hendrix, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State
The Honorable Judith Heumann, Assistant Secretary, Department of Education
Sharon Kotok, Office of the Conference Secretariat, Bureau of Global Affairs, Department of State, Sarah Kovner, Special Assistant to the Secretary, Department of Health and Human Services
The Honorable Ginger Lew, General Counsel, Department of Commerce
Ellen Marshall, Acting Coordinator for Population, Bureau of Population, Refugees and Migration, Department of State
The Honorable Jean C. Nelson, Counselor to the Administrator, Environmental Protection Agency
The Honorable Karen B. Nussbaum, Director, Women's Bureau, Department of Labor
The Honorable Jan O. Piercy, United States Executive Director, World Bank, Department of the Treasury
David Stewart, Office of the Legal Advisor, Department of State
Bisa Williams-Manigault, United States Mission to the United Nations, New York

Public Members

The Honorable Maria Antonietta Berriozabal, United States Principal Representative to the Commission of Women, Organization of American States, San Antonio, Texas
Arthenia L. Joyner, Founding Partner, Stewart, Joyner, Jordan-Holmes and Holmes, Tampa, Florida
Dorothy V. Lamm, Columnist, Psychiatric Social Worker and Health Care Advocate, Denver, Colorado

Private Sector Advisers

Laila Al-Marayati, M.D., President, Muslim Women's League, Glendae, California
Myrna Blyth, Publishing Director and Editor-in-Chief, Ladies Home Journal, New York
Elizabeth Coleman, Chairman of the Board of Directors and Chief Executive Officer, Maidenform, Atlanta, Georgia
Lynn Cutler, Senior Vice President of Public Affairs, The Kamber Group, Washington, DC
Felice Gaer, Director, Jacob Blaustein Institute for Human Rights, American Jewish Committee, New York
Adrienne Germain, Vice President and Program Director, International Women's Health Coalition, New York
Sister Dorothy Anne Kelly, President, College of New Rochelle, New Rochelle, New York
Marilyn Monahan, Secretary-Treasurer, National Education Association, Washington, DC
San Juanita Munoz, Student, Carnegie Mellon University, Pittsburgh, Pennsylvania
Julia Vadala Taft, President and Chief Executive Officer, InterAction, Washington, DC
Linda Tarr-Whelan, President, Center for Policy Alternatives, Washington, DC
Virginia Trotter-Betts, JD, MSN, RN, President, American Nurses Association, Nashville, Tennessee
Susan Weld, Lecturer in Law, Boston College Law School, Boston, Massachusetts
Marie Wilson, President, Ms. Foundation, New York

UNITED STATES OBSERVER DELEGATION TO THE TWENTY-EIGHTH GENERAL CONFERENCE OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, PARIS, OCTOBER 25–NOVEMBER 16, 1995

Principal Observer

Melinda L. Kimble, Deputy Assistant Secretary for Global Issues, Bureau of International Organization Affairs, Department of State

Public Members

Patricia Gentry Edington, Former Executive Director and President, City of Mobile Historic Development Commission, Mobile, Alabama
Lewis Katz, Senior Partner, Katz, Ettin, Levine, Kurzwell and Weber, Advocates, Cherry Hill, New Jersey

Observers

Athena Katsoulos, United States Observer Mission to the United Nations Educational, Scientific and Cultural Organization, Paris

William W. McIlhenny, United States Observer Mission to the United Nations Educational, Scientific and Cultural Organization, Paris
Raymond E. Wanner, Deputy Director, Office of United Nations Technical Specialized Agencies, Department of State

Senior Private Sector Adviser

Leonard H. Marks, Cohn and Marks, Law Firm, Washington, DC

UNITED STATES DELEGATION TO THE WORLD RADIOCOMMUNICATION CONFERENCE, INTERNATIONAL TELECOMMUNICATION UNION (ITU), GENEVA, OCTOBER 23–NOVEMBER 17, 1995

Representative

Brian Fontes, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

Cecily Holiday, Deputy Chief, Satellite and Radiocommunications Division, International Bureau, Federal Communication Commission
Richard Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Warren Richards, Executive Director for Technical Matters, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Dexter Anderson, Telecommunications Manager, International Broadcasting Bureau, United States Information Agency
Richard Barth, Director, Office of Radio Frequency Management, Department of Commerce
Donna Bethea, Electronics Engineer, Satellite Engineering Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communication Commission
Edward Davison, Electronics Engineer, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
William Hatch, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
William H. Jahn, Executive Director for Administrative Matters, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
Kristi Kendall, Attorney Adviser, Satellite Policy Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communication Commission
Damon Ladson, Electronics Engineer, Radiocommunications Policy Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communication Commission
William G. Long, Jr., Assistant for Spectrum Utilization, Defense Information Systems Agency, Department of Defense
Norman Olsen, Telecommunications Attaché, United States Mission, Geneva
Brian Ramsay, Telecommunications Specialist, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
George Sakai, Deputy Program Director, Spectrum Policy and Management, Spectrum Engineering Division, Federal Aviation Administration, Department of Transportation
Douglas Spalt, Electronics Engineer, Defense Information Systems Agency, Department of Defense
Diane Garfield, Principal Engineer, Computer Sciences Corporation, Sterling, Virginia
Farzad Ghazvinian, Director, Communications Systems, Teledesic, Kirkland, Washington
Erik Goldman, Director, Business Development, LEO One, St. Louis, Missouri
Gerald B. Helman, Vice President, Mobile Communications Holdings, Inc., Washington, DC
Shant Hovnanian, Cellular Vision, New York, New York
George Hrycenko, Consultant, Hughes Space and Communications Company, Los Angeles, California
Kris Hutchinson, Director, Frequency Management, Aeronautical Radio, Inc. (ARINC), Annapolis, Maryland
John P. Janka, Partner, Latham & Watkins, Washington, D.C.
Donald Jansky, President, Jansky/ Barmat Telecommunications, Inc., Washington, DC
Ronald J. Jarvis, Telecommunications Counsel, Final Analysis Communications Services, Inc., Greenbelt, Maryland
Thomas Keller, Senior Partner, Verner Liipfert Law Firm, Washington, DC
Ronald Lepkowski, Vice President, Engineering, Constellation Communications, Fairfax, Virginia
Lon Levin, Vice President and Regulatory Counsel, American Mobile Satellite Corporation, Reston, Virginia
Paul Locke, Manager of Space Segment Engineering, Orbcomm, Dulles, Virginia
Robert Mazer, Partner, Rosenman & Colin, Washington, D.C.
Edward F. Miller, Regulatory Affairs Consultant, Teledesic Corporation, Cleveland, Ohio
Samuel Nguyen, Spectrum Systems Engineer, COMSAT, Clarksburg, Maryland
Leonard R. Raish, Partner, Fletcher, Heald & Hildreth, Rosslyn, Virginia
Jayaram Ramasastry, Vice President, Loral Qualcomm Partnership, Qualcomm, Washington, D.C.
Eugene Rappaport, Manager, Industry & Government Technology Issues Management Division, AT&T, Bedminster, New Jersey
Edward E. Reinhardt, Telecommunications Consultant, McLean, Virginia
Alan Renshaw, Program Manager, Starsys Global Positioning Inc., Lanham, Maryland
Raul Rey, Regulatory Affairs Manager, TRW, Odyssey Services Organization, Redondo Beach, California
Raul Rodriguez, Partner, Leventhal, Senter & Lerman, Washington, D.C.
Walda Roseman, President, Compass Rose International, Inc., Washington, D.C.
Roger Rusch, Deputy Managing Director, TRW, Odyssey Services Organization, Redondo Beach, California
Jill Stern, Telecommunications Counsel, Shaw, Pittman, Potts & Trowbridge, Washington, D.C.
Thomas Sullivan, Sullivan Telecommunications Associates, Edgewater, Maryland
Leslie Taylor, President, Leslie Taylor & Associates, Bethesda, Maryland
Robert Taylor, Taylor Telecommunications and Computers, Rosharon, Texas
David Weinreich, Manager, Systems Simulation & Evaluation Department, COMSAT, Clarksburg, Maryland
Jack Wengryniuk, Manager Regulatory Affairs, Iridium, Washington, D.C.
Robert Wiedeman, Vice President Engineering, Globalstar, San Jose, California
Richard Wright, Associate Program Manager, Computer Sciences Corporation, Sterling, Virginia

United States Delegation to the World Radiocommunication Conference, International Telecommunication Union (ITU), Geneva, October 23–November 17, 1995

Representative

Brian Fontes, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Alternate Representatives

Cecily Holiday, Deputy Chief, Satellite and Radiocommunications Division, International Bureau, Federal Communications Commission
Richard Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Warren Richards, Executive Director for Technical Matters, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Dexter Anderson, Telecommunications Manager, International Broadcasting Bureau, United States Information Agency
Richard Barth, Director, Office of Radio Frequency Management, Department of Commerce
Donna Bethea, Electronics Engineer, Satellite Engineering Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communications Commission
Edward Davison, Electronics Engineer, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
William Hatch, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
William H. Jahn, Executive Director for Administrative Matters, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
Kristi Kendall, Attorney Adviser, Satellite Policy Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communications Commission
Damon Ladson, Electronics Engineer, Radiocommunications Policy Branch, Satellite and Radiocommunications Division, International Bureau, Federal Communications Commission
William G. Long, Jr., Assistant for Spectrum Utilization, Defense Information Systems Agency, Department of Defense
Norman Olsen, Telecommunications Attaché, United States Mission, Geneva
Brian Ramsay, Telecommunications Specialist, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
George Sakai, Deputy Program Director, Spectrum Policy and Management, Spectrum Engineering Division, Federal Aviation Administration, Department of Transportation
Douglas Spalt, Electronics Engineer, Defense Information Systems Agency, Department of Defense
Diane Garfield, Principal Engineer, Computer Sciences Corporation, Sterling, Virginia
Farzad Ghazvinian, Director, Communications Systems, Teledesic, Kirkland, Washington
Erik Goldman, Director, Business Development, LEO One, St. Louis, Missouri
Gerald B. Helman, Vice President, Mobile Communications Holdings, Inc., Washington, D.C.
Shant Hovnanian, Cellular Vision, New York, New York
George Hrycenko, Consultant, Hughes Space and Communications Company, Los Angeles, California
Kris Hutchinson, Director Frequency Management, Aeronautical Radio, Inc. (ARINC), Annapolis, Maryland
John P. Janka, Partner, Latham & Watkins, Washington, D.C.
Donald Jansky, President, Jansky/ Barmat Telecommunications, Inc., Washington, D.C.
Ronald J. Jarvis, Telecommunications Counsel, Final Analysis Communications Services, Inc., Greenbelt, Maryland
Thomas Keller, Senior Partner, Verner Liipfert Law Firm, Washington, D.C.
Ronald Lepkowski, Vice President, Engineering, Constellation Communications, Fairfax, Virginia
Lon Levin, Vice President and Regulatory Counsel, American Mobile Satellite Corporation, Reston, Virginia
Paul Locke, Manager of Space Segment Engineering, Orbcomm, Dulles, Virginia
Robert Mazer, Partner, Rosenman & Colin, Washington, D.C.
Edward F. Miller, Regulatory Affairs Consultant, Teledesic Corporation, Cleveland, Ohio
Samuel Nguyen, Spectrum Systems Engineer, COMSAT, Clarksburg, Maryland
Leonard R. Raish, Partner, Fletcher, Heald & Hildreth, Rosslyn, Virginia
Jayaram Ramasastry, Vice President, Loral Qualcomm Partnership, Qualcomm, Washington, D.C.
Eugene Rappaport, Manager, Industry & Government Technology Issues Management Division, AT&T, Bedminster, New Jersey
Edward E. Reinhardt, Telecommunications Consultant, McLean, Virginia
Alan Renshaw, Program Manager, Starsys Global Positioning, Inc., Lanham, Maryland
Raul Rey, Regulatory Affairs Manager, TRW, Odyssey Services Organization, Redondo Beach, California
Raul Rodriguez, Partner, Leventhal, Senter & Lerman, Washington, D.C.
Walda Roseman, President, Compass Rose International, Inc., Washington, D.C.
Roger Rusch, Deputy Managing Director, TRW, Odyssey Services Organization, Redondo Beach, California
Jill Stern, Telecommunications Counsel, Shaw, Pittman, Potts & Trowbridge, Washington, D.C.
Thomas Sullivan, Sullivan Telecommunications Associates, Edgewater, Maryland
Leslie Taylor, President, Leslie Taylor & Associates, Bethesda, Maryland
Robert Taylor, Taylor Telecommunications and Computers, Rosharon, Texas
David Weinreich, Manager, Systems Simulation & Evaluation Department, COMSAT, Clarksburg, Maryland
Jack Wengryniuk, Manager Regulatory Affairs, Iridium, Washington, D.C.
Robert Wiedeman, Vice President Engineering, Globalstar, San Jose, California
Richard Wright, Associate Program Manager, Computer Sciences Corporation, Sterling, Virginia

United States Delegation to the International Cotton Advisory Committee (ICAC), 54th Plenary Meeting, Manila, October 22–27, 1995

Representative

Kenneth E. Howland, Director, Tobacco, Cotton and Seeds Division, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

Lana Bennett, Deputy Director, Tobacco, Cotton and Seeds Division, Foreign Agricultural Service, Department of Agriculture

Advisers

Wayne Bjorlie, Leader, Fibers Group, Consolidated Farm Service Agency, Department of Agriculture
Lawrence Hall, Agricultural Counselor, United States Embassy, Manila

Private Sector Advisers

Jesse S. Barr, Assistant Director, Economic Services, National Cotton Council, Memphis, Tennessee
Adel Boutros, American Cotton Marketing Cooperatives, Bakersfield, California
Donald B. Conlin, Chairman Emeritus, New York Cotton Exchange, New York, New York

Neal P. Gillen, Executive Vice President and General Counsel, American Cotton Shippers Association, Washington, District of Columbia
William May, Vice President, Foreign Operations and Administration, American Cotton Shippers Association, Memphis, Tennessee

United States Delegation to the Radiocommunication Assembly, Radiocommunication Bureau, International Telecommunication Union (ITU), Geneva, October 16–20, 1995

Representative

John Gilsenan, Office of Standards and International Organizations, International Communications and Information Policy, Bureau of Economic and Business Affairs Department of State

Alternate Representatives

William Luther, Chief, Radio Policy, International Bureau, Federal Communication Commission
Richard Parlow, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce

Advisers

Eldon Haakinson, Institution for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado
Gerald Hurt, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce, Annapolis, Maryland
Alex Latker, Attorney Adviser, International Policy Division, Common Carrier Bureau, Federal Communications Commission
Robert Mayher, Director, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce
John Reiser, Engineer, International Branch, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission
David Struba, Chief, Spectrum Management Branch, Program Integration Division, Office of Space Communications, National Aeronautics and Space Administration
William Utlaut, Director, Institute for Telecommunications Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

James Carroll, Program Director, Sachs/Freeman Associates, Inc., Landover, Maryland
Robert Combs, Stanford Telecommunications, Reston, Virginia
Christine DiLapi, Senior Electrical Engineer, Motorola Satellite Communications, Chandler, Arizona
Farzad Ghazvinian, Director, Communications Systems, Teledesic Corporation, Kirkland, Washington
Thomas Hayden, Teledesic Corporation, Kirkland, Washington
Robert Hedinger, AT&T, Bedminster, New Jersey
Donald Jansky, President, Jansky/Barmat Telecommunications, Washington, D.C.
Hal Kimball, Consultant, Duillier, Switzerland
Roger LeClair, Senior Engineer, Hughes Space and Communications, El Segundo, California
Edward Miller, Consultant, Cleveland, Ohio
Eugene Rappoport, Manager, Industry and Government Technology Issues Management Division, AT&T, Bedminster, New Jersey
Edward Reinhart, Telecommunications Consultant, McLean, Virginia
Paul Rinaldo, American Radio Relay League, Washington, D.C.
Thomas Sullivan, Sullivan Telecommunications Associates, Edgewater, Maryland
Robert Taylor, Taylor Telecommunication and Computers, Rosharon, Texas
David Weinreich, Department Manager, COMSAT Laboratories, Clarksburg, Maryland

United States Delegation to the Civil Communications Planning Committee (CCPC), North Atlantic Treaty Organization (NATO), Brussels, October 16–18, 1995

Representative

Stephen R. Springer, National Communications System, Arlington, Virginia

Advisers

Bernard Farrell, National Communications System, Arlington, Virginia
Andy H. Rausch, National Communications System, Arlington, Virginia
E. Joseph Thompson, Federal Emergency Management Agency

Private Sector Advisers

Jerome Bevenour, AT&T, Silver Spring, Maryland
William H. Butler III, MCI, Richardson, Texas

United States Delegation to the Subcommittee on Administrative and Financial Matters (SCAF) (October 12, 1995); the Subcommittee of the Whole on International Protection (SCIP) (October 13, 1995); and the 46th Executive Committee Plenary, (October 16–20, 1995) of the United Nations High Commissioner for Refugees (UNHCR), Geneva, October 12–20, 1995

Subcommittee on Administrative and Financial Matters (SCAF) (October 12, 1995)

Representative

William Brownfield, Counselor, Refugee and Migration Affairs, United States Mission, Geneva

Alternate Representative

Paula Reed Lynch, Office of Policy, Bureau of Population, Refugees, and Migration, Department of State

Advisers

Kelly Tallman Clements, Attache, Refugee and Migration Affairs, United States Mission, Geneva
Margaret Pollack, Office of Economic, Human Rights, and Social Affairs, Bureau of International Organizations, Department of State
Kirk Ressler, First Secretary, Refugee and Migration Affairs, United States Mission, Geneva
Luis Arreaga-Rodas, First Secretary, Refugee and Migration Affairs, United States Mission, Geneva
Michele Klein Solomon, Attorney Adviser, Office of the Legal Adviser for Human Rights and Refugees, Department of State
Leon Weintraub, Counselor, International Resource Management, United States Mission, Geneva

Private Sector Adviser

Ralston Deffenbaugh, Jr., Executive Director, Lutheran Immigration, and Refugee Service, New York, New York
Martin A. Wenick, Executive Vice President, Hebrew Immigrant Aid Society, Washington, District of Columbia

Subcommittee of the Whole on International Protection (SCIP) (October 13, 1995)

Representative

William Brownfield, Counselor, Refugee and Migration Affairs, United States Mission, Geneva

Alternate Representative

Paula Reed Lynch, Office of Policy, Bureau of Population, Refugees, and Migration, Department of State

Advisers

Kelly Tallman Clements, Attache, Refugee and Migration Affairs, United States Mission, Geneva
Phyllis Coven, Director, International Affairs, Immigration and Naturalization Service, Department of Justice
Margaret Pollack, Office of Economic, Human Rights, and Social Affairs, Bureau of International Organizations, Department of State
Kirk Ressler, First Secretary, Refugee and Migration Affairs, United States Mission, Geneva
Luis Arreaga-Rodas, First Secretary, Refugee and Migration Affairs, United States Mission, Geneva
Theresa L. Rusch, Office of Refugee Admissions, Bureau of Population, Refugees and Migration, Department of State
Michele Kelin Solomon, Attorney-Adviser, Office of the Legal Adviser for Human Rights and Refugees, Department of State

Private Sector Advisers

Ralston Deffenbaugh, Jr., Executive Director, Lutheran Immigration and Refugee Service, New York, New York
Martin A. Wenick, Executive Vice President, Hebrew Immigrant Aid Society, Washington, District of Columbia

46th Session of the Executive Committee Plenary (October 16–20, 1995)

Representative

Phyllis E. Oakley, Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State

Alternate Representative

Daniel L. Spiegel, Ambassador, Permanent Representative to the United Nations and Other International Organizations, United States Mission, Geneva

Advisers

William Brownfield, Counselor, Refugee and Migration Affairs, United States Mission, Geneva
Kelly Tallman Clements, Attache, Refugee and Migration Affairs, United States Mission, Geneva
Phyllis Coven, Director, International Affairs, Immigration and Naturalization Service, Department of Justice
David Kornbluth, Office of Policy, Bureau of Population, Refugees, and Migration, Department of State
Paula Reed Lynch, Office of Policy, Bureau of Population, Refugees, and Migration, Department of State
Margaret Pollack, Office of Economic, Human Rights, and Social Affairs, Bureau of International Organizations, Department of State
Kirk Ressler, First Secretary, Refugee and Migration Affairs, United States Mission, Geneva
Luis Arreaga-Rodas, First Secretary Refugee and Migration Affairs, United States Mission, Geneva
Leonard Rogers, Deputy Assistant Administrator, Bureau for Humanitarian Response, Agency for International Development
Michele Klein Solomon, Attorney-Adviser, Office of the Legal Adviser for Human Rights and Refugees, Department of State

Private Sector Advisers

Ralston Deffenbaugh, Jr., Executive Director, Lutheran Immigration and Refugee Service, New York, New York
Martin A. Wenick, Executive Vice President, Hebrew Immigrant Aid Society, Washington, District of Columbia

United States Delegation to the Subcommittee for the Preparation of a First Draft of the Study Group for the Preparation of Uniform Rules on International Interests in Mobile Equipment of the International Institute for the Unification of Private Law (UNIDROIT), Rome, October 11–13, 1995

Representative

Charles W. Mooney, Jr., Professor Law School, University of Pennsylvania, Philadelphia, Pennsylvania

Private Sector Advisor

Thomas Whalen, Condon and Forsyth, Washington, D.C.

United States Delegation to the Working Parties of Study Groups 1 and 2 Telecommunication Development Sector, International Telecommunication Union (ITU), Geneva, November 27–December 7, 1995

Representative

Doreen F. McGirr, Senior Counsellor, Office of Telecommunications Development, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Mindel De La Torre, Deputy Chief, Policy, Telecommunications Division, International Bureau, Federal Communications Commission
Roxanne McElvane, Attorney Adviser, Telecommunications Division, International Bureau, Federal Communications Commission

Private Sector Advisers

Gregg Daffner, Vice President, Government Affairs, PanAmSat, Greenwich, Connectiicut
David Fine, Vice President, Government and International Relations, Southwestern Bell Corporation, Washington, D.C.
Lynne Gallagher, President, Telecom/Telematique International, Washington, D.C.
Jane Hurd, President, Severance International, Inc., Washington, D.C.
Joseph Jackson, Vice President, Business Development and Marketing, Systems Engineering and Management Associates, Inc., Alexandria, Virginia
Tedros Lemma, Worldspace, Washington, D.C.
Martin Sullivan, Director, Standards Management, Bellcore, Red Bank, New Jersey
Diana Tyson, Global Accounts Manager, Human Resource Development, AT&T School of Business, Somerset, New Jersey

United States Delegation to the Western Central Atlantic Fishery Commission (WECAFC), Eighth Session, Food and Agriculture Organization (FAO), Caracas, Venezuela, November 20–24, 1995

Representative

Rebecca L. Gaghen, Economic Officer, United States Embassy, Caracas

Alternate Representative

Charles S. Ahgren, Counselor for Economic Affairs, United States Embassy, Caracas

Private Sector Adviser

Miguel Rolon, Executive Director, Caribbean Fisheries Management Council, San Juan, Puerto Rico

United States Delegation to the 19th Session of the Assembly International Maritime Organization (IMO), London, November 13–24, 1995

Representative

Robert E. Kremek, Admiral, Commandant, United States Coast Guard, Department of Transportation

Alternate Representatives

James C. Card, Chief, Office of Marine Safety, Security and Environmental

Protection, United States Coast Guard, Department of Transportation
Bernice Powell, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State

Advisers

Joseph J. Angelo, Director for Standards, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Gene F. Hammel, Assistant Director, Office of International Affairs, United States Coast Guard, Department of Transportation
Norman W. Lemley, Director, National Maritime Center, United States Coast Guard, Department of Transportation
Gerard P. Yoest, Director, Office of International Affairs, United States Coast Guard, Department of Transportation

Private Sector Adviser

Edward V. Kelly, Vice President, American Maritime Officers (AMO), Washington, District of Columbia

United States Delegation to the Special Commission To Study the Operation of The Hague Conventions on the Law Applicable to Maintenance Obligations and Those Conventions Concerning the Recognition and Enforcement of Decisions in Respect of Maintenance Obligations of The Hague Conference on Private International Law (HCOPIL), The Hague, November 13–17, 1995

Representative

Peter H. Pfund, Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Alternate Representative

Gloria F. DeHart, Office of the Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Adviser

Stephen R. Grant, International Liaison, Office of Child Support Enforcement, Department of Health and Human Services

Private Sector Advisers

Patricia Apy, Co-Chair, International Law Committee, Family Law Section, American Bar Association, Red Bank, New Jersey
Gary Caswell, Assistant Attorney General, State of Texas, San Antonio, Texas
Mary Jane Hamilton, Deputy Attorney General, State of California, Sacramento, California
Madalyn Maxwell, Assistant Attorney General, State of Illinois, Springfield, Illinois
Marilyn Ray Smith, Chief Legal Counsel, Child Support Enforcement Division, Department of Revenue, The Commonwealth of Massachusetts, Cambridge, Massachusetts

United States Delegation To Study Group 15 (Transmission Systems and Equipment), Telecommunication Standardization Sector, International Telecommunication Union (ITU), Geneva, November 13–24, 1995

Representative

Gary M. Fereno, Director for CITEL and ITU–TS Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Adviser

Gary Rekstad, Electronics Engineer, National Communications System

Private Sector Advisers

Thomas Hanson, Senior Engineering Associate, Corning Inc., Corning, New York
Fred W. Huffman, Standards Engineer, MCI Communications Corporation, Piscataway, New Jersey
Felix Kapron, Principal Engineer, Bellcore, Morristown, New Jersey
David J. Lindbergh, Coordinator for Standards, Picturtel Corporation, Danvers, Massachusetts
Mark Neibert, Director for International Standards, COMSAT World Systems, Bethesda, Maryland
John Ng, Principal Engineer, Bellcore, Red Bank, New Jersey
Marshall Schachtman, Consultant, The Kohl Group, Morristown, New Jersey
Richard Schaphorst, President, Delta Information Systems, Horsham, Pennsylvania
Anthony Schiano, Senior Engineer, AT&T, Bedminster, New Jersey
Laszlo Szerenyi, Standards Engineer, MCI Communications Corporation, Richardson, Texas

United States Delegation to the Committee on the Challenges of Modern Society (CCMS) Plenary, North Atlantic Treaty Organization (NATO), Washington, D.C., November 13–15, 1995

Representatives

Sherri W. Goodman, Deputy Under Secretary for Environmental Security, Department of Defense
The Honorable, William A. Nitze, Assistant Administrator for International Activities, Environmental Protection Agency

Alternate Representative

Wendy Grieder, United States National Coordinator for NATO/CCMS, Office of International Activities, Environmental Protection Agency

Advisers

Robert B. Axelrad, Senior Policy Adviser, Indoor Environments Division, Office of Air and Radiation, Environmental Protection Agency
Christopher Dell, Deputy Director for Political Affairs, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State
Craig Dunkerley, Director, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State
E. Kent Gray, Chief, Emergency Response Coordination Group, National Center for Environmental Health, Centers for Disease Control and Prevention, Department of Health and Human Services, Atlanta, Georgia
Stephen C. James, Special Assistant to the Director, National Risk Management Research laboratory, Environmental Protection Agency, Cincinnati, Ohio
Walter W. Kovalick, Jr., Director, Technology Innovation Office, Office of Solid Waste and Emergency Response, Environmental Protection Agency
Richard A. Livingston, Turner-Fairbanks Highway Research Center, Department of Transportation, McLean, Virginia
Beaumont C. McClure, Special Assistant to the State Director for International Programs, Bureau of Land Management, Department of the Interior, Phoenix, Arizona
Gregory Phillips, CCMS Desk Officer, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State
Francis A. Schiermeier, Director, Atmospheric Modeling Division, National Exposure Research Laboratory, Environmental Protection Agency, Research Triangle Park, North Carolina
Lynn Schoolfield, CCMS Projects Officer, Office of International Activities, Environmental Protection Agency
Alan B. Sielen, Deputy Assistant Administrator for International Activities, Environmental Protection Agency
Robert Simmons, Deputy Director, Office of European and Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State

Mary Tracy, United States Mission to NATO, Brussels, Belgium
Gary D. Vest, Principal Assistant Deputy Under Secretary for Environmental Security, Department of Defense

Private Sector Advisers

Philip W. Hemily, Former Deputy Assistant Secretary General for Scientific and Environmental Affairs of the North Atlantic Treaty Organization, Washington, D.C.
Peter S. Liou, Institute for Defense Analyses, Alexandria, Virginia

United States Delegation to the Permanent Executive Committee of the Commission for Inter-American Telecommunications (CITEL), Organization of American States (OAS), Montevideo, Uruguay, December 12–15, 1995

Representative

Gary M. Fereno, Director for CITEL and ITU-T Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Susan Cronin, Economic Adviser, United States Mission to the Organization of American States, Department of State
Edward M. Malloy, Deputy Coordinator, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State
James McGlinchey, Director, International Commodity Policy and Non-Ferrous Metals, Office of the United States Trade Representative, Executive Office of the President
Robert Stephens, Economist, Federal Communications Commission

Private Sector Advisers

Raymond Crowell, Director, Industry and Government Planning, COMSAT World Systems, Bethesda, Maryland
David Fine, Vice President, Government and International Relations, Southwestern Bell, Washington, D.C.
Mario Florian, Director, Latin America, Orbital Communications Corporation, Dulles, Virginia
Karen Gies, Regulatory Specialist, MCI Telecommunications, Inc., Washington, D.C.
Catherine Hinckley, Regional Manager, PanAmSat Corporation, Coral Gables, Florida
David F. Long, Director, International Regulatory Affairs, Sprint International, Reston, Virginia
Kevin Lynch, International Relations, AT&T, Morristown, New Jersey
Thomas J. Plevyak, Manager for Standards, Bell Atlantic, Arlington, Virginia
Arthur Reilly, Bellcore, Washington, D.C.
Leigh Rubinstein, Manager, International Public Affairs, AT&T, Washington, D.C.

United States Delegation to the ITU/CITEL Americas Regional Telecommunication Policy Meeting, Telecommunication Development Bureau, International Telecommunication Union (ITU), and Commission for Inter-American Telecommunications (CITEL), Organization of American States, (OAS), Montevideo, Uruguay, December 5–8, 1995

Representative

Gary M. Fereno, Director for CITEL and ITU-T Standards Policy, International Communications and Information Policy, Bureau of Economic and Business Affairs, Department of State

Advisers

Susan Cronin, Economic Adviser, United States Mission to the Organization of American States, Department of State
James McGlinchey, Director, International Commodity Policy and Non-Ferrous Metals, Office of the United States Trade Representative, Executive Office of the President
Robert Stephens, Economist, Federal Communications Commission

Private Sector Advisers

Raymond Crowell, Director, Industry and Government Planning, COMSAT World Systems, Bethesda, Maryland
Karen Gies, Regulatory Specialist, MCI Telecommunications, Inc., Washington, D.C.
Leigh Rubinstein, Manager, International Public Affairs, AT&T, Washington, D.C.

United States Delegation to the Joint Meeting of the Committee on Antidumping Practices and the Committee on Subsidies and Countervailing Measures, Council on Goods, World Trade Organization (WTO), Geneva, December 4–8, 1995

Representative

Ronald K. Lorentzen, Director for WTO Industrial Issues, Office of the United States Trade Representative, Executive Office of the President

Advisers

Mark Lunn, Policy Analyst, Office of Policy, Import Administration, International Trade Administration, Department of Commerce
John McInerney, Senior Counsel, Import Administration, Office of General Counsel, Department of Commerce
Richard Self, Attache, Office of United States Trade Representative, Geneva

Private Sector Adviser

Scott Andersen, Consultant, Office of United States Trade Representative, Geneva

[FR Doc. 96–29836 Filed 11–29–96; 8:45 am]
BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 00–56]

Advisory Circular (AC) on Voluntary Industry Distributor Accreditation Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed AC 00–56.

SUMMARY: This notice announces the availability of AC 00–56, which describes a system for the voluntary accreditation of civil aircraft parts distributors on the basis of voluntary industry oversight and provides information that may be used for developing accreditation programs.

EFFECTIVE DATE: September 5, 1996.

ADDRESSES: Copies of this AC can be obtained free of charge from the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Richard E. Nowak, AFS–350, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7228 or facsimile 202–267–5115.

SUPPLEMENTARY INFORMATION: This AC may also be downloaded from the FedWorld BBS by dialing the Internet at the following Uniform Resources Location: Ftp.11fwux.fedworld.gov/pub/faa.btm. The file name is VIDAP.

Issued in Washington, D.C. on October 31, 1996.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 96–30638 Filed 11–29–96; 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 December 17, 1996, at 10 a.m. Arrange for oral presentations by December 10, 1996.

ADDRESSES: The meeting will be held at the Regional Airline Association, 1200 19th Street, NW., 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 December 17, 1996, at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, at 10 a.m. The agenda will include a briefing by the Rulemaking Business Process Reengineering team on its recommendations for improving the FAA rulemaking process.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by December 10, 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.

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 November 25, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–30645 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–3–M

RTCA, Inc.; Government/Industry Free Flight Steering Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held December 12, 1996, starting at 1:30 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, in Conference Room 8ABC (8th floor).

The agenda will include: (1) Welcome/Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Discuss Plans for Review and Status of Free Flight Action Plan; (4) Report from Free Flight Select Committee; (5) Other Business; (6) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, 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 November 22, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–30639 Filed 11–29–96; 8:45 am]

BILLING CODE 4810–13–M

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking reinstatement of 11 previously approved information collection activities and renewal of 5 currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 31, 1997.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, or Ms. MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 632–3843 or (202) 632–3876 or by E-mail to Ms. Swanson at gloria.swanson@fra.dot.gov or to Ms. Johnson at maryann.johnson@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3318) or MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3226). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60 days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii)

the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that the agency organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of 11 previously approved information collection activities and 5 currently approved information collection activities that FRA will submit for clearance by OMB as required by the PRA:

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Abstract: Section 20139 of title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including standards for ''bridge safety equipment, [such as] nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water.'' FRA has added 49 CFR Part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges.

Specifically, Section 214.105(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system, after major repairs, and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce the Federal regulations. The information that is maintained at the job site also promotes safe bridge worker practices.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 575 railroads.

Frequency of Submission: On occasion.

Total Responses: 6 annually.

Average Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 12 minutes.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, part 215 of the Code of Federal Regulations prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words ''Dedicated Service'' must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5(c)(2), 215.5(d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 400 railroads.

Frequency of Submission: On occasion.

Total Responses: 6.

Average Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 6 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Abstract: Title 49, section 215.301 of the Code of Federal Regulations sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 620 railroads.

Frequency of Submission: On occasion.

Total Responses: 31,000 cars.

Average Time Per Response: 45 minutes per car.

Estimated Total Annual Burden Hours: 23,250 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR Part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a ''bad order'' tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged ''bad order'' so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the ''bad order'' tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 400 railroads.

Frequency of Submission: On occasion.

Total Responses: 40,000 tags.

Average Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 6,667 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of rail safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR Part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a

disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: Recordkeeping requirement.

Reporting Burden:

CFR	Respondent universe	Total responses	Average time per response (minutes)	Total burden hours
Provide copy of disqualification order to new or prospective employer.	620 railroads	3 orders	30	1.5
Provide copy of disqualification order to prospective employer.	1 employee	1 notification	30	.5
Request copy of disqualification order from previous employer.	620 railroads	Usual & customary procedure.	N/A	N/A

Total Estimated Burden Hours: 2 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: New Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Abstract: On January 14, 1976, the Environmental Protection Agency (EPA) issued railroad noise emission standards pursuant to the Noise Control Act of 1972 (Act). The standards, 40 CFR Part 201, establish limits on the noise emissions generated by railroad locomotives under both stationary and moving conditions and railroad cars under moving conditions. Section 17 of the Act also requires the Secretary of Transportation to enforce these regulations and promulgate separate regulations to ensure compliance with the same. On December 23, 1983, FRA published 49 CFR Part 210 to ensure compliance with the EPA standards. The certification and testing data ensures that locomotives built after December 31, 1979, have passed prescribed decibel standards for noise emissions under EPA regulations.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion; one-time.

Reporting Burden:

CFR	Respondent universe	Total responses	Average time per response	Total burden hours
Request for certification information	2	40	30 minutes	20
Apply badge or tag to cab of locomotive	2	40	30 minutes	20
Noise emission measurement	2	40	3 hours	120

Total Estimated Burden Hours: 160 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR Parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system as required by Part 236 that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the ''Signal System Five-Year Report.'' It requires that on or before April 1, 1997, and every five calender years thereafter, each railroad must file a signal systems status report. 61 FR 33872, July 1, 1996. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. *Id.*

Title 49, part 235 of the Code of Federal Regulations sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines ''material modifications'' and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements provided under 49 CFR Part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in

the protest, the address for filing the protest, the time limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum.

Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under Sections 236.102–236.109; Sections 236.376 to 236.387; Sections 236.576, 236.577, and Sections 236.586–236.589. Section 236.110 further provides that the test results must be recorded on preprinted or computerized forms provided by the carrier and that the forms show the name of the railroad, place and date of the test conducted, equipment tested, test results, repairs, replacements, and adjustments made, and the condition of the apparatus. This section also requires the employee making the test must sign the form, and that the record be retained at the office of a supervisory official having proper authority. Results of tests made in compliance with Section 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year.

Additionally, Section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and the tests results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of a supervisory official having proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or another designated official at the test location, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for at least 92 days. Finally, Section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Form Number(s): FRA F 6180.14; 6180.47.

Affected Public: Businesses.

Frequency of Submission: On occasion; every five years, recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total responses	Average time per response	Total burden hours
233.5—Reporting of accidents	620	10	30 minutes	5
233.7—False proceed signal failures report	620	224	15 minutes	56
233.9—5-year signal system report	260	52	30 minutes	26
235.5—Block signal applications	82	111	10 hours	1,110
235.8—Applications for relief	82	24	2.5 hours	60
235.20—Protest letters	84	84	30 minutes	42
236.110—Recordkeeping	82	1,965,464 records	.2177 hour	427,881
236.587—Departure tests	18	730,000 tests	4 minutes	48,667
236.590—Pneumatic valves	18	6,697 locomotives	22.5 minutes	2,511

Total Estimated Burden Hours: 480,358 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Remotely Controlled Railroad Switch Operations Log.

OMB Control Number: 2130–0516.

Abstract: Title 49, section 218.30 of the Code of Federal Regulations ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR	Respondent universe	Total responses	Average time per response (minutes)	Total burden hours
Blue signal protection	400 RRs	3,600,000 records	4	240,000
Camp cars	620 RRs	4,500 records	4	300

Total Estimated Burden Hours: 240,300 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Railroad Power Brakes and Drawbars.

OMB Control Number: 2130–0008.

Abstract: Title 49, part 232 of the Code of Federal Regulations requires that an initial terminal air brake test be made by a person designated as qualified by the inspecting railroad. It also requires that a qualified person participating in the test or a person having knowledge that the test was conducted notify the road crew of the train that the test was satisfactorily performed. Under Section 232.12(a)(2), FRA requires that the notice be made in writing to the road crew if (i) the qualified person goes off duty before the road crew reports or (ii) the train that has been inspected is to be moved in

excess of 500 miles without being subjected to another test pursuant to either this section or Section 232.13.

The rule also requires that an intermediate train air brake test be made to determine that the basic integrity of the train air line has not been disturbed by an incident encountered en route, such as picking up or setting out cars at which time a train's air line could have been disconnected and reconnected several times. To ensure continuity of the train brake pipe, railroads must determine that the brakes on the rear car apply and release. For tests required by Section 232.13(b)–(d), FRA now permits railroads to employ end-of-train telemetry devices to determine the status of the train brake pipe at the rear of the train and transmit that information to the lead locomotive. Specifically, Section 232.19(h)(3) requires that railroads using this device must calibrate it for accuracy at least every 92 days and record the date of the last calibration, identify the location where the calibration was made, and provide the name of the person doing the calibration on a tag, sticker, or other method of information storage affixed to the rear unit. The label is necessary to determine whether the end-of-train device has been tested within the time prescribed. Crew members use the information to verify that the initial terminal air brake test was satisfactorily performed by a qualified person.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR	Respondent universe	Total responses	Average time per response (seconds)	Total burden hours
Written notification by departing qualified persons	30 RRs	60,000 notifications	15	250
Written notification in excess of 500 miles before receiving another test.	620 RRs	380,000 notifications	15	1,500
Testing and stenciling of telemetry devices	620 RRs	20,000 tests	10	56

Total Estimated Burden Hours: 1,806 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: U.S. DOT–AAR Crossing Inventory Form.

OMB Control Number: 2130–0017.

Abstract: The U.S. DOT–AAR Crossing Inventory Form (FRA F 6180.71) is used to provide data on new highway-rail grade crossings (grade crossings) or changes to the Highway-Rail Grade Crossing Inventory (Inventory) form. The form is used for reporting all types of changes, especially the establishment of a new grade crossing, closing of an existing grade crossing, or changes in the characteristics of a grade crossing. Many public and private entities use the data provided on the Inventory form for program assessment and research.

T3Form Number(s): FRA Form 6180.71.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Reporting Burden:

Voluntary compliance	Respondent universe	Total responses	Average time per response (minutes)	Total burden hours
U.S. DOT–AAR crossing inventory form (FRA F 6180.71).	620 RRs	10,213 forms	15	2,553
Mass update form and inventory computer printout	620 RRs	250 lists	30	125
Magnetic tape	620 RRs	16	30	8
GX computer program	620 RRs	58,680 updates	2	1,956

Total Estimated Burden Hours: 4,642 hours.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Railroad Locomotive Safety Standards.

OMB Control Number: 2130–0004.

Abstract: Under regulations issued pursuant to Congressional mandate, 49 U.S.C. 20137, trains must be equipped with event recorders. Event recorders are devices that record train speed, hot box detection, throttle position, brake application, brake operations, time and signal indications, and any other function that FRA considers necessary to monitor the safety of train operations. Event recorders provide FRA with information about how trains are operated and, if a train is involved in an accident, the devices afford data to FRA and other investigators necessary to determine the probable causes of the accident.

Under 49 CFR Part 229, railroads are required to conduct daily, periodic, annual, and biennial tests of locomotives to measure the level of compliance with the Federal regulations. The collection of information requires railroads to prepare written records indicating the repairs needed, the person making the repairs, and the type of repairs made. This information provides a locomotive engineer with information that the locomotive has been inspected and is in proper condition for use in service, and enables FRA to monitor compliance with the regulatory standards. Other information collection requirements in Part 229 are indicated in the chart below.

Form Number(s): FRA Form 6180.49A.

Affected Public: Businesses.

Frequency of Submission: On occasion; annually, biennially, recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total responses	Average time per response	Total burden hours
229.9—Movement of noncomplying locomotive.	620 RRs	21,000 tags	1 minute	350
229.17—Accident reports	620 RRs	20 reports	15 minutes	5
229.21—Daily inspection	620 RRs	5,460,000 inspections	3 minutes	273,000
229.113—Steam generator warning notice	1 RR	1 notice	1 minute	1 minute
FRA form F 6180.49A	620 RRs	21,000 forms	2 minutes	700
210.31—Locomotive noise emission test	620 RRS	100 tests	15 minutes	25
229.23—Periodic inspection,	620 RRs	84,000 tests	10 hours	840,000
229.27, 229.29—Annual and biennial tests				
229.31—Main reservoir tests				
229.33—Out-of-use credit	620 RRs	2,400 out-of-use credits.	2 minutes	80
Written copy of instructions	620 RRs	200 amendments	15 minutes	50
Data verification readout record	620 RRs	72,000 tests	30 minutes	36,000
Written record when an event recorder is removed from service.	620 RRs	6,000 removals	1 minute	100
Record of event recorder data	620 RRs	100 accidents	15 minutes	25

Total Estimated Burden Hours: 1,150,350.

Status: Reinstatement of a previously approved collection of information which has expired.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions and take necessary measures to protect motorists and railroad employees at the grade crossing until repairs have been made.

Form Number(s): FRA Form 6180.83.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total responses	Average time per response (minutes)	Total burden hours
234.7—Telephone notification	605 RRs	4	15	1
234.9—Grade crossing signal system failure reports	620 RRS	400	15	100
Notification to train crew and highway traffic control authority	620 RRs	400	15	100
Recordkeeping	620 RRs	400	15	100

Total Estimated Burden Hours: 301 hours.

Status: Regular Review.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: Under 49 CFR Part 207, railroads are required to notify states of all designated railroad police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 30 railroads.

Frequency of Submission: Recordkeeping.

Total Responses: 300 annual responses.

Average Time Per Response: 5 hours.

Total Annual Burden Hours: 1,500 hours.

Status: Regular Review.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Lastly, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 6180.94B.

Affected Public: Businesses.

Frequency of Submission: On occasion; annually, recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total responses	Average time per response	Total burden hours
219.7	620 RRs	2 waivers	2 hours	4
219.9(b)(2)	620 RRs	25 times	4 hours	100
219.11(b)(2)	200 medical facilities	1	15 minutes	.25
219.11(g), 219.301(c)(2)(ii)	620 RRs	250 classes	3 hours	750
Notice of educational material available to employees.	15 new RRs	15 notices	1 hour	15
219.104, 219.107, 40.67	20 employees	20 letters	1 hour	20
219.201(c)	200 RRs	10 reports	30 minutes	5
219.203/207/209	200 RRs	104 calls	10 minutes	17
219.205	200 RRs	400 tests	15 minutes	100
219.205—Form 6180.73	200 RRS	100 forms	10 minutes	17
219.209(c)	200 RRs	40 records	30 minutes	20
219.211(b)	200 MROs	8 reports	15 minutes	2
219.211(e)	400 employees	1 response	1 hour	1
219.211(h)	200 RRs	400 records	30 minutes	200
219.211(i)	400 employees	1 letter	1 hour	1
219.213(b)	200 RRs	4 notices	30 minutes	2
219.302(f)	200 RRs	200 records	30 minutes	100
219.401/403/405	5 RRs	5 policies	40 hours	200
219.405(c)(1)	200 RRs	200 reports	5 minutes	17
219.407	200 RRs	1 policy	2 hours	2
		1 amend.	1 hour	1
219.403/405	200 SAPs	2,000 reports	10 minutes	333
219.601(a)	5 RRs	5 programs	80 hours	400
219.601(a)	200 RRs	5 amend.	5 hours	25
219.601(b)(4)/601.(d)	200 RRs	4,000 notices	5 min.	33
	5 RRs	5 notices	10 hours	50
	200 RRs	40,000 notices	5 minutes	3,333
219.601(b)(1)	200 RRs	200 docs.	8 hours per month	19,200
219.603(a)	40,000 employees	400 docs.	15 minutes	100
219.607	5 RRs	5 programs	80 hours	400
	200 RRs	5 amend.	5 hours	25
219.607(b)(1)	200 RRs	200 documents	8 hours per month	19,200
219.607(c)(1)	200 RRs	4,000 notices	5 minutes	33
	5 RRs	5 Notices	10 hours	50
219.609	20,000 employees	200 requests	15 minutes	50
219.703(a), 40.23	200 RRs	52,920 forms	15 minutes	13,230
219.705(c)	200 RRs	2 requests	10 hours	20
219.707(c)(d), 40.33—Positive test	200 MROs	980 tests	2 hours	1,960
	200 RRs	980 notifications	15 minutes	245
219.707(c)(d), 40.33—Negative test	200 MROs	48,020 letters	20 minutes	16,007
219.709	200 RRs	10 letters	30 minutes	5
	980 employees			
219.711(c), 40.25(f)(22)(ii)	60 employees	60 letters	5 minutes	5
	51,450 employees	12,893 forms	5 minutes	1,072
219.715, 40.57/59/61	80,000 employees	20,000 tests	15 minutes	5,000
40.59(c)	200 RRs	500 entries	2 minutes	17
40.65	200 BATs	20 tests	30 minutes	10
	200 RRs	200 notices	1 hour	200
	200 RRs	20 confirm. tests	15 minutes	5
40.69	200 RRs	10 cases	12 minutes	2
	200 RRs	1 case	1 hour	1
	1 physician	1 response	1 hour	1
40.81	200 RRs	60 letters	5 minutes	5
	20 employees	4 letters	30 minutes	2
40.83	200 RRs	138,100 records	5 minutes	11,508
219.801	60 RRs	40 forms	8 hours	320
	60 RRs	20 forms	4 hours	80
219.803	60 RRs	40 forms	65 hours	2,600
	60 RRs	20 forms	25 hours	500
219.901	200 RRs	100,500 records	5 minutes	8,375
	200 RRs	200 summaries	2 hours	400
40.23(d)(2)(ii)	5 RRs	5 written instruct.	40 hours	200
40.29(a)(2) & (b)	25 lab.	58,212 forms	15 minutes	14,553
40.31(c)(1)	25 lab.	1,176 certifications	1 minute	20
40.29(g)(1) & (5)	25 lab.	52,920 reports	30 minutes	26,460
40.29(g)(6)	25 lab.	200 reports	2 hours per month	4,800
40.29(g)(8) & (m)	25 lab.	25 records	240 hours	6,000

CFR section	Respondent universe	Total responses	Average time per response	Total burden hours
40.31(d)(6)	25 lab.	2 reports	10 hours	20
40.31(d)(7) & (8)	25 lab.	1 notification	50 hours	50
	25 lab.	1 statement	50 hours	50
40.33	200 MROs	18 letters	30 minutes	9
	200 MROs	2 letters	30 minutes	1
40.37	30 employees	30 requests	30 minutes	15

Total Estimated Burden Hours: 158,554.25 hours.

Status: Regular Review.

Title: Steam Locomotive Inspection.

OMB Control Number: 2130–0505.

Abstract: The specific sections describing the reporting, testing, and recordkeeping requirements are found at 49 CFR Part 230. Railroads use the information to ensure that steam locomotives are safe for use in service. Further, FRA's Office of Safety Assurance and Compliance uses the information to monitor regulatory compliance, investigate accidents to determine possible causes, and consider waiver petitions.

Form Number(s): Form 1, Form 3, Form 4, and Form 19.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

Reporting Burden:

CFR section	Respondent universe	Total responses	Average time per response	Total burden hours
230.10	48	26 waivers	1 hour	26
230.51—Form 1	48	968 reports	5 minutes	81
230.53—Form 3	48	880 reports	7 minutes	10
230.54—Form 4	48	1 report	1 hour	1
230.54—Form 19	48	1 report	30 minutes	.5
230.32—Badge plate	48	1 plate	30 minutes	.5
230.45—Boiler number	48	1 number	15 minutes	.25
230.48—Office record—boiler washing	48	243 records	1 minute	4
230.52—Posting of copy	48	1,056 forms	1 minute	18
230.104—Locomotive inspection report	48	7,290 reports	3 minutes	365
230.111—Stenciling dates of tests and cleaning	48	108 tests	1 minute	2
230.127(b)—Pistons and piston rods	48	1 stamp	15 minutes	.25
230.133—Driving, trailing and engine truck axles	48	1 stamp	15 minutes	.25
230.136—Crank pins	48	1 stamp	15 minutes	.25
230.158—Modification of rules	48	2 requests	1 hour	2

Total Estimated Burden Hours: 511 hours.

Status: Regular Review.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (order). *See* 49 CFR Part 232, Appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR Part 232, Appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The order does not require retaining cards or tags. When a car bearing a tag for movement under the order arrives at its destination, the tags are simply removed.

Form Number(s): None.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Total Responses: 1,320 tags.

Average Time Per Response: 5 minutes per tag.

Estimated Total Annual Burden Hours: 110 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on November 26, 1996.

MaryAnn Johnson,

Acting Director, Office of Information Technology and Productivity Improvement, Federal Railroad Administration.

[FR Doc. 96–30628 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket No. M–027]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel Seidman, Division of Production, Office of Ship Construction, Maritime Administration, MAR–720, Room 2103, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–1888 or fax 202–366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Shipbuilding Orderbook and Shipyard Employment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0029.

Form Number: MA–832.

Expiration Date of Approval: April 30, 1997.

Summary of Collection of Information: The collection consists of form MA–832 to gather information, including shipyard orderbook and shipyard employment of production workers distributed by various categories of work in the shipyards by calendar year and quarter as well as projections for firm work in the same categories. Also included is information on schedule of current orderbook construction dates providing details by ship type.

Need and Use of the Information: The collected information is necessary to perform the reviews required by sections 210 and 211 of the Merchant Marine Act, 1936, as amended.

Description of Respondents: U.S. shipyards which agree to complete the information collection and return it to the Maritime Administration.

Annual Responses: 200.

Annual Burden: 100 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By order of the Maritime Administrator.

Dated: November 25, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–30647 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–81–P

Application of Foreign Underwriters To Write Marine Hull Insurance

[Docket No. M–026]

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from Ace Limited, a Bermuda based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b) interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and must be received by close of business on December 16, 1996.

Dated: November 25, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–30646 Filed 11–29–96; 8:45 am]

BILLING CODE 4910–AK–P

Surface Transportation Board

[STB Finance Docket No. 33292]

Kansas Eastern Railroad, Inc.—Acquisition Exemption—Burlington Northern Railroad Company

Kansas Eastern Railroad, Inc. (KER), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire 139.3 miles of rail line from the Burlington Northern Railroad Company between milepost 483.0 east of Augusta, KS, and milepost 343.7 west of Columbus, KS.

The transaction was expected to be consummated on November 15, 1996.

This transaction is related to STB Finance Docket No. 33293, *South Kansas and Oklahoma Railroad, Inc.—Trackage Rights Exemption—Kansas Eastern Railroad, Inc.*, wherein KER will enter into a trackage rights agreement with South Kansas and Oklahoma Railroad, Inc. for the operation of the line being acquired by KER.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33292, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005

Decided: November 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30599 Filed 11–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33297]

Nittany & Bald Eagle Railroad Company—Operation Exemption—Lines of SEDA–COG Joint Rail Authority

Nittany & Bald Eagle Railroad Company (N&BE), a Class III rail common carrier, has filed a notice of exemption to operate 6.8 miles of lines owned by the SEDA–COG Joint Rail Authority (Authority): (1) Between Tyrone (M.P 0.0) and Vail (M.P. 3.0), in Blair County, PA; (2) between Mill Hall (M.P. 51.5) and Lock Haven (M.P. 54.3), in Clinton County, PA. In addition, N&BE will operate Authority's Mill Hall Industrial Track from milepost 13, in Castenea, PA, to milepost 14, in Mill Hall, PA.

The earliest the transaction could be consummated was November 19, 1996, the effective date of the exemption (7 days after the exemption was filed).

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33297, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219. Telephone: (412) 471–1800.

Decided: November 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30597 Filed 11–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33284]

SEDA–COG Joint Rail Authority—Acquisition Exemption—Lines of Consolidated Rail Corporation

SEDA–COG Joint Rail Authority (Authority), a rail common carrier, has filed a notice of exemption under 49

CFR 1150.41 to acquire approximately 6.8 route miles of rail lines of Consolidated Rail Corporation: (1) Between Tyrone (M.P 0.0) and Vail (M.P. 3.0), in Blair County, PA; (2) between Mill Hall (M.P. 51.5) and Lock Haven (M.P. 54.3), in Clinton County, PA. In addition, Authority will acquire the Mill Hall Industrial Track from milepost 13, in Castenea, PA, to milepost 14, in Mill Hall, PA.[1]

The transaction was expected to be consummated on or about November 6, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33284, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Steven S. Hurvitz, Esq., McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., 811 University Drive, State College, PA 16801.

Decided: November 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30600 Filed 11–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33293]

South Kansas and Oklahoma Railroad, Inc.—Trackage Rights Exemption—Kansas Eastern Railroad, Inc.

Kansas Eastern Railroad, Inc.[1] (KER), a Class III rail carrier, will agree to grant local trackage rights to South Kansas and Oklahoma Railroad, a Class III rail carrier, over its rail line between milepost 483.9, east of Augusta, KS, and milepost 343.7, west of Columbus, KS, a distance of 139.3 miles.

The transaction is scheduled to become effective immediately upon the consummation of the transaction in STB Finance Docket No. 33292.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33293, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005.

Decided: November 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–30598 Filed 11–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] Authority has indicated that Nittany & Bald Eagle Railroad Company (N&BE), a Class III railroad common carrier will be the operator of the lines. N&BE has filed a notice of exemption in *Nittany & Bald Eagle Railroad Company—Operation Exemption—Rail Lines of SEDA–COG Joint Rail Authority*, STB Finance Docket No. 33297, to operate the lines.

[1] See *Kansas Eastern Railroad, Inc.—Acquisition Exemption—Burlington Northern Railroad Company*, STB Finance Docket No. 33292 (STB served Dec. 2, 1996).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1118, Foreign Tax Credit—Corporations.

DATES: Written comments should be received on or before January 31, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, T:FP, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit—Corporations.

OMB Number: 1545–0122.

Form Number: 1118.

Abstract: Form 1118 and separate Schedules I and J are used by domestic and foreign corporations to claim a credit against tax for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 339 hr., 44 min.

Estimated Total Annual Burden Hours: 3,397,363.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 22, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–30618 Filed 11–29–96; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 61, No. 232
Monday, December 2, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1806, 1910, 1922, 1944, 1951, 1955, 1956, 1965, and 3550

Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs

Correction

In rule document 96–29777 beginning on page 59762 in the issue of Friday, November 22, 1996, make the following correction:

On page 59762, in the first column, in the DATES section, in the second and sixth lines, ''December 26, 1996'' should read ''December 23, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG96-96-000, et al.]

Termovalla S.C.A., et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 96–29654 beginning on page 59092 in the issue of Wednesday, November 20, 1996, make the following corrections:

1. On page 59093, in the second column, in the Docket numbers, in the second and third line, ''ER95-12-69-004'' should read ''ER95-1269-004''.

2. On the same page, in the third column, in the Docket numbers, in the third line, ''96-108-005'' should read ''ER96-108-005''.

BILLING CODE 1505–01–D

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY001; FRL-5646-7]

Clean Air Act Final Interim Approval of Operating Permits Program; New York

Correction

In rule document 96–28539, beginning on page 57589, in the issue of Thursday, November 7, 1996, make the following correction:

Appendix A to Part 70 [Corrected]

On page 57594, in the first column, in paragraph (a), in the sixth line, ''May 7, 1999'' should read ''December 9, 1996''.

BILLING CODE 1505–01–D

Federal Register

Monday
December 2, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 985

Section 8 Rental Voucher and Certificate Programs and Management Assessment Program (SEMAP); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR–3986–P–01]

RIN 2577–AB60

Section 8 Rental Voucher and Certificate Programs Section 8 Management Assessment Program (SEMAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the Section 8 Management Assessment Program (SEMAP) to objectively measure public housing agency (HA) performance in key Section 8 tenant-based assistance program areas. SEMAP would enable HUD to ensure program integrity and accountability by identifying HA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. HAs could use the SEMAP performance analysis to assess their own program operations.

DATES: Comment due date: January 31, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4594 or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Purpose

This proposed rule provides an objective system for HUD to measure HA performance in administering the Section 8 tenant-based assistance programs, and to identify HA management capabilities and deficiencies using criteria that are key to effective program administration. This proposed rule does not apply to Indian housing authority (IHA) administration of these programs. Performance of IHA administration of the Section 8 programs is assessed using the HUD Office of Native American Programs Risk Assessment and Determination for Allocation of Resources (RADAR) instrument. RADAR will incorporate the SEMAP performance indicators. The proposed rule does not cover the Section 8 moderate rehabilitation program; however, the Department expects that in most cases an HA's performance under the tenant-based programs will reflect its performance under the moderate rehabilitation program as well. The proposed rule provides procedures for addressing problem areas and poor performance through corrective action plans and follow-up monitoring.

At a time of diminishing HUD staffing resources, use of SEMAP will enable the Department to improve its risk assessment and to effectively target monitoring and program assistance to housing agencies that need most improvement and that pose the greatest risk.

The proposed rule describes 15 performance indicators that will be used to assess HA performance; the annual HA SEMAP certification and HUD review process; HUD scoring procedures and procedures for designating high, standard and troubled performers; and requirements for corrective action plans and strategies for improving performance.

While the Department plans to use SEMAP as its fundamental means of measuring HA Section 8 performance, SEMAP will be used in conjunction with independent auditor (IA) audit reports, fair housing and equal opportunity compliance reviews, HUD reviews of financial documents, on-site reviews, housing quality standards (HQS) reviews, participant complaints, and other pertinent information to assess ultimately an HA's overall performance under the Annual Contributions Contract (ACC).

II. Discussion

A. Performance Indicators

Overview

Section 985.3 lists 15 SEMAP performance indicators which are key to effective and cost efficient program administration. The indicators were chosen first and foremost to ensure that the Section 8 programs consistently operate to meet the intended result of helping eligible families afford decent rental units at a reasonable subsidy cost (i.e., to assist ''the right families in the right units at the right cost''). In addition, certain indicators measure whether rental assistance is delivered effectively (e.g., time from request for lease approval to HQS inspection, lease-up, deconcentration) and whether the HA advances the critical goal of family self-sufficiency (FSS) (e.g., FSS enrollment, welfare to work).

The Department considered including an indicator which would show whether families admitted to the program have incomes below the income limits, but all information HUD has indicates that there are almost no admissions of families with incomes over the income limits. Adding this as a SEMAP indicator would have very little useful purpose, since virtually all HAs are in full compliance with the requirement. The Department requires 100 percent reporting of all income and rent determinations, and monitoring income eligibility is built into the Multifamily Tenant Characteristics System (MTCS). MTCS is the Department's national data base on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs. There is a SEMAP indicator on HA verification of family income.

The Department also considered including indicators on financial management, but concluded that existing procedures for HUD review of budgets, requisitions and year-end financial statements and the annual independent audit already provide for sufficient HUD oversight of the financial management area.

Remarks on Particular Indicators

The ratings for the annual reexaminations indicator and the annual HQS inspections indicator at §§ 985.3(d) and 985.3(i), indicate that annual reexaminations and HQS inspections may not be more than 2 months overdue. This 2 month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual reexamination or the annual HQS inspection on Form HUD–50058, and to allow the processing of the data into the MTCS. The Form HUD–50058 data are used to measure performance under this indicator. The 2 month allowance provided here for rating purposes does not mean that any delay in completing

annual reexaminations and HQS inspections is ever permitted.

The indicator at § 985.3(j) for HQS quality control inspections shows whether an HA supervisor or other qualified person reinspects a random sample of at least 5 percent of completed HQS inspections. A small HA with only 1 or 2 employees may arrange with a nearby HA to have a qualified HQS inspector perform the required quality control inspections.

The indicator at § 985.3(l), for lease-up shows whether the HA executes assistance contracts on behalf of eligible families for the number of units that has been under budget for at least one year. In the event that the Congress continues hold-back requirements on turnover of rental vouchers and certificates in future fiscal years when SEMAP is implemented, HUD plans to waive the SEMAP regulation concerning ratings under this indicator and to instead provide that the number of units under contract would be divided by the number of units budgeted for the last HA fiscal year reduced by a HUD-determined percentage of the number of units budgeted to determine the lease-up rate for rating purposes.

The ratings under the lease-up indicator are based on the assumption that an HA uses all available annual contributions in determining the total number of units budgeted. In the event the HUD State or Area Office (hereafter referred to as HUD Office) approves an HA budget that budgets fewer units than could be supported with available annual contributions due to limited HA management capacity, and as a result the rating on the indicator as determined under § 985.3(l)(3) is overstated, the HUD Office may decrease the points it assigns for the lease-up indicator to adjust for the approved ''under-budgeting''.

The indicator at § 985.3(m) for FSS enrollment applies only to HAs with mandatory FSS programs (i.e., HAs that received FY 1992 FSS incentive award Section 8 funding or that received FY 1993 and later year Section 8 funding (excluding renewal funding)).

The deconcentration indicator at § 985.3(n) applies only to HAs with jurisdiction in metropolitan areas. This indicator compares the dispersal of Section 8 families with children throughout a metropolitan area to the dispersal of FMR-priced units throughout the metropolitan area. FMR-priced units are standard quality housing units, excluding zero- and one-bedroom units, that rent at or below the FMR as determined using 1990 Census data and FMRs. The indicator measures whether Section 8 families with children are at least as dispersed throughout the area as are the FMR-priced units, both within the HA's area of jurisdiction and within the entire metropolitan area. The Department does not intend that the SEMAP indicator for deconcentration should cause any metropolitan HA to directly or indirectly reduce a family's opportunity to select among available units. HUD intends that, by including the dispersal of Section 8 families with children throughout metropolitan areas as a measure of performance, HAs will be encouraged to provide more outreach to owners in all areas of their respective jurisdictions and more counseling and transportation assistance to motivate and increase housing choice on the part of families.

Future Implementation of Welfare-to-Work Indicator

The welfare-to-work indicator at § 985.3(o) shows whether the HA helps assisted families move from welfare to work by measuring the percent of welfare families who move from welfare to work during the course of a year. This indicator will be implemented in SEMAP beginning in federal fiscal year 1999, to allow HAs sufficient time to build capacity and coordinate social services to achieve the performance objective. This means the welfare-to-work indicator will first be used for HAs with an HA fiscal year end of September 30, 1998, and then will be applied for all subsequent annual SEMAP reviews.

Solicitation of Specific Comment on Particular Indicators

The Department specifically invites comment on whether the proposed fair market rent (FMR) limit/payment standards indicator and the annual reexaminations indicator should be retained as SEMAP indicators in a final rule. The FMR limit/payment standards indicator and the annual reexaminations indicator would show whether the HA complies with key program requirements that directly affect whether the correct housing assistance payments (HAPs) and family shares are paid. The Department, however, has some concern about the appropriateness of their placement in a management assessment program that is primarily intended to be outcome oriented rather than compliance oriented. In short, all HAs should be fully performing on these indicators.

The Department also specifically invites comment on whether SEMAP ought to include performance indicators on rent burden, portability, timeliness of HAPs to owners, or any other key area. A rent burden indicator could set a standard that would encourage HAs to ensure that needy families do not spend a disproportionate share of income toward rent. For example, the Department considered including a performance indicator that not more than 20 percent of rental voucher program participants pay more than 40 percent of adjusted monthly income for rent. However, the Department recognizes that there has never been any articulated federal standard concerning rent burden in the rental voucher program, and that HAs have only limited control over a family's choice to assume a greater rent burden than the traditional 30 percent of annual adjusted income. Also, 40th percentile FMRs, and potentially lower payment standards, may place increased pressure on families to choose to pay more than 40 percent of income for rent, particularly if the families want to choose housing outside areas of low income concentration.

The Department is considering adding, and requests comment on, a SEMAP indicator to measure an HA's performance in: (1) Analyzing computer matching results that HUD supplies to HAs from the Department's Tenant Eligibility Verification System (TEVS), and (2) taking appropriate administrative actions. Those actions will help ensure integrity in rental assistance programs. TEVS processes data from the computer matching of social security and supplemental security income data and Federal tax return data (i.e., Form W–2 and Form 1099 data) shown on files of the Social Security Administration and the Internal Revenue Service, with family-reported income data that HAs submit electronically to the Multifamily Tenant Characteristics System (MTCS). See 60 FR 21548; May 2, 1995 and 61 FR 37804; July 19, 1996 for more detail. Housing agencies will be asked to resolve income discrepancies reported by TEVS and to track the amount of money recovered.

During Fiscal Year 1996 HUD implemented a computer matching project involving social security and supplemental security income for HAs serviced by HUD's Great Plains, Rocky Mountains, Pacific/Hawaii and Northwest/Alaska offices. HUD anticipates that the social security and supplemental security income matching will be operational nationwide by March 1997. The Federal tax return data matching is now in a pilot testing stage. Therefore, it is premature to propose a specific SEMAP indicator at this time. The Department, however, expects that HA actions to analyze matching results and to take appropriate administrative

actions will become an important indicator of HA performance at some time during the next two years. The Department anticipates providing a maximum of 10 points for this indicator.

The Department is considering adding an indicator that would measure whether the HA adequately explains to rental voucher and certificate holders how portability works, and whether the initial HA promptly reimburses the receiving HA in accordance with established portability billing and payment deadlines.

Effort to Minimize New Recordkeeping

A key consideration in determining the 15 SEMAP indicators was whether the Department can measure performance under the indicators using readily available data, without imposing substantial new or undue recordkeeping burdens on HAs. Under the proposed SEMAP indicators, an HA that is not already doing so will need to begin maintaining documentation of the time from receipt of request for lease approval to HQS inspection, and of its 5 percent HQS quality control inspections. For all other SEMAP indicators, the Department expects that HAs already keep records that will demonstrate performance in conformity with longstanding program requirements.

B. Program Operation

The basic SEMAP procedures have been modeled on the Public Housing Management Assessment Program (PHMAP) required by section 6(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)). While SEMAP is not required by law, HUD has determined that a management assessment program for Section 8 tenant-based assistance similar to PHMAP can improve the Department's oversight of the Section 8 programs and help HUD to target monitoring and assistance to programs that pose the greatest risk and to HAs needing most improvement.

1. SEMAP Certification

Section 985.101 requires an HA administering a Section 8 tenant-based assistance program to submit annually a SEMAP certification form within 45 days after the beginning of its fiscal year. The certification form requires short answers from HAs concerning HA performance under the 15 SEMAP indicators and assures HUD that HA responses are accurate and that there is no evidence of seriously deficient performance. A proposed SEMAP certification form is attached as Appendix 1 to this proposed rule. The HA board of commissioners approves, and the board chairperson and HA executive director sign, the certification.

2. SEMAP Score and Overall Performance Rating

HUD Assessment and Verification of SEMAP Certification

Upon receipt of the annual HA SEMAP certification, the HUD Office will independently assess each HA's performance under SEMAP using family data reported by HAs on Forms HUD–50058 and HUD–50058–FSS and maintained in the HUD MTCS, annual audit reports, and other available information to verify the HA responses. The HUD Office may also conduct an on-site confirmatory review to verify an HA certification under any indicator. Based upon this HUD review and verification, the HUD Office will prepare a SEMAP profile for each HA, assigning a rating for each SEMAP indicator in accordance with the regulation.

Determination of SEMAP Score and Overall Performance Rating

The HUD Office will sum its ratings for the individual indicators and divide by the potential maximum number of points to arrive at an overall HA SEMAP score. HAs with SEMAP scores of at least 90 percent will receive an overall performance rating of high performer; HAs with SEMAP scores of 60 to 89 percent will receive an overall performance rating of standard; and HAs with scores of less than 60 percent will receive an overall performance rating of troubled. The HUD Office may modify an HA's overall performance rating (of high performer or standard) when warranted by circumstances that have bearing on the SEMAP indicators such as adverse litigation, fair housing and equal opportunity compliance concerns, fraud or misconduct, audit findings, or substantial noncompliance with program requirements. HUD will provide the HA a written explanation of any modified overall performance rating.

HUD Notification to HA of SEMAP Ratings

Within 45 days of receipt of the HA's certification, the HUD Office will complete an HA SEMAP profile and will notify the HA in writing of its rating on each SEMAP indicator, the HA's overall SEMAP score and its overall performance rating (high performer, standard, or troubled). The HUD notification letter will identify and require correction of any program management deficiencies within 45 days.

3. Required Actions for SEMAP Deficiencies

Section 985.106 requires that the HA improve its Section 8 program management for any SEMAP indicator that is rated zero (a ''SEMAP deficiency''), and must send HUD a written report of the corrective action taken on the SEMAP deficiency within 45 days of receipt of its SEMAP ratings from HUD. If an HA fails to correct SEMAP deficiencies as required, HUD will require that the HA prepare and submit a written corrective action plan for the deficiency within 30 days.

HUD must, under § 985.107, review on-site any HA that is assigned an overall performance rating of troubled. HUD will issue a written report of its on-site review findings and recommendations. Upon receipt of the HUD report, the HA must write a corrective action plan and submit it to HUD for approval. Both the HA and HUD must monitor implementation of a corrective action plan to ensure targets for improved performance are met.

Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)). In these cases, the HUD Office may require use of the administrative fee reserve for specific administrative improvements in areas where administration is found deficient.

4. HAs Under the Jurisdiction of More than One HUD Office

For any HA with jurisdiction under the jurisdiction of more than one HUD Office (e.g, a state agency), the HUD Office with the greatest amount of funding obligated under ACCs will assume all responsibility for administration of SEMAP for the HA.

C. Default Under ACC

An HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD may constitute a default under the ACC as determined by HUD. The ACC provides for HUD notice of a determination of default to the HA and authorizes HUD to take possession of all or any HA property, rights, or interests in connection with a program if HUD determines that the HA has failed to comply with obligations under the ACC, including compliance with any final SEMAP regulation, or with obligations under a HAP contract.

III. Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained at §§ 985.101,

985.106 and 985.107 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal: Section 8 Management Assessment Program (SEMAP)

(2) Summary of the collection of information:

A proposed SEMAP certification form is attached as Appendix 1 to this proposed rule. The corrective action plan is a written plan prepared by an HA to address program management deficiencies or findings identified by HUD through remote monitoring or on-site review that will bring the HA to an acceptable level of performance. Through the report of corrective action, an HA describes how it corrected any SEMAP deficiency (indicator rating of zero).

(3) Description of the need for the information and its proposed use:

HUD has determined that a management assessment program for Section 8 tenant-based assistance, similar to the Public Housing Management Assessment Program (PHMAP) and including SEMAP certifications, corrective action plans, and reports of corrective actions, can improve the Department's oversight of the Section 8 programs and help HUD to target monitoring and program assistance to public housing agency (HA) programs needing most improvement and posing the greatest risk.

HUD will use the HA's SEMAP certification, together with otherwise available data, to assess HA management capabilities and deficiencies, and to assign an overall performance rating to each HA administering Section 8 tenant-based assistance. HUD will rate an HA on each SEMAP indicator, and will complete an HA SEMAP profile identifying any program management deficiencies and assigning an overall performance rating. An HA's written report of correction of a SEMAP deficiency will be used as documentation that the HA has taken action to address identified program weaknesses. Where HUD assigns an overall performance rating of troubled, the HA's corrective action plan will be used to monitor the HA's progress on program improvements.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be PHAs. The estimated number of respondents is included in paragraph (5), immediately below. The proposed frequency of responses is once annually.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

SECTION 8.—MANAGEMENT ASSESSMENT PROGRAM

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
SEMAP Certification	2,670	1	2,670	[1] 5–6	14,500	985.101
Corrective Action Plan	260	1	260	10	2,600	985.107(c)
Report on Correction of SEMAP Deficiency	670	1	670	2	1,340	985.106
Total Annual Burden					18,440	

[1] 1,150 metropolitan HAs will require an extra hour to write narrative on actions to broaden metropolitan area-wide housing choice.

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–3447) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule establishes management assessment criteria for HAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the proposed rule establishes management assessment criteria which will be utilized by State/Area Offices for monitoring purposes and the provision of technical assistance to HAs.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by

approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is intended to promote good management practices by including, in HUD's relationship with HAs, continuing review of HAs' compliance with already existing requirements. The proposed rule does not create any new significant requirements of its own. As a result, the proposed rule is not subject to review under the Order.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves requirements for management assessment of HAs. Any effect on the family would be indirect. To the extent families in public housing will be affected, the impact of the rule's requirements is expected to be a positive one.

Catalog

The catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR, chapter IX is proposed to be amended by adding a new part 985 to read as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

Subpart A—General

Subpart B—Program Operation

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart A—General

§ 985.1 Purpose and applicability.

(a) *Purpose.* The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at a reasonable subsidy cost. SEMAP also establishes an objective system for HUD to measure HA performance in key Section 8 program areas to enable the Department to ensure program integrity and accountability. SEMAP provides procedures for HUD to identify HA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. HAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) *Applicability.* This rule applies to HA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component of the certificate program (24 CFR part 983), and enrollment of Section 8 participants under the family self-sufficiency program (FSS) (24 part CFR 984). This rule does not apply to Indian housing authority (IHA) administration of these programs. Performance of IHA administration of the Section 8 programs is assessed using the HUD Office of Native American Programs Risk Assessment and Determination for Allocation of Resources instrument. SEMAP does not cover the Section 8 moderate rehabilitation program (24 CFR part 882, subparts D and E).

§ 985.2 Definitions.

(a) The terms *Department, Fair Market Rent, HUD, Secretary,* and *Section 8,* as used in this part, are defined in 24 CFR 5.100.

(b) The definitions in 24 CFR 982.4 apply to this part. As used in this part:

Corrective action plan means a HUD-required written plan to address HA program management deficiencies or findings identified by HUD through remote monitoring or on-site review that will bring the HA to an acceptable level of performance.

HA means a Housing Agency, excluding an IHA.

HUD office means a HUD State or Area Office unless otherwise specified.

MTCS means Multifamily Tenant Characteristics System. MTCS is the Department's national data base on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs.

MTCSupport means HUD's automated system to provide summary reports of Section 8 participant data collected and maintained in HUD's MTCS.

Performance indicator means a standard set for a key area of Section 8 program management against which the HA's performance is measured to show whether the HA administers the program properly and effectively. (See § 985.3.)

SEMAP certification means the HA's annual certification to HUD, on the form prescribed by HUD, concerning its performance in key Section 8 program areas.

SEMAP deficiency means any rating of 0 points on a SEMAP performance indicator.

SEMAP profile means a summary prepared by the HUD Office of an HA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

§ 985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess HA Section 8 management. The HUD Office will use the verification method identified for each indicator in reviewing the accuracy of an HA's annual SEMAP certification. The HUD Office will prepare a SEMAP profile for each HA assigning a rating for each indicator as shown. If the HUD verification method for the indicator relies on data in MTCSupport and HUD determines those data are insufficient to verify the HA's certification on the indicator due to the HA's failure to

adequately report family data, the HUD Office shall assign a zero rating for the indicator:

(a) *Selection from the Waiting List.* (1) This indicator shows whether the HA has written admission policies in its administrative plan and whether the HA follows these policies when selecting applicants for admission from the waiting list. (24 CFR 982.54(d)(1) and 982.204(a)).

(2) HUD verification method: The latest independent auditor (IA) annual audit report.

(3) Rating: (i) The latest IA audit report states that: The HA has written admission policies in its administrative plan and, based on random samples of applicants and admissions, documentation in the tenant files shows that families were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of admission. 10 points.

(ii) The latest IA audit report does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) *Rent reasonableness.* (1) This indicator shows whether the HA has and implements a written methodology to determine and document for each unit leased that, at the time of initial leasing and at least annually during an assisted tenancy, the rent to owner is reasonable based on current rents for comparable unassisted units. The HA's system must take into consideration the location, size, type, quality, age and amenities of the unit to be leased in determining comparability and the reasonable rent.

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA has a written methodology it follows to determine rent reasonableness; and

(B) Based on a random sample of tenant files, the HA documents rent reasonableness for each unit leased at initial leasing and annually thereafter. 20 points.

(ii) The latest IA audit report includes the statement in paragraph (b)(3)(i) of this section, except that the HA documents rent reasonableness for only 80 to 99 percent of units at initial leasing and annually thereafter. 10 points.

(iii) The latest IA audit report does not support either statement in paragraphs (b)(3)(i) and (b)(3)(ii) of this section. 0 points.

(c) *Fair market rent (FMR) limit and payment standard (PS).* (1) This indicator shows whether at least 90 percent of the units newly leased under the rental certificate program have initial gross rents at or below the applicable FMR/exception rent limits, and whether the HA has adopted payment standards for the rental voucher program, for each FMR area in the HA jurisdiction, which do not exceed the applicable FMR/exception rent limits.

(2) HUD verification method: MTCSupport—Rents and Rent Burdens Report—Shows newly leased certificate units' gross rents as percent of FMR and shows voucher payment standards as percent of FMR.

(3) Rating: (i) At least 90 percent of the units newly leased under the rental certificate program have initial gross rents at or below the applicable FMR/exception rent limits and the HA's rental voucher program payment standards do not exceed the applicable FMR/exception rent limits. 5 points.

(ii) More than 10 percent of rental certificate program units have been newly leased at initial gross rents that exceed the applicable FMR/exception rent limits or the HA's rental voucher program payment standards exceed the FMR/exception rent limits. 0 points.

(d) *Annual reexaminations.* (1) This indicator shows whether the HA conducts a reexamination for each participating family at least every 12 months.

(2) HUD verification method: MTCSupport—Key Management Indicators Report—Shows percent of reexaminations that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual reexamination on Form HUD–50058, and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is permitted.

(3) Rating: (i) Fewer than 2 percent of all HA reexaminations are more than 2 months overdue. 10 points.

(ii) 2 to 10 percent of all HA reexaminations are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all HA reexaminations are more than 2 months overdue. 0 points.

(e) *Correct tenant rent calculations.* (1) This indicator shows whether the HA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program.

(2) HUD verification method: MTCSupport—Key Management Indicators Report—Shows percent of all tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the HA on Forms HUD–50058.

(3) Ratings: (i) 2 percent or fewer of all HA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.

(ii) More than 2 percent of all HA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.

(f) *Income determination and utility allowances.* (1) This indicator shows whether, at the time of admission and reexamination, the HA verifies and correctly determines adjusted annual income for each assisted family, and whether the HA maintains and properly applies an up-to-date utility allowance schedule. (24 CFR 813.109).

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) (A) The latest IA audit report states that, based on the audit and a random sample of tenant files, for at least 90 percent of families:

(*1*) The HA obtains third party verification of reported family income, assets, and composition, and/or documents tenant files to show why independent verification is not possible;

(*2*) The HA properly attributes and calculates allowances for any medical, child care, and/or handicapped assistance costs; and

(*3*) The HA uses the appropriate utility allowances for the unit leased.

(B) The audit report also states that the HA has analyzed utility rate data within the last year, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 20 points.

(ii) The latest IA audit report includes the statements in paragraph (f)(3)(i) of this section, except that the HA obtains third party verifications, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 10 points.

(iii) The latest IA audit report does not support the statements in either paragraph (f)(3)(i) or (f)(3)(ii) of this section. 0 points.

(g) *Time from request for lease approval (RFLA) to HQS inspection.* (1) This indicator shows whether the HA promptly inspects a unit when a rental voucher or certificate holder submits a RFLA.

(2) HUD verification method: On-site confirmatory review.

(3) Rating: (i) 90 percent or more units are inspected within 7 calendar days of HA receipt of RFLA. 10 points.

(ii) 90 percent or more units are inspected within 14 calendar days of HA receipt of RFLA. 5 points.

(iii) Less than 90 percent of units are inspected within 14 calendar days of RFLA. 0 points.

(iv) If a unit for which an HA receives a RFLA is occupied, and therefore not available for inspection at the time the HA receives the RFLA, the HA may document this fact and the date that the HA is later notified that the unit is vacant and available for inspection. The later date may be used as the date of the HA's receipt of the RFLA for rating under this indicator.

(h) *Pre-contract housing quality standards (HQS) inspections.* (1) This indicator shows whether each unit leased passed HQS inspection before the beginning date of the assisted lease term. (24 CFR 982.305).

(2) HUD verification method: MTCSupport—Key Management Indicators Report—Shows percent of newly leased units where the effective date of the assistance contract is before the date the unit passed HQS inspection.

(3) Rating: (i) Each unit under HAP contract passed HQS inspection before the beginning date of the assisted lease term. 5 points.

(ii) Any unit has been leased that did not pass HQS inspection before the beginning date of the assisted lease term. 0 points.

(i) *Annual HQS inspections.* (1) This indicator shows whether the HA inspects each unit under contract at least annually. (24 CFR 982.405(a)).

(2) HUD verification method: MTCSupport—Key Management Indicators Report—Shows percent of HQS inspections that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual HQS inspection on Form HUD–50058, and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is permitted.

(3) Rating: (i) No annual HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) Some but less than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) 10 percent or more of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points.

(j) *HQS quality control inspections.* (1) This indicator shows whether an HA supervisor or other qualified person reinspects a random sample of at least 5 percent of completed HQS inspections. (24 CFR 982.405(b)).

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the auditor has determined that an HA supervisor or other qualified person performs reinspections of a sample of 5 percent of inspections for quality control purposes. 5 points.

(ii) The latest IA audit report does not support the statement in paragraph (j)(3)(i) of this section. 0 points.

(k) *HQS enforcement.* (1) This indicator shows whether, following each HQS inspection, the unit passes HQS or cited deficiencies are corrected within 30 days or any HA-approved extension. In addition, if deficiencies are not corrected timely, the indicator shows whether the HA stops (abates) HAPs or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (24 CFR 982.404).

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the review of a random sample of tenant files shows that, if HQS deficiencies are not corrected within 30 days or any HA-approved extension, the HA stops (abates) HAPs or takes prompt and vigorous action to enforce family obligations. 10 points.

(ii) The latest IA audit report does not support the statement in paragraph (k)(3)(i) of this section. 0 points.

(l) *Lease-up.* (1) This indicator shows whether the HA successfully contracts for the units that have been under budget for at least one year.

(2) HUD verification method: Latest Report on Program Utilization (HUD–52683).

(3) Rating: (i) 98 percent or more of the units budgeted for the last completed HA fiscal year are under contract. 20 points.

(ii) 95 percent or more but less than 98 percent of the units budgeted for the last completed HA fiscal year are under contract. 10 points.

(iii) Less than 95 percent of the units budgeted for the last completed HA fiscal year are under contract. 0 points.

(iv) If the HA failed to submit the required Report on Program Utilization, 0 points shall be assigned for this indicator.

(m) *Family self-sufficiency (FSS) enrollment.* (1) This indicator shows whether the HA has enrolled families in the FSS program as required. This indicator applies only to HAs with mandatory FSS programs (i.e., HAs that received FY 1992 FSS incentive award Section 8 funding or that received FY 1993 or later year Section 8 funding (excluding renewal funding)). (24 CFR 984.105).

(2) HUD verification method: MTCSupport—Resident Characteristics Report—Shows number of families enrolled in FSS. This number is divided by the number of mandatory FSS slots based on funding reserved for the HA through the second to last completed Federal fiscal year.

(3) Rating: (i) The HA has filled 80 percent or more of its mandatory FSS slots. 10 points.

(ii) The HA has filled 60 to 79 percent of its mandatory FSS slots. 5 points.

(iii) The HA has filled fewer than 60 percent of its mandatory FSS slots. 0 points.

(n) *Deconcentration.* (1) This indicator applies only to HAs with jurisdiction in metropolitan areas. The indicator shows whether the HA effectively solicits participation of owners of affordable units in all areas of its jurisdiction, provides assistance to Section 8 families with children to motivate and increase housing choice, and takes action to broaden metropolitan area-wide housing choice.

(2) HUD verification method: MTCS data and HA narrative describing actions to broaden metropolitan area-wide housing choice. HUD assesses the HA's effectiveness in encouraging deconcentration by determining whether Section 8 families with children are at least as dispersed throughout the metropolitan area as FMR-priced units. FMR-priced units are standard quality rental units, excluding zero- and one-bedroom units, that rent at or below the FMR. To compare the dispersal of Section 8 families with children to the dispersal of FMR-priced units, HUD first determines the dispersal of FMR-priced units among all census tracts in an HA jurisdiction and in the metropolitan area based on 1990 census data and FMRs. HUD then considers the poverty rates of the census tracts and determines what poverty rate divides the FMR-priced units in half (the ''dividing poverty rate''). That is, at what poverty rate are half of the FMR-priced units dispersed in census tracts with poverty rates above that level, and half dispersed in census tracts with poverty rates below that level. Then HUD determines the percent of Section 8 families with children that reside in census tracts with poverty rates below the dividing poverty rate. The goal is to have at least 60 percent of Section 8 families with children living in census tracts with poverty rates below the dividing poverty rate. HUD makes the determination twice: First, for only the

HA's area of jurisdiction, and then for the entire metropolitan area. HUD also assesses the HA's actions to broaden metropolitan area-wide housing choice such as counseling, transportation assistance, and cooperation with other metropolitan area HAs or nonprofit organizations which promote housing choice.

(3) Rating: (i) At least 50 percent of Section 8 families with children reside in the HA jurisdiction census tracts with poverty rates below the dividing poverty rate; and at least 50 percent of Section 8 families with children reside in the metropolitan area census tracts with poverty rates below the dividing poverty rate, or the HA is taking action to broaden metropolitan area-wide housing choice. 10 points.

(ii) 40 to 49 percent of Section 8 families with children reside in the HA jurisdiction census tracts with poverty rates below the dividing poverty rate; and 40 to 49 percent of Section 8 families with children reside in the metropolitan area census tracts with poverty rates below the dividing poverty rate, or the HA is taking action to broaden metropolitan area-wide housing choice. 5 points.

(iii) Neither statement in paragraph (n)(3)(i) or (n)(3)(ii) applies. 0 points.

(o) *Welfare to work.* (1) This indicator shows whether the HA helps assisted families move from welfare to work. HUD will determine the percentage of the HA's rental voucher and certificate program families whose primary source of income at the start of the previous federal fiscal year was AFDC and/or general assistance (''welfare families'') (excluding families whose head of household is elderly or disabled) which had earnings as the primary source of income (''working families'') at the end of the previous federal fiscal year. This indicator will be implemented in SEMAP beginning in federal fiscal year 1999.

(2) HUD verification method: MTCSupport—Key Management Indicators—Shows percent of welfare families who became working families during the previous federal fiscal year.

(3) Rating: (i) More than 15 percent of welfare families became working families during the previous federal fiscal year. 10 points.

(ii) Between 5 and 15 percent of welfare families became working families during the previous federal fiscal year. 5 points.

(iii) Fewer than 5 percent of welfare families became working families during the previous federal fiscal year. 0 points.

Subpart B—Program Operation

§ 985.101 SEMAP certification.

(a) An HA must submit the HUD-required SEMAP certification form within 45 calendar days after the start of its fiscal year.

(1) The certification must be approved by HA board resolution and be signed by the board of commissioners chairperson and by the HA executive director. Where a unit of local government or a state administers the Section 8 program, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director and the chief executive officer of the unit of government.

(2) An HA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit the subcontractor's own SEMAP certification on the HUD-prescribed form to the HA in support of the HA's SEMAP certification to HUD. The HA shall retain subcontractor certifications for three years.

(3) An HA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the HA in providing its certification.

(b) Failure of an HA to submit its SEMAP certification within 45 calendar days after the start of its fiscal year will result in an overall performance rating of troubled and the HA will be subject to the requirements at § 985.107.

(c) An HA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

§ 985.102 SEMAP profile.

Upon receipt of the HA's SEMAP certification, the HUD Office will rate the HA's performance under each SEMAP indicator in accordance with § 985.3. If an HA administers both the rental certificate program and the rental voucher program, performance under each indicator is initially assessed separately for each program. If the indicator ratings differ by program, the HUD Office shall assign the HA the lower rating for the indicator. The HUD Office will then prepare a SEMAP profile for each HA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at an HA's overall SEMAP score.

§ 985.103 SEMAP score and overall performance rating.

(a) *High performer rating.* HAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. An HA that achieves an overall performance rating of high performer may receive national recognition by the Department.

(b) *Standard rating.* HAs with SEMAP scores of 60 to 89 percent shall be rated standard.

(c) *Troubled rating.* HAs with SEMAP scores of less than 60 percent shall be rated troubled.

(d) *Modified rating.* (1) Notwithstanding an HA's SEMAP score, the HUD Office may modify an HA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as adverse litigation, a conciliation agreement under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 3600–3620), fair housing and equal opportunity monitoring and compliance review findings, fraud or misconduct, audit findings or substantial noncompliance with program requirements.

(2) When the HUD Office modifies an overall performance rating for any reason it shall explain in writing to the HA the reasons for the modification.

§ 985.104 HA right of appeal of overall rating.

An HA may appeal its overall performance rating to the HUD Office by providing justification of the reasons for its appeal.

§ 985.105 HUD Office SEMAP responsibilities.

(a) *Annual review.* The HUD Office shall assess each HA's performance under SEMAP annually and shall assign each HA a SEMAP score and overall performance rating.

(b) *Notification to HA.* No later than 45 calendar days after receipt of the HA's SEMAP certification, the HUD Office shall notify each HA in writing of its rating on each SEMAP indicator, of its overall SEMAP score and of its overall performance rating (high performer, standard, troubled). The HUD notification letter shall identify and require correction of any SEMAP deficiencies (indicator rating of zero) within 45 calendar days.

(c) *On-site confirmatory review.* The HUD Office may conduct an on-site confirmatory review to verify the HA certification and the HUD rating under any indicator.

(d) *Changing rating from troubled.* The HUD Office must conduct an on-site confirmatory review of an HA's performance before changing any annual overall performance rating from troubled to standard or high performer.

(e) *Appeals.* The HUD Office must review, consider and provide a final

written determination to an HA on its appeal of its overall performance rating.

(f) *Corrective action plans.* The HUD Office must review the adequacy and monitor implementation of HA corrective action plans submitted under § 985.106(c) or § 985.107(c), and provide technical assistance to help the HA improve program management. If an HA is assigned an overall performance rating of troubled, the HA's corrective action plan must be approved by the HUD Office.

§ 985.106 Required actions for SEMAP deficiencies.

(a) When the HA receives the HUD Office notification of its SEMAP rating, an HA must correct any SEMAP deficiency (indicator rating of zero) within 45 calendar days.

(b) The HA must send a written report to the HUD Office on its correction of any identified SEMAP deficiency.

(c) If an HA fails to correct a SEMAP deficiency within 45 calendar days as required, the HUD Office may then require the HA to prepare and submit a corrective action plan for the deficiency within 30 calendar days.

§ 985.107 Required actions for HA with troubled performance rating.

(a) *Required on-site review.* Upon assigning an overall performance rating of troubled, the HUD Office must conduct an on-site review of HA program management.

(b) *HUD written report.* The HUD Office must provide the HA a written report of its on-site review containing HUD findings of program management deficiencies and recommendations for improvement.

(c) *HA corrective action plan.* Upon receipt of the HUD Office written report on its on-site review, the HA must write a corrective action plan and submit it to HUD for approval. The corrective action plan must:

(1) Specify goals to be achieved;

(2) Identify obstacles to goal achievement and ways to eliminate or avoid them;

(3) Identify resources that will be used or sought to achieve goals;

(4) Identify an HA staff person with lead responsibility for completing each goal;

(5) Identify key tasks to reach each goal;

(6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and

(7) Provide for regular evaluation of progress toward improvement.

(d) *Monitoring.* The HA and the HUD Office must monitor the HA's implementation of its corrective action plan to ensure performance targets are met.

(e) *Use of administrative fee reserve prohibited.* Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)).

(f) *Upgrading poor performance rating.* The HUD Office shall change an HA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved HA performance and an improved SEMAP score.

§ 985.108 SEMAP records.

The HUD Office shall maintain SEMAP files, including certifications, notifications, appeals, corrective action plans, and related correspondence for at least three years.

§ 985.109 Default under the Annual Contributions Contract (ACC).

HUD may determine that an HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

Dated: October 21, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Note: Appendix 1 will not be codified in the Code of Federal Regulations.

BILLING CODE 4210–33–P

Appendix 1 - Proposed Section 8 Management Assessment Program Certification

Instructions: Respond to this certification form using the HA's actual data.

HA Name: **For HA Fiscal Year Ending:** **Submission Date:**

Performance Indicator		HA Response
1.	**Selection from the Waiting List.** The HA has written admission policies in its administrative plan which it follows when selecting applicants for admission from the waiting list. (24 CFR 982.54(d)(1) and 982.204(a)) (Enter Yes or No)	
2.	**Rent Reasonableness.** The HA has and implements a written methodology to determine and document, for each unit leased, that, at the time of initial leasing and at least annually during an assisted tenancy, the rent to owner is reasonable based on current rents for comparable unassisted units. The HA's system takes into consideration the location, size, type, quality, age and amenities of the unit to be leased in determining comparability and the reasonable rent. (Enter Yes or No)	
3.	**FMR Limit and Payment Standards.** The initial gross rents for 90% of units newly leased under the rental certificate program are at or below the applicable FMR/ exception rent limits **and** the HA has adopted payment standards for the rental voucher program by unit size for each fair market rent area in the HA jurisdiction which do not exceed the FMR/exception rent limits. (Enter Yes or No, and enter FMRs and payment standards)	Y or N: _____ 0-BR FMR: _____ 3-BR FMR: _____ PS: _____ PS: _____ 1-BR FMR: _____ 4-BR FMR: _____ PS: _____ PS: _____ 2-BR FMR: _____ PS: _____ IF THE HA HAS JURISDICTION IN MORE THAN ONE FMR AREA, ATTACH FMR & PAYMENT STANDARD SCHEDULES FOR EACH FMR AREA
4.	**Annual Reexaminations.** The HA conducts a reexamination for each participating family at least every 12 months. (Enter Yes or No)	
5.	**Correct Tenant Rent Calculations.** The HA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. (Enter Yes or No)	

Performance Indicator		HA Response
6.	**Income Determination and Utility Allowances.** At the time of admission and reexamination, the HA verifies and correctly determines adjusted annual income for each assisted family, **and** the HA maintains and properly applies an up-to-date utility allowance schedule. (24 CFR 813.109) (Enter Yes or No)	
7.	**Time from Request for Lease Approval (RFLA) to HQS Inspection.** The HA promptly inspects a unit when a rental voucher or certificate holder submits a RFLA. (See 24 CFR 985.3(g)(3)(iv) regarding a unit that is occupied at the time the HA receives the RFLA.)	% Units inspected by HA within 7 calendar days of HA receipt of RFLA: _____ % Units inspected by HA within 14 calendar days after HA receipt of RFLA: _____ % Units inspected by HA later than 2 weeks after HA receipt of RFLA: _____
8.	**Pre-contract HQS Inspections.** Each unit leased passed HQS inspection before the beginning date of the assisted lease. (24 CFR 982.305) (Enter Yes or No)	
9.	**Annual HQS Inspections.** The HA inspects each unit under contract at least annually. (24 CFR 982.405) (Enter Yes or No)	
10.	**HQS Quality Control Inspections.** An HA supervisor (or other qualified person) reinspects a random sample of at least 5 percent of completed HQS inspections. (24 CFR 982.405(b)). (Enter Yes or No)	
11.	**HQS Enforcement.** Following each HQS inspection, the HA ensures that the unit passes HQS or that cited deficiencies are corrected within 30 days (or any HA-approved extension). If deficiencies are not corrected timely, the HA stops (abates) HAPs or terminates the HAP contract, or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (24 CFR 982.404) (Enter Yes or No)	
12.	**Lease-Up.** The HA executes assistance contracts on behalf of eligible families for the number of units that have been under budget for at least one year.	a. Total certificate units budgeted for last HA FY: _____ b. Total certificate units now under assistance contract: _____ **% Certificate Units Leased (b/a):** _____ c. Total voucher units budgeted for last HA FY: _____ d. Total voucher units now under assistance contract: _____ **% Voucher Units Leased (d/c):** _____

Performance Indicator		HA Response
13.	**Family Self-Sufficiency Enrollment.** The HA has enrolled families in FSS as required. (24 CFR 984.105) (APPLIES ONLY TO HAs REQUIRED TO ADMINISTER AN FSS PROGRAM)	a. # Mandatory FSS slots (count units funded under FY 1992 FSS incentive awards and in FY 1993 and later through the 2nd to last completed FFY: _____ OR, Mandatory FSS slots under HUD-approved exception: _____ b. # Families currently enrolled: _____ **% FSS slots filled (b/a):** _____ OR, Not Applicable: _____
14.	**Deconcentration.** The HA solicits participation of owners of affordable units in all areas of its jurisdiction, provides assistance to Section 8 families with children to motivate and increase housing choice, and takes action to broaden metropolitan area-wide housing choice. (APPLIES ONLY TO HAs WITH JURISDICTION IN METROPOLITAN AREAS) (Enter Yes or No)	ATTACH A BRIEF NARRATIVE (NO MORE THAN 1 PAGE) DESCRIBING THE HA'S ACTIONS TO BROADEN METROPOLITAN AREA-WIDE HOUSING CHOICE.
15.	**Welfare to Work.** Beginning in FFY 1999, include this indicator: The HA helps assisted families move from welfare to work. (Enter Yes or No)	

I hereby certify that, as of the submission date, the above responses concerning the Section 8 Management Assessment Program (SEMAP) performance indicators are true and accurate for the HA fiscal year indicated above. I also certify that, to my present knowledge, there is not evidence to indicate seriously deficient performance that casts doubt on the HA's capacity to administer Section 8 rental assistance in accordance with federal law and regulations.

Executive Director, signature & date

X _____

Chairperson, Board of Commissioners, signature & date

X _____

The HA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the HA in providing its certification.

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Federal Register

Monday
December 2, 1996

Part III

Department of Housing and Urban Development

1 CFR Part 462

24 CFR Part 81

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) Book-Entry Procedures Revisions; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1 CFR Part 462

24 CFR Part 81

[Docket No. FR–4095–I–01]

RIN 2501–AC35

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac): Book-Entry Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises procedures that govern the issuance, recordation, and transfer of Federal National Mortgage Association (''Fannie Mae'') and Federal Home Loan Mortgage Corporation (''Freddie Mac'') (collectively ''Government-Sponsored Enterprises'' or ''GSEs'') Securities in the Book-entry System. The rule modifies HUD's current book-entry procedures for Fannie Mae to bring them into accord with the revised book-entry procedures of the Department of Treasury (''Treasury'') published in the Federal Register on August 23, 1996 (61 FR 43626). This rule also extends these revised book-entry procedures to Freddie Mac and supersedes Freddie Mac's current book-entry regulations.

In accordance with Treasury's revised book-entry procedures, this rule incorporates recent significant changes in commercial and property law, including changes concerning the holding of securities through financial intermediaries. This rule replaces existing regulations that contain outdated legal concepts. This rule applies to outstanding securities.

DATES: Effective date: January 1, 1997.

Comment due date: Comments must be submitted by January 31, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Tasker, Director, Office of Government-Sponsored Enterprises, Room 6154, telephone (202) 708–2224; or, for legal questions, Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/ RESPA, Office of the General Counsel, Room 9262, telephone (202) 708–3137. The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. A telecommunications device for deaf persons (TTY) is available at (202) 708–9300. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Both Fannie Mae and Freddie Mac use the Book-entry System of the Federal Reserve Banks to issue, record, and transfer ownership of certain of their respective securities. Although the Book-entry System was originally designed for Treasury securities, both GSEs have used this system under separate sets of regulations dating back to the late 1970s. Treasury regulations govern the Book-entry System, known as the commercial book-entry system, when it is used to issue, record, transfer and maintain Treasury securities. Recently, Treasury substantially modified its regulations governing Treasury securities held in this system to reflect contemporary legal development of the Uniform Commercial Code (''UCC''). This regulation conforms the book-entry regulations applicable to GSE securities to the changes made in Treasury's regulations (tailoring the changes to differences in the GSEs and GSE Securities), and combines the book-entry regulations applicable to both GSEs into a single set of regulations.

This rule furthers a rulemaking regarding book-entry procedures begun with the publication of HUD's proposed rule, 60 FR 9154 (Feb. 16, 1995), to implement the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (''FHEFSSA''). As part of that rulemaking, HUD proposed to revise the book-entry procedures applicable to Fannie Mae, and make the procedures applicable to both GSEs. In comments on the proposed rule, however, the GSEs and the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association (''ABA Task Force'') stated that HUD should not revise the book-entry procedures in the form proposed in light of continuing work on a comprehensive revision of the Treasury's book-entry regulations. They urged HUD to wait until Treasury adopted revised book-entry regulations, and then to adopt consistent regulations for Book-entry GSE Securities. Treasury was, at that time, in the process of completing its revision of its book-entry regulations to reflect a major revision to Article 8 of the UCC. (Treasury had withdrawn proposed changes to its own regulations pending the completion of the revisions to Article 8 and conforming revisions to Article 9 of the UCC. *See* 57 FR 12244 (April 9, 1992) and 58 FR 59972 (November 12, 1993).) The Federal Reserve Bank of New York also urged HUD to delay implementation of new book-entry provisions, await Treasury's adoption of revised book-entry regulations, and then promulgate consistent regulations.

As indicated in the preamble to HUD's final rule implementing other matters pursuant to FHEFSSA, 60 FR 61846, 61885 (December 1, 1995), the Secretary decided to postpone making significant revisions to the book-entry regulations for the GSEs, including establishing uniform book-entry procedures for both GSEs, pending completion of the revised Treasury book-entry regulations. Based on the comments received, the Secretary determined that for HUD to act at that time to finalize a complete set of regulations for both GSEs, and then shortly to revise them, would be inefficient and lead to confusion. In the final rule, HUD announced its intention to adopt revised regulations simultaneous with Treasury's adoption of a final rule revising its book-entry procedures and to make HUD's regulations consistent with Treasury's at that time.

On March 4, 1996 (61 FR 8420), Treasury's Bureau of the Public Debt proposed revisions to its book-entry regulations. The purposes of Treasury's changes, like the purposes of the changes to HUD's rule announced today, were to incorporate recent and significant changes in commercial law addressing the holding of securities in book-entry form through securities intermediaries and to replace existing regulations that contain outdated legal concepts. Treasury received eleven comments on its proposed rule. Based on Treasury's proposal, the comments received in response, and Treasury's approach to addressing the comments in Treasury's August 23, 1996 final rule, and HUD's previously announced determination, based on the comments received, to issue revised book-entry regulations consistent with Treasury's

once those were promulgated, HUD developed this interim rule. HUD considered Treasury's proposal, the comments received in response thereto, and Treasury's final rule as relevant to this interim rule, since this rule is closely modelled on Treasury's rule—except differences necessitated by distinctions in the GSEs and their GSE Securities—and will become effective simultaneously with Treasury's rule. In light of the public comments on HUD's February 16, 1995 proposed revisions to the book-entry procedures and in light of Treasury's notice and comment rulemaking and HUD's adaptation of Treasury's rule to GSE Securities, HUD is issuing its revisions as an interim rule to accompany Treasury's final rule previously published in the Federal Register.

The book-entry rule announced today is identical for both GSEs and provides a level playing field for both GSE's securities. To this end, this regulation supersedes not only HUD's current book-entry regulation for Fannie Mae contained in 24 CFR part 81, subpart H, but also supersedes Freddie Mac's current book-entry regulation, codified at 1 CFR part 462.

II. Analysis of Revisions to Book-Entry Procedures

Except as is necessary because of differences between the GSEs and their securities and Treasury and Treasury securities, HUD's revisions to the book-entry procedures applicable to GSEs follow the revisions Treasury is making to its book-entry procedures in a final rule previously published in the Federal Register. HUD adopts, to the extent relevant, the substance of the analysis contained in the commentary to Treasury's final rule, which will be codified at 31 CFR Part 357, Appendix B of Treasury's regulations. It is HUD's intent that the book-entry procedures announced today will be interpreted in a manner fully consistent and uniform with Treasury's revised book-entry procedures and the commentary to Treasury's final rule, except to the extent that HUD's rule diverges from Treasury's rule due to the unique nature of the GSEs and their securities.

The book-entry regulation promulgated today shares many major similarities with Treasury's regulation of the Treasury/Reserve Automated Debt Entry System (''TRADES''). Three of the similarities worthy of note are:

- Under both the book-entry regulations applicable to GSE securities and Treasury's TRADES regulation, there is federal preemption of state law with respect to the rights and obligations of the United States and the Federal Reserve Banks. (Additionally, HUD's rule provides for federal preemption of state law with respect to the rights and obligations of the GSEs.)
- Other than as expressly stated in the rule, no duty exists on the part of Treasury, Freddie Mac, Fannie Mae, or the Federal Reserve to holders of GSE securities indirectly or through a securities intermediary.
- Book-entry GSE Securities may be converted to definitive securities only when so permitted in the documents establishing the terms of the securities.

Four significant areas in which HUD's rule differs from Treasury's rule, however, are the following:

- Under Treasury regulations, Treasury securities may be maintained in either of two book-entry systems—TRADES or TREASURY DIRECT. Inasmuch as there is no direct registration and holding of GSE Securities at this time, this rule does not establish a system analogous to TREASURY DIRECT for GSE Securities.
- The GSEs issue a wide variety of securities, some of which are not maintained by the Federal Reserve Banks. GSE Securities not maintained by a Federal Reserve Bank are not subject to this book-entry regulation and there is no federal preemption by these subpart H regulations for such securities. Furthermore, the book-entry regulation in this subpart H applies only for so long as the GSE security is actually on the Book-entry System; this regulation does not apply to GSE securities initially issued on the records of a Federal Reserve Bank when those securities are taken off the book-entry system and converted to definitive form.
- The book-entry regulation applicable to the GSEs recognizes that there are variations in documentation that a GSE uses depending upon the type of security issued.
- Unlike Treasury securities, GSE Securities may contain an express choice of law provision, under which state law is chosen to govern the rights and obligations of the GSEs. To the extent the state law chosen in the Security Documentation conflicts with the state law that would govern under these regulations, the state law selected in accordance with this regulation will prevail.

III. Section-by-Section Comparison With Treasury's Model

This section notes in a section-by-section comparison, other differences between this book-entry regulation and Treasury's TRADES regulation.

Revisions to 81.2 Definitions

The rule adds some definitions to § 81.2. These definitions correspond to definitions in 31 CFR 357.2, but are tailored to apply to the GSEs and their securities. It should be noted that HUD's rule uses the terminology ''Book-entry System'' rather than ''TRADES,'' because TRADES is Treasury's unique terminology for the system as applied to Treasury securities.

HUD's definition of ''person'' makes clear that it excludes the GSEs. In addition, HUD's rule provides a definition of ''Securities Documentation.'' Further, HUD intends that the rule's definitions of ''Book-entry GSE Security'' and ''GSE Security'' refer to the wide array of securities and obligations that the GSEs issue.

The definitions added to § 81.2 are supplemented by a general provision, § 81.2(c), which indicates that terms used in subpart H that are not defined in part 81 have the meanings set forth in 31 CFR 357.2. This provision reflects HUD's determination that it is unnecessary to define certain terms used in subpart H or used in a section of Treasury's rule adopted by cross-reference in subpart H, even though those terms are not defined in part 81, because the definitions in the Treasury rule are adequate (e.g., ''Security Entitlement'').

This rule also eliminates an outdated provision that formerly appeared in the definition of ''Fannie Mae security,'' which excluded short-term discount notes and obligations convertible into shares of common stock.

Section 81.91

This section, addressing maintenance of GSE Securities, is modelled after 31 CFR 357.0, but is custom-tailored to GSE Securities to reflect that GSE Securities need not be maintained in the Book-entry System. Some GSE Securities are held in definitive form, either indirectly through depositories or intermediaries or directly by the investor in TREASURY DIRECT. No system currently exists for GSE Securities that is analogous to TREASURY DIRECT.

Section 81.92

This section, addressing the law governing the rights and obligations of the United States, the Federal Reserve Banks, and the GSEs, and other interests, is modelled after 31 CFR 357.10 and 357.11. One difference between HUD's and Treasury's provisions is that HUD's rule recognizes that the GSEs use various forms of documentation to establish the terms of

GSE Securities, depending upon the type of security issued. HUD's rule makes clear the way in which such documentation applies to the GSEs and their securities.

Section 81.93

This section, addressing security entitlements and interests, is modelled after 31 CFR 357.12. HUD's rule applies these provisions to the GSEs and their securities.

Section 81.94

This section, addressing obligations of GSEs, is modelled after 31 CFR 357.13. HUD's rule accounts for the possibility that the GSEs could make payments with respect to Book-entry GSE Securities that might be characterized as other than principal or interest payments.

Section 81.95

This section, addressing the authority of the Federal Reserve Banks, is modelled after 31 CFR 357.14. HUD's rule specifically authorizes each Federal Reserve Bank to effect conversions between Book-entry GSE Securities and Definitive GSE Securities where conversion rights are available pursuant to the applicable Securities Documentation.

Section 81.96

This section, addressing withdrawal of Book-entry GSE Securities eligible for conversion to definitive form, is modelled after 31 CFR 306.117. HUD's rule highlights the requirement that conversion must be consistent with the Securities Documentation.

Section 81.97

This section, addressing waiver of regulations, is modelled after 31 CFR 357.41. HUD's rule makes clear that the Secretary of HUD may waive these regulations. HUD traditionally has consulted with the GSEs in the waiver process. In accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)), HUD publishes a notice each quarter indicating the waivers of regulations granted during that quarter.

Section 81.98

This section, addressing liability of GSEs and Federal Reserve Banks, is modelled after 31 CFR 357.42. HUD's rule reflects that some terms such as ''tender'' and ''transactions request form'' used in Treasury's rule do not apply to Book-entry GSE Securities.

Section 81.99

This section is modelled after two Treasury regulations. Subsection (a) on additional requirements is modelled after 31 CFR 357.40. Subsection (b) on notice of attachment for GSE Securities is modelled after 31 CFR 357.44.

Removal of 1 CFR part 462

Freddie Mac's current book-entry regulation is codified at 1 CFR part 462. This regulation was promulgated prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, (August 9, 1989). Section 731(c) of FIRREA accorded the Secretary of HUD general regulatory power over Freddie Mac. The Secretary's general regulatory power over Freddie Mac is currently codified in section 1321 of FHEFSSA (12 U.S.C. 4541).

Since this regulation applies to both GSEs, it supersedes Freddie Mac's current book-entry regulation codified at 1 CFR Part 462. Thus, HUD's rule removes Freddie Mac's current book-entry regulation from the CFR pursuant to the Secretary's general regulatory power over Freddie Mac.

Findings and Certifications

Public Reporting Burden

This interim rule contains no new information collection requirements that would require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520).

Justification for Interim Rule

As discussed above in the Background section, this rule is published as an interim rule based not only on the previous proposed rule issued by HUD on February 16, 1995, but also on the proposed and final rules issued by Treasury. Treasury's final rule, published on August 23, 1996, needed relatively minor adaptations to apply appropriately to Fannie Mae and Freddie Mac. This interim rule makes those necessary changes.

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, prior public procedure may be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The essence of this rule has been the subject of notice and comment in the form of the Treasury proposed rule, and comments on HUD's proposed rule recommended that HUD's rule follow Treasury's rule. To avoid dislocation in the securities market, it is imperative that these regulations take effect at the same time as Treasury's final rule, on January 1, 1997. Given that Treasury's rule was not published until August 23, 1996, there would not have been sufficient time for HUD to go through notice and comment rulemaking and then proceed to publish a final rule with a January 1, 1997 effective date. Therefore, the Department has determined that it is unnecessary and contrary to the public interest to undergo separate notice and comment rulemaking on the specifics of this adaptation of the Treasury rule before making this rule effective. As a result, in accordance with 24 CFR part 10, HUD is publishing this interim rule for effect.

In the interest of obtaining the fullest participation possible in determining that the adaptation of Treasury's rule is appropriate, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule affects the operation of two entities, Fannie Mae and Freddie Mac, neither of which is a small entity.

Environmental Impact

This interim rule is exempt from the requirement for an environmental assessment under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), in accordance with HUD regulations at 24 CFR 50.19(c)(1), as revised by a final rule on September 27, 1996 (61 FR 50919). In accordance with 24 CFR 50.19(a), other Federal environmental laws, as described in 24 CFR 50.4, are not applicable to this interim rule.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule's preemption of State law to the extent that it applies the newly revised Article 8 of the Uniform Commercial Code has sufficient effect on States to require consideration of the impact of the rule under the Order. The General Counsel has assessed this preemption in light of the principles, criteria, and requirements of the Executive Order and determined that it is not inconsistent with them. The policy does not impose additional costs or burdens on the States

and it does not affect the States' ability to discharge traditional State governmental functions.

This rule makes explicit the preemption applicable to the rights and obligations of the United States, the Federal Reserve Banks, and the GSEs that was implicit under the prior rule. The rule continues to accommodate State law, to the maximum extent possible, given market methodologies. Ultimately, as States proceed to adopt the revised Article 8, the rule will provide no greater preemption of State law than under the prior rule.

The rule is justified, despite the preemption it effects, by the fact that the preemption is no greater than necessary to accommodate the nationwide application of the rule and the nationwide market for the GSE Securities, as was the preemption under the book-entry rules this rule replaces. It should be noted that section 304(d) of the Fannie Mae Charter Act (12 U.S.C. 1719(d)) and section 306(g) of the Freddie Mac Act (12 U.S.C. 1455(f)) specifically provide for the exemption of GSE securities from State securities registration requirements (as well as the registration requirements of the Securities and Exchange Commission). *See also* 15 U.S.C. 77r–1.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Unfunded Mandates Reform Act

The Secretary, in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, has reviewed this interim rule before publication and by approving it certifies that this interim rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Catalog

There is no Catalog of Federal Domestic Assistance number for the program affected by this interim rule.

List of Subjects

1 CFR Part 462

Accounting, Banks, Banking, Securities.

24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, for the reasons set out in the preamble, under the authority of 42 U.S.C. 3535(d), part 462 of title 1 of the Code of Federal Regulations and part 81 of title 24 of the Code of Federal Regulations are amended as follows:

TITLE 1—GENERAL PROVISIONS

CHAPTER IV—MISCELLANEOUS AGENCIES

PART 462—FEDERAL HOME LOAN MORTGAGE CORPORATION (BOOK-ENTRY REGULATIONS)

1. 1 CFR part 462 is removed.

TITLE 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

2. The authority citation for Part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

3. In § 81.2, paragraph (b) is amended by adding the following definitions, in appropriate alphabetical order location, and by adding a new paragraph (c), to read as follows:

§ 81.2 Definitions.

* * * * *

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

* * * * *

Definitive GSE Security means a GSE Security in engraved or printed form, or that is otherwise represented by a certificate.

* * * * *

Eligible Book-entry GSE Security means a Book-entry GSE Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is available in either definitive or book-entry form.

Entitlement Holder means a Person to whose account an interest in a Book-entry GSE Security is credited on the records of a Securities Intermediary.

* * * * *

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

* * * * *

GSE Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive GSE Security or a Book-entry GSE Security.

* * * * *

Person, as used in subpart H, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a GSE, or a Federal Reserve Bank.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

* * * * *

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a ''security.''

Securities documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry GSE Security.

* * * * *

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

* * * * *

(c) *Subpart H terms.* Unless the context requires otherwise, terms used in subpart H of this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

4. Subpart H is revised to read as follows:

Subpart H—Book-Entry Procedures

Subpart H—Book-Entry Procedures

§ 81.91 Maintenance of GSE Securities.

A GSE Security may be maintained in the form of a Definitive GSE Security or a Book-entry GSE Security. A Book-entry GSE Security shall be maintained in the Book-entry System.

§ 81.92 Law governing rights and obligations of United States, Federal Reserve Banks, and GSEs; rights of any Person against United States, Federal Reserve Banks, and GSEs; Law governing other interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the Book-entry regulations contained in this subpart H, the Securities Documentation (but not including any choice of law provisions in such documentation), and Federal Reserve Bank *Operating Circulars:*

(1) The rights and obligations of the United States, a GSE and the Federal Reserve Banks with respect to:

(i) A Book-entry GSE Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to GSE Securities; and

(2) The rights of any Person, including a Participant, against the United States, a GSE and the Federal Reserve Banks with respect to:

(i) A Book-entry GSE Security or Security Entitlement; and

(ii) The operation of the Book-entry System applicable to GSE Securities;

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 81.93(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 81.93(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this subpart H, and notwithstanding any provision in the Security Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the GSEs.

§ 81.93 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry GSE Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) A GSE, the United States, and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, a GSE, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 81.92(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 81.94 Obligations of GSEs; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 81.93(c)(1), for the purposes of this subpart H, the GSE and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry GSE Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks, the United States, nor a GSE is liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry GSE Security in a Participant's Securities Account, including any such claim arising as a result of the transfer

or disposition of a Book-entry GSE Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the GSE to make payments (including payments of interest and principal) with respect to Book-entry GSE Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry GSE Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry GSE Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry GSE Security.

§ 81.95 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the GSEs to perform the following functions with respect to the issuance of Book-entry GSE Securities offered and sold by a GSE to which this subpart H applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this subpart H, and procedures established by the Secretary consistent with these authorities:

(1) To service and maintain Book-entry GSE Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the GSE;

(3) To effect transfer of Book-entry GSE Securities between Participants' Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry GSE Securities and Definitive GSE Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the GSE.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this subpart H, governing the details of its handling of Book-entry GSE Securities, Security Entitlements, and the operation of the book-entry system under this subpart H.

§ 81.96 Withdrawal of Eligible Book-entry GSE Securities for conversion to definitive form.

(a) Eligible Book-entry GSE Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive GSE Securities.

(b) A Reserve bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry GSE Securities from book-entry in the Book-entry System, convert such securities into Definitive GSE Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such GSE Securities.

(c) All requests for withdrawal of Eligible Book-entry GSE Securities must be made prior to the maturity or date of call of the securities.

(d) GSE Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable offering circular.

§ 81.97 Waiver of regulations.

The Secretary reserves the right in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of a GSE, the United States, or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Secretary is satisfied that such action will not subject a GSE or the United States to any substantial expense or liability.

§ 81.98 Liability of GSEs and Federal Reserve Banks.

A GSE and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. A GSE and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

§ 81.99 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, a GSE may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the GSE be necessary for the protection of the interests of the GSE.

(b) *Notice of attachment for GSE Securities in Book-entry system.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: November 6, 1996.

Henry G. Cisneros,

Secretary.

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Part IV

Department of Transportation

Federal Aviation Administration

Allowable Carbon Dioxide Concentration in Transport Category Airplane Cabins; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27704, Amdt. No. 25–89]

RIN 2120–AD47

Allowable Carbon Dioxide Concentration in Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the standards for maximum allowable carbon dioxide (CO_2) concentration in occupied areas of transport category airplanes by reducing the maximum allowable concentration from 3 percent to 0.5 percent. This action is in response to a recommendation from the National Academy of Sciences to review the CO_2 limit in airplane cabins, and provides a cabin CO_2 concentration level representative of that recommended by some authorities for buildings.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Kristin L. Larson, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1760, facsimile (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking No. 94–14, published in the Federal Register on May 2, 1994 (59 FR 22718). As discussed in that notice, this action reduces the maximum allowable carbon dioxide concentration level from 3 percent to 0.5 percent.

In October 1984, the Department of Transportation was directed by Congress (Public Law 98–466) to commission the National Academy of Sciences (NAS) to conduct an independent study on the cabin air quality in transport category airplanes. The NAS formed the Committee on Airliner Cabin Air Quality to study all safety aspects of airliner cabin air quality, and submitted its report, ''The Airliner Cabin Environment—Air Quality And Safety,'' to the FAA on August 12, 1986. One of the recommendations in the report relates to the allowable carbon dioxide (CO_2) concentration in the airplane cabin. This action is a result of that recommendation. For the purposes of this rule, the term ''cabin'' is meant to include the passenger cabin, the flight deck, lower lobe galleys, crew rest areas, and any other areas occupied by passengers or crew members in a transport category airplane.

Discussion

Carbon dioxide is the product of normal human metabolism, which is the predominant source in airplane cabins. The CO_2 concentration in the cabin depends on the ventilation rate, the number of people present, and their individual rates of CO_2 production, which varies with activity and (to a smaller degree) with diet and health. Carbon dioxide is also generated by sublimation of dry ice used to cool food in the galleys, and to preserve certain cargo carried in the cargo compartments. The carbon dioxide concentration level is frequently used as an indication of general air quality. At concentrations above a given level, complaints of poor air quality or ''stuffiness'' begin to appear.

The maximum CO_2 limit of § 25.831(b)(2) of the Federal Aviation Regulations (FAR) is 3 percent by volume, sea level equivalent. This 3 percent limit was incorporated into § 4b.371 of the Civil Air Regulations (CAR) by Amendment 4b6 on March 5, 1952. This limit was carried over into 14 CFR part 25 when this part was codified in 1965. This high limit was established to allow for increases in the carbon dioxide levels in the crew compartment to ensure that, in airplanes with built-in carbon dioxide fire extinguishing systems, safe carbon dioxide concentration levels would not be exceeded in the occupied areas when combating fires in cargo compartments.

The American Conference of Governmental Industrial Hygienists (ACGIH) has adopted a short-term exposure limit (STEL) for CO_2 of 30,000 parts per million (3 percent). The 3 percent limit specified in part 25 may therefore be satisfactory as a short-term limit, but is inappropriate for a steady-state condition. However, the NAS Committee notes in their report that this 3 percent limit is much higher than the limits adopted by the air conditioning industry for buildings and other types of interior environments, and recommends that the limit specified in part 25 be revised to more closely match the currently acceptable limits. The FAA concurs.

In contrast to the 3 percent limit specified in part 25, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), in their Standard 62–1989, recommends an outside air ventilation rate of 15 cubic feet per minute for vehicles. Based on the ASHRAE calculations, this equates to a CO_2 limit of 1,000 parts per million (PPM), or 0.1 percent, if the occupants have a low physical activity level. As most of the airplane occupants are passengers who are not active, this is a reasonable parallel. ASHRAE standards such as the 0.1 percent CO_2 limit are frequently quoted in magazine and newspaper articles when reporting on airliner cabin air quality.

As CO_2 concentration in the air increases, there is an increase in both the rate and the depth of breathing, reaching twice the normal rate at 3 percent concentration. At 3 percent concentration, there is some discomfort; at higher concentrations, headache, malaise, and, occasionally, fatigue occur, and the air is reported by those affected as being stale. People can function for long periods of time at levels of CO_2 as high as 1 percent (as in nuclear submarines), but it is generally felt by ASHRAE that 0.1 percent is a better limit. This value, however, is based on the dissipation of smoke and odors and not on health considerations. As noted above, according to ASHRAE Standard 62–1989, a steady-state CO_2 concentration of 0.1 percent would require a fresh-air ventilation rate of 15 cubic feet per minute (cfm) per person. In the previous edition of the standard (62–1981), ASHRAE recommended a limit of 0.5 percent for office buildings and other occupied spaces, but suggested that 0.25 percent would provide an additional safety factor. The ASHRAE standard is intended to be used as a comfort standard rather than a health and safety standard. ASHRAE has recognized that the 0.1 percent CO_2 concentration limit may not be appropriate for airliner cabins, and has formed an aviation subcommittee, the charter of which is to develop a transport airplane cabin air quality standard. While this subcommittee is not an FAA advisory committee, industry often uses ASHRAE standards in designing systems. The subcommittee will sponsor research studies to determine the quality of the ambient air and quantify the correlation between measurable contaminants and passenger perception of air quality. As noted above, ASHRAE standards were intended to be used for buildings rather than vehicles such as airplanes, and they consider it appropriate to establish a new standard for airplanes at this time.

The Occupational Safety and Health Administration (OSHA), in § 1910.1000 of part 1910 (CFR 29), sets an interim (transitional) limit for CO_2 at 5,000 ppm or 0.5 percent, with a final rule limit of

10,000 ppm or 1 percent, effective December 31, 1993. The increase to 1 percent is apparently in deference to operators of commercial bakeries and breweries, both of which generate a significant amount of CO_2 in their processes. The FAA does not believe it is appropriate to base the allowable CO_2 concentration in transport category airplanes on the needs of specific manufacturing processes. Other commercial enterprises have no difficulty in meeting the existing OSHA limit of 0.5 percent.

The American Conference of Governmental Industrial Hygienists, in its ''Documentation of the Threshold Limit Values and Biological Exposure Indices—Sixth Edition,'' also recommends 0.5 percent as a limit, but ACGIH recommends this value as a time-weighted average limit for repeated daily exposure by workers. The FAA is adopting this value as a limit. A concentration limit of 0.5 percent is considered to be appropriate because there are no documented safety or health benefits associated with the establishment of a lower value.

Copies of the pertinent documents from ASHRAE, OSHA, and ACGIH have been placed in the public docket for this rulemaking.

Cabin ventilation provides air for dilution of airborne contaminants, and supplies oxygen for passengers and crew. Oxygen requirements for sedentary adults can be met with a fresh-air ventilation rate of only 0.24 cubic feet per minute (CFM) per person. Ventilation rates for current transport category airplanes vary from a low of approximately 7 cfm per person (with one or more air conditioning packs turned off for economy), to over 20 cfm per person (which includes up to 50 percent filtered, recirculated air). Thus, even at the lowest ventilation rates available on current airplanes, there is no significant reduction in the percentage of oxygen, or increase in the amount of water vapor in the cabin due to respiration. However, the design parameters for the ventilation systems are driven by operation on the ground during hot days. Contamination of air with CO_2 varies inversely with the ventilation rate, because CO_2 production by sedentary people is nearly constant.

In order to bring the maximum allowable carbon dioxide concentration into concert with accepted modern limits, this rule adopts a new maximum allowable carbon dioxide concentration of 0.5 percent. According to ASHRAE, for sedentary people this concentration can be maintained by a fresh air flow rate of 2.25 cfm per person, which is lower than that currently measured in transport category airplanes.

Section 25.831(b)(2) currently reads, ''Carbon dioxide in excess of three percent . . . is considered hazardous in the case of crewmembers.'' The health and comfort considerations discussed earlier are equally valid for passengers. Therefore, the FAA has removed the reference to crewmembers. In addition, § 25.831(b)(2) also specifies that, ''Higher concentrations of carbon dioxide may be allowed in crew compartments if appropriate protective breathing equipment is available.'' This sentence was incorporated when the 3 percent limit was established in CAR 4b.371 in 1952. As noted above, the origins of the 3 percent limit are unclear, but it is likely that the limit was set at this high level to account for the discharge of CO_2 fire extinguishers in the flight deck, cabin, or cargo compartment. This thesis is supported by the mention of protective breathing in the existing rule. However, most CO_2 extinguishers have been replaced by Halon or other types of fire extinguishers. Further, the rule is not intended to cover the short-duration rise in CO_2 concentration that would accompany discharge of a fire extinguisher. Therefore, that sentence in § 25.831(b)(2) is removed because it is no longer considered necessary or appropriate.

Section 25.831(b)(1) specifies a limit for carbon monoxide (CO) concentration of 1 part in 20,000 parts air (0.005 percent). This limit is the same as currently recommended by ASHRAE and the Occupational Safety and Health Administration (OSHA), and therefore this action does not change this limit.

Discussion of Comments

Comments were received from foreign and domestic airplane manufacturers through their respective trade associations, foreign airworthiness authorities, trade organizations representing flight attendants and US and Canadian pilots, one US operator, an organization representing airline passengers, and several individuals.

Two commenters support the proposed change as it appears in the notice. Five commenters wrote to register dissatisfaction with the air quality on airplanes, mentioning both comfort for passengers and illnesses believed to be associated with inadequate fresh air flow. One commenter urges the FAA to ''make the changes necessary so that we can fly in reasonable health.'' Another commenter is of the opinion that ''very poor recirculation of air in planes is costing a lot of money in medical terms, not to mention suffering.'' Two commenters state that the FAA should perform tests on existing airplanes. The FAA infers from these comments that the commenters are in favor of revising the requirements to ensure acceptable air quality. Studies conducted by the FAA and others do not indicate that there is a health hazard associated with cabin air quality. As none of these commenters suggest specific changes to the proposal, there are no changes to the final rule in response to the comments.

One commenter misread the proposal as to the allowable concentration currently in the regulations and that proposed in the notice. This commenter states that the standards for cabin air quality should be better than the standard set for buildings, because the population density is higher in an airplane, and in an office building people may exit periodically. While the commenter made no specific recommendations, the FAA infers that the commenter advocates lower limits than proposed in the notice. The FAA does not concur that these factors justify a requirement for a lower carbon dioxide concentration. The existing standards are all based on a ventilation rate per occupant. To meet the same requirements with a higher population density, a greater volume of fresh air ventilation is required. It is not clear how this concern can be addressed by the airline industry or the FAA when the studies conducted indicate that the air quality in airplanes does not present a hazard to the health of the travelers.

Two commenters state that the proposed 0.5 percent carbon dioxide concentration limit is too high. One commenter suggests that the FAA ''set a limit of 800 parts per million (ppm), the same level proposed by the Occupational Safety and Health Administration for indoor air quality,'' which is 0.08 percent. Another commenter recommends that the FAA adopt an airplane cabin carbon dioxide maximum concentration of 0.1 percent. Both commenters express concerns about the effect of higher carbon dioxide levels and increased recirculation on the spread of disease and on people with respiratory difficulties. One commenter notes that concentrations above 0.1 percent may result in complications for persons with an existing respiratory difficulty, noting that 12.4 million Americans have asthma.

Another commenter states that flight attendants who are repeatedly exposed to carbon dioxide levels above 0.1 percent develop a tolerance, while passengers do not. Another commenter states that flight attendants are at a greater risk because of this same

repeated exposure. The FAA does not concur with these views. The documented studies contained in the docket for this rule indicate that the air quality currently present in the airliner cabins is comparable to that found in other indoor environments. The OSHA recommendation proposed in the Federal Register on April 5, 1994 (59 FR 16035), which has not been adopted at this time, addresses the carbon dioxide concentration as a comfort factor to be used in determining the need to verify proper operation of heating and ventilating equipment. Further, this proposal addresses non-industrial work environments and specifically excludes vehicles. A copy of the OSHA proposed amendment has been included in the docket for this rulemaking. There is no evidence that concentrations up to 0.5 percent present any health hazard in terms of general health or the spread of disease. In the economic evaluation conducted by the FAA, the higher costs associated with requiring a carbon dioxide concentration limit below 0.5 percent do not present a favorable cost/benefit ratio and cannot be justified. Further, there appears to be no specific concentration level, even at levels down to 0.1 percent, at which at least some passengers might not be affected. This rule, which will be contained in the airworthiness requirements of part 25, is intended to provide safe flight and landing for transport category airplanes. Because carbon dioxide in concentrations below 0.5 percent do not have adverse safety effects, the FAA has determined that a concentration limit of 0.5 percent provides a reasonable balance between cost and benefit, and provides a significant improvement over the existing allowable concentration.

Several commenters note that the OSHA and ACGIH standards are for an average concentration over a specific time period. ACGIH, for instance, recommends 5,000 ppm (0.5 percent) as a time-weighted average for a normal 8-hour workday or a 40-hour workweek. They note in their 1991 report that Australia, Germany, Sweden, and the United Kingdom all recommend a time-weighted value of 0.5 percent for carbon dioxide concentration. OSHA's limits also reflect the average airborne exposure in any 8-hour work shift of a 40-hour workweek. The FAA infers that the commenters advocate providing both a time weighted and a short term concentration limit. The FAA does not concur that the carbon dioxide level should be averaged over the entire flight for several reasons. Many flights exceed eight hours in duration, and the occupants are not able to leave the airplane as are workers in an office. Also, there are added stresses involved in being in an airplane cabin. The cabin pressure altitude is significantly above sea level, usually at 6,000 to 8,000 feet. The relative humidity is lower than is usually found in ground-based environments. There are unquantified stresses associated with being in a crowded airplane cabin. Many people experience anxiety from the mere fact that they are aloft. While most of these factors cannot be controlled, the FAA has determined that the present part 25 limit on carbon dioxide concentration does not reflect industry standards and should be reduced accordingly.

One commenter suggests that the average concentration should be limited to 0.5 percent, but ''a limit of 3 percent by volume (sea level concentration) may be allowed for short term durations.'' The commenter points out that the 3 percent limit for short term durations corresponds to the short term exposure limit (STEL) adopted by the ACGIH, and having two limits should be similar to the two limits on cabin ozone concentration specified in § 25.832. Again, the FAA does not concur. The adverse health and safety effects of ozone are defined in available literature and § 25.832 of the FAR addresses that concern. There appears to be no reason to phrase the two requirements similarly.

The FAA has determined, however, that some short term excursions to values higher than 0.5 percent at some locations in the airplane may occur during normal, inflight operations when airplane pressurization and air conditioning systems are controlling the environment in the cabin. One commenter notes that the area in close proximity to the galley may experience higher carbon dioxide levels because meals are often cooled by dry ice, which releases gaseous carbon dioxide. Another commenter states that cabin air can be contaminated on the ground by exhaust ingestion or self ingestion during certain wind conditions. The FAA does not agree that this presents a problem. In one survey, conducted by the Harvard University School of Public Health, carbon dioxide levels were measured during boarding and deboarding operations. The typical levels reported were 2,000 to 2,550 ppm, or 0.2 to 0.25 percent, well below the 0.5 percent proposed by the FAA. However, the FAA does concur that it is not appropriate for the certification standards to apply to operations on the ground when the airplane systems are not operating (e.g., at the gate or during ''push-back''). The final rule is changed to reflect this determination.

The same commenter expresses concern that the use of carbon dioxide hand-held fire extinguishers in the cabin could result in local concentrations exceeding 0.5 percent, noting that the present Halon extinguishers might be replaced by carbon dioxide devices now that production of Halon is banned, and suggests a higher short-term exposure limit. The FAA does not concur that this is a justification for a higher limit. The use of carbon dioxide fire extinguishers is not envisioned, although there are no prohibitions against their use in airplanes. When Halon is no longer available, the replacement extinguishers will be required to be safe in the concentrations predicted for use in occupied areas. Further, the use of fire extinguishers in the cabin is, by its nature, an emergency situation. This is not, in the context of the previous paragraph, normal in-flight operations. Therefore, there appears to be no need for the higher limit on carbon dioxide.

Two commenters state that the utilization of building criteria for establishing carbon dioxide concentration limits for airplane cabins is not appropriate. Both commenters add that the statement in the proposal that concentrations above 0.5 percent are hazardous is not justifiable. The FAA concurs with the general statement that carbon dioxide concentrations above 0.5 percent may not be hazardous for most people. Many standards in use today allow higher concentrations. As noted by one commenter, the World Health Organization considers 12,000 ppm (1.2 percent) to be a safe level. In any case, the final rule has been changed and no longer contains the word ''hazardous.'' Both of these commenters note that the rule, as proposed, would limit carbon dioxide concentrations in lower lobe galleys, accessible cargo compartments where animals are carried, cockpits, and other occupied areas. They express concern that local carbon dioxide concentrations in the galley areas where food is cooled with dry ice might exceed 0.5 percent. The FAA concurs in part with these comments. The ventilation requirements associated with this rule change are intended to address areas that are normally occupied. Cargo compartments accessible in flight, whether in all cargo or ''combi'' airplanes with main deck cargo compartments, are not ''normally occupied.'' The final rule has been changed to reflect this determination.

One commenter disagrees with the statement in the preamble of the proposed rule that ''This low ventilation rate is also sufficient to dissipate the water vapor * * *,'' noting that water

buildup in insulation blankets is significant with present airplane fresh air inflow rates, especially in hot day ground conditions. The FAA concurs and the statement has been removed from the preamble. In stating this view, the commenter did not recommend any changes in the rule.

One commenter states that the term ''sea level equivalent'' should be clarified. The commenter suggests that the clarification include technical and/or medical rationale, including referenced sources, and provide an explanation of the methodology by which this value is to be calculated. If this rationale is not provided, the commenter states that the FAA should delete the phrase. The FAA does not concur that the term ''sea level equivalent'' is not defined, although the definition appears in reference to another gas. In FAA Advisory Circular 120–38, ''Transport Category Airplanes Cabin Ozone Concentrations,'' sea level equivalent is defined as ''* * * concentration in ppmv referenced to standard conditions of 25° C and 760 millimeters of mercury pressure.'' Based on this definition, and calculations provided in the AC, the maximum measured concentration, sea level equivalent, for a cabin altitude of 8,000 feet would be 0.5 percent multiplied by 0.74 (the ratio of air pressure at 8,000 feet to air pressure at sea level), or 0.37 percent. Values of this ratio for other cabin altitudes are provided in the AC. As the term sea level equivalent is defined, the rule is adopted as proposed.

The same commenter also notes that the statement in the preamble that control of carbon dioxide buildup due to respiration is the factor that dictates the design parameters for ventilation systems is incorrect. Operation on the ground during high ambient temperatures generally dictates the ventilation system design parameters. The FAA concurs and the preamble has been changed accordingly.

One commenter recommends that the new standards for carbon dioxide concentration not be applied to all-cargo airplanes. The commenter notes that measured carbon dioxide levels on the flight decks of these airplanes are well below both the current standard and that proposed in Notice 94–14. The commenter goes on to state that lowering the limit on carbon dioxide is a comfort issue, and would place a burden on the manufacturers of transport category airplanes that is not commensurate with any safety benefit that might result. The FAA does not concur. As noted elsewhere in this preamble, the FAA has determined that the existing concentration limit of 3 percent for carbon dioxide is not appropriate because many passengers and crewmembers are adversely affected at that level. The lower levels adopted by this amendment will provide a standard that, when met, will ensure that passengers and crewmembers, including those on all-cargo airplanes, will not be subjected to levels of carbon dioxide that would reduce their ability to perform their assigned duties. There are no costs associated with lowering the limit as proposed.

With the exception of the changes noted above, this final rule is adopted as proposed in Notice 94–14.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this rule: (1) will generate benefits exceeding its costs and is not ''significant'' as defined in Executive Order 12866; (2) is not ''significant'' as defined in DOT's Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below, following FAA's disposition of comments on the economic aspects of the NPRM.

Response to Comments

One commenter calculates that it would cost about $0.076 per person per hour to provide 100 percent fresh air in the cabin of a typical 300-seat widebody airplane. The FAA disagrees with this commenter and estimates that the cost of 100 percent fresh air would be $0.095 per person per hour.

Another commenter states that the FAA did not account for the potential costs of applying the rule to all occupiable sections of the airplane because it evaluated only the passenger cabin area and ignored the flight deck and lower lobe galleys. The FAA concurs in part with this comment. The carbon dioxide concentration requirements are intended to apply to areas that are normally occupied. The final rule has been changed to reflect this intent. Thus, the commenter's statement does not alter the FAA's economic analysis.

Another commenter states that the FAA did not evaluate the possibility that ground-air contamination (ingestion of other airplanes' exhausts) may temporarily push the CO_2 level above the 0.5 percent limit. The FAA does not agree that this presents a problem. In one survey, conducted by the Harvard University School of Public Health, CO_2 levels were measured during boarding and deboarding operations. The typical levels reported were 0.2 percent to 0.25 percent, well below the 0.5 percent in this rule. However, the FAA does concur that it is not appropriate for the certification standards to apply to ground operations when the airplane systems are not functioning. As a result, the final rule has been changed to reflect this determination. Consequently, there is no economic impact as a result of this remote possibility.

Two commenters state that if live animal cargo areas are included under the definition of ''inhabited'' areas, there would be considerable potential costs. The FAA partly concurs with these comments in that cargo compartments accessible in flight, whether in all cargo or ''combi'' airplanes with main deck cargo compartments, are not normally occupied and the final rule has been changed to reflect this determination. As a result, there is no economic impact from excluding live animal cargo areas from this rule.

Costs

Airplane cabin CO_2 levels can be reliably calculated from the number of passengers and the ventilation rate. In addition, engineering analyses have determined the amount of fuel used to provide a unit ventilation rate. These functional relationships allow the calculation of the costs to maintain a given cabin CO_2 level. The FAA estimates that the 3 percent CO_2 limit under the current rule costs about 0.27 cents per person per hour while the new 0.5 percent limit will cost about 1.7 cents per person per hour. Thus, the amended limit constitutes a 1.43 cent increase per person per hour, or about $4,475 per (newly certificated) airplane per year.

In point of fact, however, the ventilation rates in current transport category airplanes currently maintain cabin CO_2 levels below 0.5 percent. As the FAA expects that the minimum ventilation rates of future aircraft designs will also maintain CO_2 levels below 0.5 percent in order to control

odors, temperature, water vapor, etc., no actual incremental costs or benefits will result from the rule change. However, codification of this limit will ensure that future designs maintain the 0.5 percent level.

Benefits

Although outdoor air contains CO_2 at the 0.03 percent level, CO_2 may produce respiratory center stimulation, mild narcotic effects, and asphyxiation under high levels and high exposure duration. At concentrations of 2 to 3 percent, CO_2 can produce headaches, breathing difficulty, and increases in blood pressure and pulse. By comparison, no ill-effects have been observed at the 0.5 percent level.

Cost-Benefit Comparison

From a strict cost-benefit evaluation of the rule change itself, isolated from actual practice, the FAA concludes that it would cost about 1.43 cents per person per hour to increase the ventilation to reduce cabin CO_2 levels from 3 percent to 0.5 percent. By comparison, this reduction eliminates the cabin CO_2 levels known to produce headaches, breathing difficulty, and increases in blood pressure and pulse. While no precise economic value has been assigned to the benefit from avoiding these ill effects, the FAA has determined that they are worth more than 1.43 cents per person per hour.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed or final rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size, ''significant economic impact'' in terms of annualized costs, and ''substantial number'' as eleven or more and which is more than one-third of the small entities subject to the proposed or final rule.

The final rule would affect manufacturers of transport category airplanes produced under future new airplane type certificates. For manufacturers, Order 2100.14A defines a small entity as one with 75 or fewer employees. Since no part 25 airplane manufacturer has 75 or fewer employees, the rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

As the certification rules apply to both foreign and domestic manufacturers that market airplanes in the United States, neither group will receive a competitive advantage. As no incremental compliance costs are expected, there will be no competitive trade disadvantage or advantage for U.S. manufacturers in foreign markets or for foreign manufacturers in the United States.

Federalism Implications

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation , it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), there are no reporting or recordkeeping requirements associated with this rule.

Conclusion

Because the revised standards for maximum allowable carbon dioxide concentration are not expected to result in a substantial economic cost or have a significant adverse effect on competition, the FAA has determined that this final rule is not significant under Executive Order 12866. In addition, the FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since no actual incremental costs are expected to be incurred to comply with the requirements of this rule, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this final rule has been placed in the public docket. A copy may be obtained from the person identified under the caption, **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

2. Section 25.831 is amended by revising paragraph (b)(2) to read as follows:

§ 25.831 Ventilation.

* * * * *

(b) * * *

(2) Carbon dioxide concentration during flight must be shown not to exceed 0.5 percent by volume (sea level equivalent) in compartments normally occupied by passengers or crewmembers.

* * * * *

Issued in Washington, D.C., on November 21, 1996.

Linda Hall Daschle,

Acting Administrator.

[FR Doc. 96–30525 Filed 11–29–96; 8:45 am]

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Federal Register

Monday
December 2, 1996

Part V

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 12

Recordkeeping and Confirmation Requirements for Securities Transactions; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 12

[Docket No. 96–25]

RIN 1557–AB42

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rule that prescribes recordkeeping and confirmation requirements for securities transactions. The final rule is another part of the OCC's Regulation Review Program to update and streamline OCC regulations and eliminate unnecessary regulatory costs and other burdens. The final rule reorganizes the OCC's regulation by placing related subjects together, clarifies areas where the rule was confusing, incorporates significant OCC interpretive positions, and updates various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by national banks.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Suzette H. Greco, Senior Attorney, Securities and Corporate Practices Division (202) 874–5210; Joseph W. Malott, National Bank Examiner, Capital Markets Division (202) 874–5070; William L. Granovsky, National Bank Examiner, Fiduciary Activities (202) 874–4861.

SUPPLEMENTARY INFORMATION:

Background

The OCC adopted 12 CFR part 12 on July 24, 1979 (44 FR 43252) to require national banks to establish uniform procedures and records relating to the handling of securities transactions for customers. The requirements reflected in part the recommendations of the Securities and Exchange Commission's (SEC) *Final Report of the Securities and Exchange Commission on Bank Securities Activities* (June 30, 1977). Part 12's recordkeeping and confirmation requirements were patterned after the SEC's rules applicable to broker/dealers and were intended to serve similar purposes for banks involved in effecting customers' securities transactions.[1] The OCC amended part 12 on December 31, 1979 (44 FR 77137) to include additional suggestions recommended by commenters, and the part became effective on January 1, 1980. The Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) also adopted regulations substantially identical to part 12 in 1979. *See* 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 344, 44 FR 43261 (July 24, 1979) (FDIC regulation).

On December 22, 1995, the OCC published a notice of proposed rulemaking (60 FR 66517) (proposal) to revise 12 CFR part 12, the OCC's Recordkeeping and Confirmation Requirements for Securities Transactions regulation. The purpose of the proposal was to modernize part 12, address various market developments and regulatory changes, and reduce regulatory burden, where possible. The FRB published a substantively similar yet somewhat differently worded proposed rule on December 26, 1995. *See* 60 FR 66759. The FDIC published an advance notice of proposed rulemaking on May 24, 1996, soliciting comment on issues similar to those raised in the OCC's and FRB's proposed rules, but has not yet proposed a rule. *See* 61 FR 26135.

Comments Received and Changes Made

The OCC received ten comments on the proposal. The comment letters included eight from banks and bank holding companies, one from a trade association, and one on behalf of a mutual fund sponsor and distributor. Commenters generally supported the proposal, but several commenters requested changes. The OCC carefully considered each of the comments and has made a number of changes in response to the comments received.

Overall, the final rule adopts most of the changes to part 12 as proposed by the OCC. The section-by-section discussion of this preamble identifies and discusses the comments received and changes made to certain sections of the proposal. A derivation table identifying sections of former part 12 changed by the final rule is included at the end of this preamble.

[1] Brokers and dealers generally must register with the SEC under the Securities Exchange Act of 1934. *See* 15 U.S.C. 78o(a)(1). Banks are excluded from the definitions of ''broker'' and ''dealer'' and thus are not subject to the registration provisions. *See* 15 U.S.C. 78c(a) (4) and (5).

Section-by-Section Discussion

Authority, Purpose, and Scope (§ 12.1)

The proposal revised and expanded the scope section to clarify the securities transactions to which part 12 applies and identify the types of transactions that are subject to other regulatory requirements. Generally, any national bank effecting a securities transaction for a customer is subject to the requirements of part 12, unless the transaction specifically is excepted. For example, part 12 requirements apply to transactions in mutual funds as well as other securities.

National banks conducting government securities transactions for their customers also are within the scope of part 12.[2] Consistent with regulations issued pursuant to the Government Securities Act of 1986, 15 U.S.C. 78o–5, part 12 (§ 12.1(c)(2)(ii)) exempts a national bank that conducts fewer than 500 government securities *brokerage* transactions per year from complying with the recordkeeping requirements under § 12.3. *See* 17 CFR 401.3(a)(2)(i) and 404.4(a).[3] This exemption does not apply to government securities *dealer* transactions by national banks, however.

The ''scope'' section (§ 12.1(c)(1)) also clarifies that a national bank's transactions in municipal securities that are *not* subject to the Municipal Securities Rulemaking Board's (MSRB) rules, *are* subject to part 12.[4] Thus,

[2] The Department of the Treasury, under its authority pursuant to the Government Securities Act of 1986 (GSA), 15 U.S.C. 78o–5, has issued regulations in 17 CFR parts 400 through 405, 449, and 450, applicable to many government securities transactions by national banks (GSA regulations). The GSA regulations define the terms ''government securities broker'' and ''government securities dealer'' to include financial institutions. See 17 CFR 400.3 (k) and (l). Part 404 of the GSA regulations provides specific recordkeeping requirements for government securities brokers and dealers that are financial institutions. *See* 17 CFR 404.4.

[3] National banks, because they are subject to part 12 recordkeeping requirements, are not required to follow the recordkeeping requirements of the GSA regulations at 17 CFR 404.2 and 404.3. *See* 17 CFR 404.4(a). National banks, however, must follow other recordkeeping requirements under the GSA regulations. *See* 17 CFR 404.4 (a)(3), (b), and 450.4 (c), (d), and (f). Part 12 *confirmation* requirements apply to all government securities transactions by national banks.

[4] The MSRB adopts rules with respect to transactions in ''municipal securities'' effected by brokers, dealers, and ''municipal securities dealers.'' *See* 15 U.S.C. 78o–4; Rules of the MSRB, MSRB Manual (CCH) ¶ 3501 *et seq.* As defined in the Exchange Act, a ''municipal securities dealer'' includes a bank, as well as a ''separately identifiable department or division of a bank,'' that is engaged in the business of buying and selling municipal securities for its own account through a broker or otherwise. *See* 15 U.S.C. 78c(a)(30). Under the SEC's regulatory requirements, however, a bank

under § 12.1(c)(2)(iii), transactions in municipal securities conducted by a national bank registered with the SEC as a ''municipal securities dealer'' are exempt from part 12. However, municipal securities brokerage transactions by a national bank not registered as a municipal securities dealer are subject to part 12 requirements.

The proposal's ''scope'' section provided exceptions from part 12 requirements for: (1) Banks conducting a small number of securities transactions; (2) certain government securities transactions; (3) certain municipal securities transactions; and (4) securities transactions conducted by a foreign branch of a national bank. The proposal also clarified that notwithstanding the exceptions from part 12, the OCC expects a national bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations.

Most commenters supported the clarifications to the proposed scope section. With respect to the scope section as discussed in the proposal's preamble, two commenters requested further clarification. One commenter requested clarification of whether part 12 requires a national bank to provide a confirmation of a trade placed by a customer directly with a registered broker/dealer for settlement in the customer's custodial account. In these circumstances, a national bank need not provide a confirmation if the customer receives a confirmation from the registered broker/dealer.

Another commenter suggested clarifying that part 12 generally would not apply when dual employees are involved in a networking operation with a registered broker/dealer. As noted in the proposal's preamble, the OCC recognizes that a national bank may enter into various arrangements with registered broker/dealers that permit the broker/dealers to operate on the bank's premises. Part 12 generally does not apply to securities transactions executed by these registered broker/dealers for their customers. As registered broker/dealers, they already are subject to the SEC's recordkeeping and confirmation rules.[5] The OCC agrees that when a dual employee is performing work for and under the control of a registered broker/dealer pursuant to an arrangement between the bank and a registered broker/dealer, part 12 requirements do not apply. However, if the dual employee is performing work for and under control of the bank, then the part 12 requirements do apply. *See* Interpretive Letter No. 680 (July 26, 1995), *reprinted in* [1994–95 Transfer Binder] Fed. Banking L. Rep. (CCH) 83628.

Accordingly, the final rule adds a new provision (§ 12.1(c)(2)(v)) clarifying that part 12 does not apply to securities transactions effected by a broker or dealer registered with the SEC, including securities transactions effected by a bank employee when the employee is acting as an employee of an SEC-registered broker/dealer. The final rule also adopts the amendments to the scope section as proposed and revises § 12.1(c)(1) to state more clearly that both part 12 and 12 CFR part 9 govern fiduciary transactions effected by a national bank.[6]

Definitions (§ 12.2)

The proposal added new definitions of *asset-backed security, completion of the transaction, crossing of buy and sell orders, debt security, government security,* and *municipal security,* and modified the definitions of *collective investment fund, customer, investment discretion, periodic plan,* and *security.*

Several commenters asked the OCC to make clarifications. One commenter questioned whether the definition of *customer* includes a bank when that bank acts as the fiduciary of an account and effects transactions for that account. That is not the intent of part 12. While both the former rule and the proposal define *customer* to include any person or account (including fiduciary accounts) for which a national bank makes or participates in making the purchase or sale of securities, the account is the *customer* when the bank acts as fiduciary and has investment discretion over the account. Accordingly, the final rule clarifies that part 12 does not require that the bank notify itself of a transaction.

Another commenter asked whether, for purposes of the notification requirements for transactions involving periodic plans or employee benefit plans, the *customer* is the plan trustee or the plan participant. The OCC does not intend part 12 to require a bank acting as a trustee of an employee benefit plan to provide notifications to itself where the bank as trustee is the shareholder of record of the securities being bought and sold. Generally, a written agreement between the trustee and the participants governs these plans and dictates the type of notifications required. The primary law governing employee benefit plans and trusts is the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq. The final rule clarifies that the definition of *customer* does not include a bank as trustee acting as shareholder of record for the purchase and sale of securities.

Several commenters raised questions about the proposed definition of *investment discretion.* The proposal, like the former rule, tracked the definition of ''investment discretion'' in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(35). Under this definition, a bank exercises investment discretion with respect to an account if the bank directly or indirectly: (1) Is authorized to determine what securities or other property to purchase or sell, or (2) makes decisions as to what securities or other property to purchase or sell even though some other person may have responsibility for these investment decisions. The significance of a finding under part 12 that a bank exercises investment discretion is that the bank then may choose from more options when providing a customer with notice of a transaction. For example, instead of complying with the generally applicable rule requiring a bank to provide notification at or before completion of the transaction, a bank exercising investment discretion in an agency capacity may send an itemized statement to a customer every three months.

Three commenters recommended revising the part 12 definition of *investment discretion* to conform to the proposed definition of *investment discretion* in 12 CFR part 9, the OCC's regulation governing fiduciary powers of national banks.[7] The final rule does not substantively change the former part 12 definition of *investment discretion.* Given that the broader definition of the term in part 12 serves to reduce burden on national banks by providing more flexibility to banks in giving notices of securities transactions, the OCC believes it appropriate to retain the definition as proposed. The OCC will review the definition of *investment discretion* used in part 9 in the course of adopting amendments to that rule.

need not register as a ''municipal securities broker.'' *See* 15 U.S.C. 78c(a) (4) and (31).

[5] As noted in the proposal, however, if the bank is using this registered broker/dealer solely to clear securities transactions effected by the bank for the bank's own customers, then the requirements of part 12 do apply to the bank because the bank has executed the transactions.

[6] The final rule also changes the caption of § 12.1(c)(2) from ''exemptions'' to ''exceptions'' to better reflect that § 12.1(c)(2) does not necessarily exempt the specified transactions from all part 12 requirements.

[7] The OCC published a notice of proposed rulemaking on 12 CFR part 9 on December 21, 1995. *See* 60 FR 66163.

Three commenters asked the OCC to clarify that the definition of *periodic plan* also includes cash management sweep services, such as arrangements where funds are transferred or ''swept'' out of a bank to purchase money market mutual funds. Both the former and proposed rules define *periodic plan* to include dividend reinvestment plans, automatic investment plans, employee stock purchase plans, and other plans where the bank has written authority to act as agent for the customer to purchase and sell specific securities, in specific amounts, at specific time intervals. Cash management services, whereby a bank will allow a depositor to transfer or ''sweep'' all funds or all funds above a specified amount from deposits into investment vehicles, often money market mutual funds, on a daily basis and to automatically redeem securities as needed, are not expressly included in the former or proposed rules.

The OCC agrees with the views of the commenters that the definition of *periodic plan* encompasses cash management sweep services. Many banks today engage in cash management sweep services to allow customers to earn an investment return on otherwise idle cash balances. The types of cash management services banks offer vary and banks should take care to comply with all applicable requirements with respect to any particular arrangement. Accordingly, the final rule revises the definition of *periodic plan* to specifically include these services. The final rule also adopts a separate timeframe for notifications for cash management sweep services, as discussed in § 12.5.

Finally, one commenter urged the OCC to retain the exception in the definition of *security* for letters of credit and other forms of bank indebtedness incurred in the ordinary course of business. The proposed definition closely tracks the definition of *security* in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10), which does not explicitly contain this exception. However, the final rule retains this exception, because, upon further consideration, the OCC has concluded that this exception avoids extending the regulation's coverage to transactions where the requirements of part 12 are unnecessary.

Recordkeeping (§ 12.3)

The proposal provided that a national bank may maintain the records required by § 12.3(a) in any manner, if the records clearly and accurately reflect the information required and provide an adequate basis for auditing the information (§ 12.3(b)). This provision is intended to give banks flexibility in the maintenance of records required by part 12. The OCC requested comments addressing whether and in what manner banks rely upon this provision. The OCC received two comments on this issue. The commenters suggested that the OCC clarify the extent to which a national bank may use electronic or automated records.

The OCC recognizes that better and more affordable technology will increase banks' interest in replacing paper files with electronic data bases and filing systems. The OCC has no objection to a national bank using an electronic or automated recordkeeping system as long as the records are maintained in conformity with § 12.3(b). Accordingly, the final rule specifically permits the use of electronic or automated records as long as the records are easily retrievable and readily available for inspection and the bank has the capability to reproduce the records in hard copy form.

Content and Time of Customer Notification (§ 12.4)

Under the proposal a national bank may give or send the required written notification to a customer for whom the bank has effected a securities transaction by providing either (1) a copy of a registered broker/dealer's confirmation prepared for the bank and a statement regarding remuneration, or (2) a bank-generated confirmation containing essentially the same information as the SEC requires for registered broker/dealer confirmations. The written notification conveys information to the bank's customers about their securities transactions, thereby giving them an opportunity to verify the terms of their transactions and evaluate the accuracy of the bank's execution.

The proposal did not include former part 12's provision permitting an additional five business days for a national bank to provide notification to a customer by using a copy of the registered broker/dealer's confirmation to the bank. The OCC, however, specifically requested comments on the need for additional time by a national bank opting to provide notification by using a copy of the registered broker/dealer's confirmation.

The OCC received four comments on this issue. One commenter opposed giving a bank additional time and stated that it was not necessary and not conducive to a uniform regulatory environment. Three commenters favored continuing to allow a bank additional time. In light of the comments, the final rule retains the provision allowing a bank additional time. However, the final rule changes the length of the additional time allowed from five days to one day from receipt by the bank of the registered broker/dealer's confirmation. The former regulation's five-day period was based on the industry practice of having the settlement of a securities transaction on the fifth business day after the trade day (T+5). The industry now must settle most securities transactions by the third business day after the trade day (T+3). Given the advances in electronic technology for providing confirmations and market developments, the OCC believes one additional business day is sufficient for providing a customer a notification in this manner. Accordingly, the final rule adopts this change in the time of notification when a bank opts to provide notification by using a copy of a registered broker/dealer's confirmation.

The OCC also requested comments on the adoption of the timeframe *at or before completion of the transaction* for a national bank to provide a written notification. Sending the notification at or before completion of the transaction is consistent with the SEC's broker/dealer confirmation rule. *See* Securities Exchange Act of 1934 Rule 10b–10, 17 CFR 240.10b–10(a) (SEC Rule 10b–10). The SEC also defines *completion of the transaction* similar to the proposed part 12 definition, generally meaning payment of funds and delivery of the securities. *See* 17 CFR 240.10b–10(d)(2).

The OCC received four comments on this issue. One commenter supported the adoption of this timeframe and two commenters expressed concern about a bank's ability to provide the information so quickly. Another commenter noted that in a typical custody arrangement, customers employ an outside broker (e.g., a registered broker/dealer) to make investments for them and the bank does not process any activity on its customer's account records until it receives authorization from the registered broker/dealer. However, the commenter interpreted the proposal to mean that the bank must provide the customer a notification within the T+3 timeframe. With respect to this last comment, the OCC notes that part 12 does not apply when a registered broker/dealer is effecting the securities transactions and the bank is acting only as custodian.

The final rule adopts the timeframe *at or before completion of the transaction* in order to reflect current securities industry practice. This timeframe requires a national bank to give or send notification of its customers' securities transactions in the same way as a

nonbank registered broker/dealer. The OCC believes this change promotes consistency among regulators and keeps banks on a level playing field with nonbank registered broker/dealers. The OCC also believes that the additional day to provide the confirmation when using a copy of a registered broker/dealer's confirmation will allow a bank adequate time to provide a notification. Further, the OCC notes that the final rule only requires the bank to give or send the notification by the settlement of the securities transaction, i.e. the completion of the transaction, and not that the customer must receive the notification by settlement.

Consistent with SEC Rule 10b–10, the proposal added § 12.4(b) (8), (9), (10), and (11), requiring disclosure of yield information on debt securities (renumbered in the final rule as § 12.4(a)(8), (9), (10), and (11)). The proposal also added § 12.4(b)(12) requiring disclosure that a debt security has not been rated by a nationally recognized statistical rating organization, if that is the case (renumbered in the final rule as § 12.4(a)(12)).

The OCC sought comments on the applicability and need for these disclosure requirements. Both commenters that addressed this issue focused on the requirement for unrated debt securities, and both supported including these requirements. One commenter stated that its trade confirmation already shows ''NR'' for unrated securities. The OCC recognizes that there are a variety of situations where certain securities may be unrated. The disclosure is intended to alert customers that they may wish to obtain further information or clarification from the bank on the nature of these securities. For the reasons stated in the proposal and in light of the comments, the final rule adopts these additional disclosure requirements.

The proposal also requested comments on whether part 12 should include a provision similar to SEC Rule 10b–10(c) stating the required period of time for a national bank to furnish information pursuant to a customer's request. SEC Rule 10b–10(c) requires broker/dealers to furnish to customers requested information within five business days of the receipt of the request, or within 15 business days if the broker/dealer effected the transaction more than 30 days before the receipt of the request. *See* 17 CFR 240.10b–10(c). Former part 12 did not contain a similar provision. Two commenters addressed this issue and were opposed to incorporating the SEC's standard. The commenters noted that furnishing information pursuant to a customer's request ''within a reasonable time'' is sufficient. The OCC agrees with the commenters. Accordingly, the final rule does not contain this provision.

The proposal included a new provision concerning the disclosure of other remuneration similar to that in the SEC's Rule 10b–10. *See* 17 CFR 240.10b–10(a)(2)(i)(D). Under proposed § 12.4(b)(6) (renumbered in the final rule as § 12.4(a)(6)), a national bank may choose not to disclose the source and amount of *other* remuneration to the bank, if the bank: (1) Informs the customer in writing that it has received or will receive other remuneration; and (2) the bank states that it will furnish the source and amount of the other remuneration upon the customer's written request.

The OCC received two comments supporting the inclusion of this provision but suggesting further clarification. In light of these comments, the final rule adopts the provisions on remuneration disclosure as proposed with the following clarification. First, the final rule clarifies that a notification by means of the written statements permitted by § 12.4(a)(6) is available only in lieu of disclosing the source and amount of *other* remuneration, not in lieu of disclosing the remuneration paid by the customer. Second, § 12.4(a)(6) reflects that the bank will furnish information pursuant to a customer's request within a reasonable time.

Proposed § 12.4(c), captioned ''Notification by agreement,'' retains the option in the former rule for the bank and the customer to agree in writing to a different time and form of notification for a securities transaction where the national bank does not exercise investment discretion. The OCC received three comments on this issue. Two commenters asked for clarification on the use of the notification by agreement option. Another commenter suggested moving § 12.4(c) back to § 12.5, the section on alternative forms and times of notification, as under the former rule.

In response to these comments, the OCC notes that a bank does not need to provide a notification under § 12.4 (a) or (b) when using the notification by agreement option, unless specifically requested by the customer. The OCC has not substantively changed the notification by agreement option and intends a national bank using this option to provide notification in the same way as under the former part 12 provision. The final rule relocates the notification by agreement option to § 12.5(a) in an effort to further clarify §§ 12.4 and 12.5.

Finally, in response to several commenters' suggestions for stylistic changes intended to reduce confusion and enhance readability, the final rule changes the name of the section, some introductory language, and the captions. The final rule also reverses the order of the notification options of § 12.4(a) and § 12.4(b) to emphasize the information a bank must provide its customer in a notification regardless of which type of notification under this section the bank elects to provide.

Notification by Agreement; Alternative Forms and Times of Notification (§ 12.5)

In addition to the notification requirements in § 12.4, the proposal also authorized alternative forms and times of notification under § 12.5 for certain specific types of transactions. These were: (1) Transactions in which the bank exercises investment discretion in other than an agency capacity; (2) transactions in which the bank exercises investment discretion in an agency capacity; (3) transactions for a collective investment fund; and (4) transactions for a periodic plan. The OCC asked commenters to address the continuing need for the alternative forms of notification.

Two commenters addressed this issue. One commenter expressed support for the continued inclusion of the alternative forms of notification. Another commenter suggested that § 12.5(c) (regarding notifications for collective investment fund transactions) was unnecessary because banks follow the requirements of 12 CFR part 9, the OCC's fiduciary regulation. The OCC agrees with this comment and has revised the final rule to state simply that for collective investment fund transactions a bank must follow the requirements of 12 CFR part 9. The final rule also changes the name of the section, some introductory language, and the captions in an effort to eliminate confusion and enhance readability.

The proposal clarified that for § 12.5 purposes generally, it is the ''transaction'' that triggers the notification requirements, not the type of account. The OCC requested comments about any effects of the proposed change regarding alternative forms of notification based upon types of transactions instead of types of accounts.

The OCC received one comment on this proposed change. The commenter suggested that the type and form of notification should be negotiated as part of the original agreement between the customer and the bank, and that automated means then should be used

to comply with the notification requirements for all transactions in the account. The commenter was concerned that the proposed change would preclude this option of agreeing to the type and form of the notification.

The OCC agrees with the commenter that the customer and the national bank should have the option to determine the type and form of notification initially with the account opening. The OCC does not believe that the change set out in the proposal would preclude the customer and the bank agreeing beforehand on the form and time of the notification required. For example, a national bank effecting securities transactions for an account in which the bank exercises investment discretion may have an agreement with the customer to provide a monthly account statement. The alternative notification procedures set forth in § 12.5 continue to permit the national bank and the customer to agree in writing to another type and form of notification. However, even though the national bank and the customer may agree on the type and form of notification at the opening of the account, the OCC views the ''transaction'' as triggering the part 12 notification requirements. The OCC does not intend for the proposed change to substantively affect a national bank's compliance with the part 12 notice requirements. Thus, the final rule adopts this change in terminology that the transaction triggers the notification requirements.

The proposed rule amended the notification time for periodic plan transactions under § 12.5(d) (renumbered in the final rule as § 12.5(e)) to not less than once every three months rather than notification as promptly as possible after each transaction. One commenter noted their support for this change in notification time. Two other commenters specifically suggested the OCC clarify in the final rule how the periodic plan notification requirements apply to cash management sweep services. One commenter noted that a separate confirmation requirement, for example, for every money market mutual fund transaction in a sweep arrangement, would impose an unnecessary paperwork burden on national banks and their customers and place banks at a competitive disadvantage relative to nonbank registered broker/dealers. Under the SEC's Rule 10b–10, broker/dealers must provide a confirmation after the end of each monthly period for transactions in money market mutual funds. *See* 17 CFR 240.10b–10(b)(2).

The OCC agrees that national banks offering cash management sweep services should provide notification similar to that provided by nonbank registered broker/dealers offering similar services. As discussed in § 12.2, the OCC has revised the definition of periodic plan in the final rule to include cash management sweep services. Section 12.5(e) in the final rule provides the timeframe for notification for periodic plans. The final rule clarifies that, with respect to cash management sweep services, the time for notification is each month in which a purchase or sale of securities takes place in the customer's deposit account and not less than once every three months if there are no securities transactions in the account. The final rule also adopts the change as proposed for other periodic plans, namely, that the time for notification is not less than once every three months. The OCC believes that these timeframes are consistent with current industry practice and the SEC's notification requirements. These timeframes also will serve to eliminate unnecessary regulatory burden by reducing the number of required notifications.

The OCC reminds national banks engaging in cash management sweep services that the securities involved in the sweep services remain subject to any other applicable rules and regulations. In some instances notification requirements other than those of part 12 may apply. For example, a bank offering a sweep repurchase agreement program involving government securities, commonly called a ''sweep repo,'' may be subject to daily confirmation requirements under the Government Securities Act of 1986 regulations, 17 CFR parts 400 through 405, 449, and 450. *See* OCC Advisory Letter 96–2 (March 22, 1996).

Fees (§ 12.6)

The proposal placed the former provisions in §§ 12.4 and 12.5 regarding fees into a new § 12.6. The OCC received no comments on this section. The final rule adopts the section substantially as proposed except that certain provisions are reordered.

Securities Trading Policies and Procedures (§ 12.7)

The proposal retained the requirement under § 12.7(a)(1) that a bank establish written policies and procedures assigning supervisory responsibility for personnel engaged in different aspects of the trading process. The proposal did not propose specific language concerning the separation of supervisory responsibility for sales activities and ''back room'' functions. The OCC received one comment suggesting that the OCC include a specific reference to establishing separate supervisory procedures and reporting lines for ''back room'' personnel. On reconsideration and in light of the recent developments involving the lack of internal controls in certain highly publicized cases,[8] the final rule includes a provision (§ 12.7(a)(1)(iii)) that explicitly states the need for separate supervisory procedures for back room functions.

The OCC received several comments related to the filing of personal trading reports by national bank officers and employees under proposed § 12.7(a)(4). One commenter recommended revising § 12.7(a)(4)(iii) to apply only to employees who perform the securities trading functions for the bank. The OCC declines to narrow the scope of the requirement in the final rule given the important purpose behind the personal reporting requirement and recent concerns in the securities industry on personal trading by insiders.[9] This requirement, which is similar to requirements under the securities laws and regulations, addresses potential conflicts of interests between bank personnel and customers and deters improper or illegal use of information by bank insiders.

The proposal did not change the scope of former § 12.6 (renumbered as § 12.7 in the proposal). The OCC requires the filing of a report from national bank officers or employees who make investment recommendations or decisions for the accounts of customers, participate in the determination of the recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for purchase or sale. The OCC notes that these individuals do not have to be regularly or frequently involved in the recommendation or decision-making process or obtain information on a regular basis to be subject to the reporting requirement. However, the mere fact that an officer or employee learns of a securities transaction after it has been effected, or an investment recommendation after it has been transmitted to a customer, would not subject that officer or

[8] *See, e.g.*, David Brilliant, *Tone at the Top: Boards and Managers Must Ensure Quality Business and Controls*, The Banker 26 (Nov. 1995); *Out of Control: Greater Supervision is Urged by the Report into the Barings Fiasco*, The Banker 15 (Aug. 1995); Maureen Duffy, *Barings' Systems: The Blame Game*, 12 Wall Street & Technology 16 (1995).

[9] *See, e.g.*, Division of Investment Management, SEC, Personal Investment Activities of Investment Company Personnel (1994); Investment Company Institute, Report of the Advisory Group on Personal Investing (1994).

employee to the reporting requirements of § 12.7.

Another commenter requested that the OCC amend the requirement to file personal trading reports ''within ten days'' so that it reads ''within ten business days'' to accommodate large banking organizations. The suggested change is consistent with past informal practices to which the OCC has not objected. Accordingly, the final rule reflects this change.

Under § 12.7(d), the proposal requested comment on clarifying that a national bank acting as an investment adviser to an investment company is subject to section 17 of the Investment Company Act, 15 U.S.C. 80a–17, and, in particular, the requirements of Rule 17j–1 of the Investment Company Act, 17 CFR 270.17j–1 (SEC Rule 17j–1). The additional provision in the proposal simply reminded banks of the separate existing requirement under SEC Rule 17j–1. As noted in § 12.7(d), certain officers and employees of a national bank acting as an investment adviser to an investment company must comply with a reporting requirement regarding personal securities trading under both part 12 and SEC Rule 17j–1.

The OCC received two comments addressing this issue. The commenters suggested that the OCC clarify that filing one report with the bank will suffice for purposes of both part 12 and SEC Rule 17j–1 if the information required is the same. The OCC believes this would reduce burden while enabling the OCC and the SEC to have access to the report. Accordingly, the final rule permits national bank officers and employees to file one report where the required information is the same. Nonetheless, the OCC cautions national banks to recognize that the part 12 requirements, in some respects, are broader than those under the Investment Company Act because part 12 applies to investment advisory activities by national banks whether the bank provides the advice to an investment company or to another type of customer.

The final rule also includes a technical correction to § 12.7(d) to clarify that SEC Rule 17j–1 requires personal securities transactions to be reported to the investment adviser and maintained for review by the SEC.

Waivers (§ 12.8)

The proposal clarified that a national bank may file a written request with the OCC for waiver of one or more of the requirements set forth in §§ 12.2 through 12.7, either in whole or in part. The OCC received no comments on this section. The final rule adopts § 12.8 as proposed.

Settlement of securities transactions (§ 12.9)

The proposal added § 12.9 to establish a securities settlement timeframe for national banks effecting or entering into contracts for the purchase or sale of securities for customers. The OCC intends this provision to parallel the SEC's adoption of the ''T+3'' securities settlement timeframe. *See* Securities Exchange Act of 1934 Rule 15c6–1, 17 CFR 240.15c6–1; 58 FR 52891 (Oct. 13, 1993); 60 FR 26604 (May 17, 1995) (amendments to the rule). The OCC requested comment on the need for and effect of adopting the T+3 securities settlement requirement for national banks.

The OCC received one comment on this issue. The commenter pointed out that many small banks do not have access to SEC rules and would prefer to have part 12 specify the actual requirement. The commenter also noted that incorporating the SEC's rule by reference would permit banks to take advantage of any changes by the SEC immediately rather than waiting for the OCC to amend part 12. After careful consideration of this matter, the OCC decided that national banks would benefit more from having immediate access to the text of the SEC's rule rather than only having a cross-reference to the SEC's rule in the OCC's regulation. For this reason, the final rule adopts § 12.9 as proposed.

Interpretations (§§ 12.101 and 12.102)

The proposal added two interpretive rulings to part 12. The first interpretation (§ 12.101) related to the disclosure of remuneration for mutual fund transactions. Consistent with the SEC's practice, the OCC stated it would allow a bank to fulfill its disclosure requirement regarding the source and amount of remuneration for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction.

The second interpretive ruling (§ 12.102) recognized the use of electronic communications to satisfy part 12's customer notification requirements. This would allow a national bank to send a customer notification by facsimile transmission or by some other electronic media under certain circumstances. Since the OCC published the proposal, the SEC has issued further guidance for broker/dealers using electronic media to deliver information to customers under the SEC's confirmation rule, SEC Rule 10b–10, 17 CFR 240.10b–10. *See* Securities and Exchange Commission Release No. 33–7288, 61 FR 24644 (May 15, 1996). The SEC's guidance supersedes its earlier guidance as cited in the proposal. However, SEC Release No. 33–7288 retains a general approach consistent with the OCC's proposed interpretive ruling.

The OCC received two comments strongly supporting the addition of the interpretive rulings. Since the OCC's proposed interpretive rulings are consistent with the SEC's approach, the final rule adopts the interpretive rulings as proposed.

DERIVATION TABLE

[Only substantive modifications, additions and changes are indicated]

Revised provision	Original provision	Comments
§ 12.1(a)	§ 12.1(a).	
§ 12.1(b)	§ 12.1(a).	
§ 12.1(c)(1)	.....	Added.
§ 12.1(c)(2)(i)	§ 12.7(a).	
§ 12.1(c)(2)(ii)	.....	Added.
§ 12.1(c)(2)(iii)	§ 12.7(b)	Modified.
§ 12.1(c)(2)(iv)	§ 12.7(c).	
§ 12.1(c)(2)(v)	.....	Added.
§ 12.1(c)(3)	.....	Added.
	§ 12.1(b)	Removed.
§ 12.2(a)	.....	Added.
§ 12.2(b)	§ 12.2(a).	
§ 12.2(c)	.....	Added.

DERIVATION TABLE—Continued

[Only substantive modifications, additions and changes are indicated]

Revised provision	Original provision	Comments
§ 12.2(d)		Added.
§ 12.2(e)	§ 12.2(b)	Modified.
§ 12.2(f)		Added.
§ 12.2(g)		Added.
§ 12.2(h)	§ 12.2(c).	
§ 12.2(i)		Added.
§ 12.2(j)	§ 12.2(d)	Modified.
§ 12.2(k)	§ 12.2(e)	Modified.
§ 12.3(b)	§ 12.3	Modified.
§ 12.4	§§ 12.4, 12.5	Modified.
§ 12.5	§§ 12.4, 12.5	Modified.
§ 12.6	§§ 12.4, 12.5.	
§ 12.7(a)	§ 12.6 (a), (b), (c), and (d).	
§ 12.7(b)	§ 12.6(d)	Modified.
§ 12.7(c)	§ 12.6(d)	Modified.
§ 12.7(d)		Added.
§ 12.8	12.7(d).	
§ 12.9		Added.
§ 12.101		Added.
§ 12.102		Added.

Effective Date

The final rule takes effect on December 31, 1996. The OCC finds good cause, pursuant to 5 U.S.C. 553(d)(3), for prescribing this year-end effective date, because it will enable national banks to adjust their practices to conform with the regulation at the beginning of a calendar quarter. The final rule confers benefits on the public and national banks by streamlining and clarifying current requirements governing recordkeeping and confirmations for securities transactions.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule will have minimal economic impact on national banks, regardless of size, since it reduces somewhat regulatory burden but makes no material changes.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, March 22, 1995, 109 Stat. 48 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing somewhat regulatory costs and other burdens, where possible.

Paperwork Reduction Act of 1995

The OCC invites comment on:

(1) Whether the collections of information contained in this final rule are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated information collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Respondents/recordkeepers are not required to respond to these collections of information unless they display a currently valid OMB control number.

The collections of information contained in this final rule have been approved by the Office of Management and Budget under OMB Control No. 1557–0142 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0142, Washington, DC 20503, with a copy to the Legislative and Regulatory Activities Division (Attention: 1557–0142), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collections of information in this final rule are found in 12 CFR 12.3 through 12.5 and 12.7 and 12.8. This information is required by the OCC to establish an audit trail. That audit trail is used by the OCC in its regulatory examinations as a tool to evaluate a bank's compliance with the banking and securities laws and regulations, such as the anti-fraud provisions of the Federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through national banks. Other information provides a basis for the OCC to waive some or all of the recordkeeping and confirmation requirements of 12 CFR part 12. The

respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: The average burden will vary from two hours to more than 700 hours, depending upon individual circumstances, with an estimated average of 53.5 hours.

Estimated number of respondents and/or recordkeepers: 1,047.

Estimated total annual reporting and recordkeeping burden: 56,019. hours

Start-up costs to respondents: None.

List of Subjects in 12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 12 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

Authority: 12 U.S.C. 24, 92a, and 93a.

§ 12.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 24, 92a, and 93a.

(b) *Purpose.* This part establishes rules, policies, and procedures applicable to recordkeeping and confirmation requirements for certain securities transactions effected by national banks for customers.

(c) *Scope*—(1) *General.* Any security transaction effected for a customer by a national bank is subject to this part, except as provided by paragraph (c)(2) of this section. This part applies to a national bank effecting transactions in government securities. This part also applies to municipal securities transactions by a national bank that is not registered as a ''municipal securities dealer'' with the Securities and Exchange Commission. *See* 15 U.S.C. 78c(a)(30) and 78o–4. This part, as well as 12 CFR part 9, applies to securities transactions effected by a national bank as fiduciary.

(2) *Exceptions*—(i) *Small number of transactions.* The requirements of §§ 12.3(a)(2) through (4) and 12.7(a)(1) through (3) do not apply to a national bank having an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(ii) *Government securities.* The recordkeeping requirements of § 12.3 do not apply to national banks effecting fewer than 500 government securities brokerage transactions per year. This exception does not apply to government securities dealer transactions by national banks. *See* 17 CFR 404.4(a).

(iii) *Municipal securities.* This part does not apply to transactions in municipal securities conducted by a national bank registered with the Securities and Exchange Commission as a ''municipal securities dealer'' as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o–4.

(iv) *Foreign branches.* This part does not apply to securities transactions conducted by a foreign branch of a national bank.

(v) *Transactions effected by registered broker/dealers.* This part does not apply to securities transactions effected by a broker or dealer registered with the Securities and Exchange Commission (SEC) where the SEC-registered broker or dealer directly provides the customer a confirmation; including, transactions effected by a national bank employee when acting as an employee of an SEC-registered broker/dealer.

(3) *Safe and sound operations.* Notwithstanding paragraph (c)(2) of this section, every national bank conducting securities transactions for customers shall maintain effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The systems maintained must clearly and accurately reflect appropriate information and provide an adequate basis for an audit.

§ 12.2 Definitions.

(a) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(b) *Collective investment fund* means any fund established pursuant to 12 CFR 9.18.

(c) *Completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a national bank, except as provided in paragraph (c)(2) of this section, the time when the customer pays the bank any part of the purchase price, or, if payment is made by a bookkeeping entry, the time when the bank makes the bookkeeping entry for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a national bank and who makes payment for the security prior to the time when payment is requested or notification is given that payment is due, the time when the bank delivers the security to or into the account of the customer;

(3) In the case of a customer who sells a security through or to a national bank, except as provided in paragraph (c)(4) of this section, if the security is not in the custody of the bank at the time of sale, the time when the security is delivered to the bank, and if the security is in the custody of the bank at the time of sale, the time when the bank transfers the security from the account of the customer;

(4) In the case of a customer who sells a security through or to a national bank and who delivers the security to the bank prior to the time when delivery is requested or notification is given that delivery is due, the time when the bank makes payment to or into the account of the customer.

(d) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(e) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which a national bank makes or participates in making the purchase or sale of securities, but does not include a broker, dealer, bank acting as a broker or dealer, bank acting as the fiduciary of an account, bank as trustee acting as shareholder of record for the purchase or sale of securities, or issuer of securities that are the subject of the transaction.

(f) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing. This

definition does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*

(g) *Government security* means:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (g)(1), (2), or (3) of this section, other than a put, call, straddle, option, or privilege:

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

(h) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(i) *Municipal security* means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision;

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(c)(2) (1970)) (Code)) the interest on which is excludable from gross income under section 103(a)(1) of the Code (26 U.S.C. 103(a)(1)) if, by reason of the application of paragraph (4) or (6) of section 103(c) of the Code (26 U.S.C. 103(c)) (determined as if paragraphs (4)(A), (5), and (7) were not included in section 103(c) (26 U.S.C. 103(c)), paragraph (1) of section 103(c) (26 U.S.C. 103(c)) does not apply to the security.

(j) *Periodic plan* means:

(1) A written authorization for a national bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them. These plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(2) Any prearranged, automatic transfer or ''sweep'' of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).

(k) *Security:* (1) Means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing;

(2) Does not mean currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount note in accordance with 12 CFR 9.18; U.S. Savings Bonds; or any other instrument the OCC determines does not constitute a security for purposes of this part.

§ 12.3 Recordkeeping.

(a) *General rule.* A national bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *Memorandum order.* A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled), including:

(i) Account or customer name for which the transaction was effected;

(ii) Type of order (market order, limit order, or subject to special instructions);

(iii) Time the trader or other bank employee responsible for effecting the transaction received the order;

(iv) Time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;

(v) Price at which the order was executed; and

(vi) Name of the broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 12.4 and 12.5.

(b) *Manner of maintenance.* The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Record maintenance may include the use of automated or electronic records provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy.

§ 12.4 Content and time of notification.

Unless a national bank elects to provide notification by one of the means specified in § 12.5, a national bank effecting a securities transaction for a customer shall give or send to the customer either of the following types of notifications at or before completion of the transaction or, if the bank uses a registered broker/dealer's confirmation, within one business day from the bank's receipt of the registered broker/dealer's confirmation:

(a) *Written notification.* A written notification disclosing:

(1) Name of the bank;

(2) Name of the customer;

(3) Capacity in which the bank acts (i.e., as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity);

(4) Date and time of execution, or a statement that the bank will furnish the time of execution within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) Amount of any remuneration that the customer has provided or is to provide any broker/dealer, directly or indirectly, in connection with the transaction;

(6) (i) Amount of any remuneration that the bank has received or will receive from the customer, and the source and amount of any other remuneration that the bank has received or will receive in connection with the transaction; unless:

(A) The bank and its customer have determined remuneration pursuant to a written agreement; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction.

(ii) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (a)(6)(i) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;

(7) Name of the registered broker/dealer utilized; or where there is no registered broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information within a reasonable time upon written request from the customer;

(8) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, unless the transaction is for a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon; or

(B) Is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that continuously are subject to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield, unless the transaction is for a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that continuously are subject to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that continuously are subject to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case; or

(b) *Copy of the registered broker/dealer's confirmation.* A copy of the confirmation of a registered broker/dealer relating to the securities transaction and, if the customer or any other source will provide remuneration to the bank in connection with the transaction and a written agreement between the bank and the customer does not determine the remuneration, a statement of the source and amount of any remuneration that the customer or any other source is to provide the bank.

§ 12.5 Notification by agreement; alternative forms and times of notification.

A national bank may elect to use the following notification procedures as an alternative to complying with § 12.4:

(a) *Notification by agreement.* A national bank effecting a securities transaction for an account in which the bank does not exercise investment discretion shall give or send written notification at the time and in the form agreed to in writing by the bank and customer, provided that the agreement makes clear the customer's right to receive the written notification pursuant to § 12.4 (a) or (b) at no additional cost to the customer.

(b) *Trust transactions.* A national bank effecting a securities transaction for an account in which the bank exercises investment discretion other than in an agency capacity shall give or send written notification within a reasonable time if a person having the power to terminate the account, or, if there is no such person, any person holding a vested beneficial interest in the account, requests written notification pursuant to § 12.4 (a) or (b). Otherwise, notification is not required.

(c) *Agency transactions.* (1) A national bank effecting a securities transaction for an account in which the bank exercises investment discretion in an agency capacity shall give or send, not less than once every three months, an itemized statement to each customer that specifies the funds and securities in the custody or possession of the bank at

the end of the period and all debits, credits and transactions in the customer's account during the period.

(2) If requested by the customer, the bank shall give or send written notification to the customer pursuant to § 12.4 (a) or (b) within a reasonable time.

(d) *Collective investment fund transactions.* A national bank effecting a securities transaction for a collective investment fund shall follow 12 CFR 9.18.

(e) *Periodic plan transactions.* (1) A national bank effecting a securities transaction for a periodic plan (except for a cash management sweep service) shall give or send to its customer not less than once every three months, a written statement showing:

(i) The customer's funds and securities in the custody or possession of the bank;

(ii) All service charges and commissions paid by the customer in connection with the transaction; and

(iii) All other debits and credits of the customer's account involved in the transaction.

(2) A national bank effecting a securities transaction for a cash management sweep service or other periodic plan as defined in § 12.2(j)(2) shall give or send its customer a written statement, in the same form as under paragraph (e)(1) of this section, for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account, subject to any other applicable laws and regulations.

(3) Upon written request of the customer, the bank shall give or send the information described in § 12.4 (a) or (b), except that the bank need not provide to the customer any information relating to remuneration paid in connection with the transaction when the remuneration is paid by a source other than the customer.

§ 12.6 Fees.

A national bank may charge a reasonable fee for providing notification pursuant to § 12.5(b), (c), and (e). A national bank may not charge a fee for providing notification pursuant to § 12.4 or § 12.5 (a) and (d).

§ 12.7 Securities trading policies and procedures.

(a) *Policies and procedures; reports of securities trading.* A national bank effecting securities transactions for customers shall maintain and adhere to policies and procedures that:

(1) Assign responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with registered broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers. Policies and procedures for personnel described in this paragraph (a)(1)(iii) must provide for supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1)(i) and (ii) of this section;

(2) Provide for the fair and equitable allocation of securities and prices to accounts when the bank receives orders for the same security at approximately the same time and places the orders for execution either individually or in combination;

(3) Provide for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction, where permissible under applicable law; and

(4) Require bank officers and employees to report to the bank, within ten business days after the end of the calendar quarter, all personal transactions in securities made by them or on their behalf in which they have a beneficial interest, if the officers and employees:

(i) Make investment recommendations or decisions for the accounts of customers;

(ii) Participate in the determination of the recommendations or decisions; or

(iii) In connection with their duties, obtain information concerning which securities are purchased, sold, or recommended for purchase or sale by the bank.

(b) *Required information.* The report required under paragraph (a)(4) of this section must contain the following information:

(1) The date of the transaction, the title and number of shares, and the principal amount of each security involved;

(2) The nature of the transaction (i.e. purchase, sale, or other type of acquisition or disposition);

(3) The price at which the transaction was effected; and

(4) The name of the registered broker, registered dealer, or bank with or through whom the transaction was effected.

(c) *Report not required.* This section does not require a bank officer or employee to report transactions if:

(1) The officer or employee has no direct or indirect influence or control over the transaction;

(2) The transaction is in mutual fund shares;

(3) The transaction is in government securities; or

(4) The transactions involve an aggregate amount of purchases and sales per officer or employee of $10,000 or less during the calendar quarter.

(d) *Additional reporting requirement.* A national bank that acts as an investment adviser to an investment company is subject to the requirements of Securities and Exchange Commission (SEC) Rule 17j–1 (17 CFR 270.17j–1) issued under the Investment Company Act of 1940. SEC Rule 17j–1 requires an ''access person'' of the investment adviser to report certain personal securities transactions to the investment adviser for review by the Securities and Exchange Commission. ''Access person'' includes directors, officers, and certain employees of the investment adviser. The reporting requirement under paragraph (a)(4) of this section is a separate requirement from any applicable requirements under SEC Rule 17j–1. However, an ''access person'' required to file a report with a national bank pursuant to SEC Rule 17j–1 need not file a separate report under paragraph (a)(4) of this section if the required information is the same.

§ 12.8 Waivers.

A national bank may file a written request with the OCC for waiver of one or more of the requirements set forth in §§ 12.2 through 12.7, either in whole or in part. The OCC may grant a waiver from the requirements of this part to any national bank, or any class of national banks, with regard to a specific transaction or a specific class of transactions.

§ 12.9 Settlement of securities transactions.

(a) A national bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section do not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section does not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, or sold to an initial purchaser by a national bank participating in the offering. A national bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

Interpretations

§ 12.101 National bank disclosure of remuneration for mutual fund transactions.

A national bank may fulfill its obligation to disclose information on the source and amount of remuneration, required by § 12.4, for mutual fund transactions by providing this information to the customer in a current prospectus, at or before completion of the securities transaction. The OCC's view is consistent with the position of the Securities and Exchange Commission (SEC) as provided in a no-action letter dated March 19, 1979, which permits confirmations for mutual funds to refer to the sales load disclosed in the prospectus. *See* Letter to the Investment Company Institute, *reprinted in* [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The OCC would reconsider its position upon any change in the SEC's practice.

§ 12.102 National bank use of electronic communications as customer notifications.

(a) In appropriate situations, a national bank may satisfy the ''written'' notification requirement under §§ 12.4 and 12.5 through electronic communications. Where a customer has a facsimile machine, a national bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, a bank may satisfy the notification delivery requirement by other electronic communications when:

(1) The parties agree to use electronic instead of hard-copy notifications;

(2) The parties have the ability to print or download the notification;

(3) The recipient affirms or rejects the trade through electronic notification;

(4) The system cannot automatically delete the electronic notification; and

(5) Both parties have the capacity to receive electronic messages.

(b) The OCC would consider the permissibility of other situations using electronic notifications on a case-by-case basis.

Dated: November 22, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

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Part VI

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 1 and 7
Investment Securities; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1 and 7

[Docket No. 96–26]

RIN 1557–AB37

Investment Securities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is clarifying and updating its rules that prescribe the standards under which national banks may purchase and sell, deal in, and underwrite securities. This final rule is another component of the OCC's Regulation Review Program, a project designed to review, modernize, and simplify OCC regulations and reduce unnecessary regulatory burdens on national banks. The final rule reorganizes the regulation by placing related subjects together, clarifies certain areas, and updates various provisions to address market developments and to incorporate significant OCC interpretations, judicial decisions, and statutory amendments.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Senior Attorney, Securities and Corporate Practices Division, 202–874–5210; Kurt Wilhelm, Senior Investment Advisor, Capital Markets, 202–874–5070; Daniel L. Cooke, Attorney, and Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities Division, 202–874–5090. Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20009.

SUPPLEMENTARY INFORMATION:

Background

Part 1 has historically prescribed the limitations and restrictions on a national bank's purchase of investment securities for its own account. Part 1 also addresses a national bank's ability to purchase and sell, deal in, and underwrite certain investment securities. The part 1 limitations on these activities are based on the Banking Act of 1933, section 16, Pub. L. 73–66, 48 Stat. 184 (codified as amended at 12 U.S.C. 24(Seventh)), and vary according to the characteristics of the security.

In the past, part 1 grouped the securities identified in 12 U.S.C. 24(Seventh) into three categories, Types I, II, and III securities. More recently, the Secondary Mortgage Market Enhancement Act of 1984, (SMMEA) [1] and the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) [2] amended 12 U.S.C. 24(Seventh) and removed quantitative limits on national banks'' purchases of certain types of mortgage- and small business-related securities, subject to regulations prescribed by the OCC.

On December 21, 1995, the OCC published a notice of proposed rulemaking (60 FR 66152) (proposal) to revise part 1 and implement the changes required by CDRI and SMMEA. The proposal sought to implement the goals of the OCC's Regulation Review Program by updating and streamlining the regulation and eliminating requirements that imposed inefficient and costly regulatory burdens on national banks. The proposal also sought to implement the amendments made by SMMEA and CDRI and to update various provisions to address market developments and to incorporate significant OCC interpretations and judicial decisions.

In the proposal, the OCC added two new classifications of securities to characterize the changes made by SMMEA and CDRI and to reflect developments in national banks'' treatment of their assets. Specifically, the proposal added a new category of securities, Type IV securities, that are defined as certain types of asset-backed securities identified in SMMEA and CDRI, which are exempt from the 10 percent investment limitation of 12 U.S.C. 24(Seventh). Type IV securities are: (1) residential and commercial mortgage-related securities offered and sold pursuant to section 4(5) of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77d(5); (2) residential and commercial mortgage-related securities described in section 3(a)(41) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78c(a)(41); and (3) small business-related securities as defined in section 3(a)(53)(A) of the Exchange Act, 15 U.S.C. 78c(a)(53)(A).

The proposal also added Type V securities, which are investment grade securities that are backed by pools of assets composed of obligations in which a national bank may invest directly.

In addition to adding Type IV and Type V securities, the proposal refined the definitions and limitations imposed on the three existing types of securities. Finally, the proposal restructured part 1 to make it easier to read and apply.

[1] Sec. 105(c), Pub. L. 98–440, Title I, 98 Stat. 1691 (codified as amended at 12 U.S.C. 24(Seventh) (1984)).

[2] Pub. L. 103–325, 108 Stat. 2160 (1994).

Comments and OCC Action

The OCC received 19 comment letters in response to the proposal. The commenters included eight trade associations, one professional association, six banks, two law firms, one private business, and one unaffiliated individual. The commenters generally supported the proposal but also recommended a number of specific modifications. Many of the commenters offered reasons why the OCC should remove or lessen structural limitations on investment in Type IV and Type V securities, particularly aspects of the proposed diversification requirements.

In the final rule, the OCC has addressed many of the concerns of the commenters and, in particular, has concluded that some of the proposal's definitional restrictions on Type IV and Type V securities are not necessary.

The final rule's structure is based on three core sections. Section 1.2 defines the five types of securities as well as other significant terms such as ''investment grade,'' ''investment security,'' and ''marketable.'' Section 1.3 prescribes limitations on dealing in, underwriting, purchasing, and selling each of the five types of securities defined in § 1.2, investment company shares, and securities held based on estimates of an obligor's performance. Section 1.3 prescribes special provisions on aggregation of securities with a common issuer and calculation of investment company holdings. Section 1.4 prescribes how a national bank must calculate the limits imposed by § 1.3.

The final rule also makes minor clarifying and technical changes. The following section-by-section analysis discusses the comments and substantive changes made by the final rule:

Authority, Purpose, and Scope (§ 1.1)

The proposal consolidated the former ''Scope and application'' section (§ 1.2) with the ''Authority'' section (§ 1.1). The proposal also clarified that the limitations set forth in part 1 apply to national banks, federal branches of foreign banks, District of Columbia banks, and state banks that are members of the Federal Reserve System.

The OCC received no comments on this section, which is adopted as proposed with minor clarifying changes.

Definitions (§ 1.2)

The proposal substantially revised the definitions section to add several new definitions and to update others. The proposal revised the definitions of Type I, II, and III securities to define the securities by their characteristics rather than by the statutory limitations on the

extent to which national banks may deal in, underwrite, purchase, or sell them. The proposal also defined two new types of securities, Type IV and Type V securities, and added a definition of ''investment company.''

The final rule adds a new defined term, ''NRSRO.'' The final rule changes the paragraph letter designations for each definition accordingly. Of particular note, the final rule makes the following substantive changes:

Capital and Surplus (§ 1.2(a))

The proposal defined ''capital and surplus'' as the sum of Tier 1 and Tier 2 capital includable in risk-based capital under the Minimum Capital Ratios in 12 CFR part 3 appendix A, plus the balance of a bank's allowance for loan and lease losses that is not included in Tier 2 capital.

The OCC received three comments on this definition. The commenters noted that, because part 1 applies to state banks that are members of the Federal Reserve System, the OCC should adopt a definition of ''capital and surplus'' that applies the Board of Governors of the Federal Reserve System's (FRB's) definition of ''capital and surplus'' to state member banks. The OCC agrees with these commenters and has, therefore, changed the final rule to incorporate technical changes and to provide that banks must use the appropriate Federal banking agencies'' guidelines defining ''capital and surplus.''

Investment Grade (§ 1.2(d))

In many instances in the final rule, a security must be ''investment grade'' to be a permissible investment for a national bank. The proposal defined a security as ''investment grade'' when *each* nationally recognized statistical rating organization (NRSRO) that has rated the security has given it a rating in one of the top four rating categories. Thus, for purposes of this definition, if a security were given different ratings by different NRSROs, the lowest rating would govern. For example, if two NRSROs rated a security in one of their top four categories, but a third NRSRO did not give the security a top four rating (a so-called ''split- rated'' security), the security would not qualify as ''investment grade.''

The OCC received ten comments on this section. Seven commenters recommended that the OCC change the proposed definition to recognize a security as ''investment grade'' if only one NRSRO rates the security in one of the top four categories. These commenters asserted that otherwise any one NRSRO could render a particular security non-investment grade and, therefore, not permissible for a national bank to purchase. One commenter recommended that, at a minimum, the OCC should deem a security ''investment grade'' if a majority of the NRSROs that rate the security rate it in one of the top four categories.

The OCC agrees that giving a single NRSRO the ability to deem an investment impermissible for a national bank may be unnecessarily restrictive. Thus, the final rule defines the term ''investment grade'' to mean a security that receives a top four rating from either: (a) Two or more NRSROs; or (b) one NRSRO if the security has been rated by only one NRSRO. This approach assures that a security is sufficiently creditworthy while also allowing for some diversity in the evaluations produced by different NRSROs.

Some commenters requested that the OCC exclude unsolicited ratings from the definition. Under the proposal, an unsolicited non-investment grade rating would have rendered the security an impermissible investment for a national bank. However, the final rule recognizes unsolicited ratings, but no longer will permit a single unsolicited rating to render a security automatically ineligible for national bank investment.

Investment Security (§ 1.2(e))

The proposal defined ''investment security'' as a security that is: (1) An investment grade marketable debt obligation; or (2) the credit equivalent of an investment grade marketable debt obligation if the security is not rated. The OCC requested comment on whether to describe more specifically the characteristics of securities that are the credit equivalent of investment grade. The OCC also asked commenters to address whether other securities with characteristics functionally equivalent to a debt obligation might be classified as ''investment securities.''

The OCC received four comments on this section. The commenters generally supported the definition of ''investment security.'' Most commenters felt that defining ''credit equivalency'' by identifying specific characteristics would sacrifice flexibility.

The OCC agrees with the commenters and believes that to adopt specific identifiable characteristics of credit equivalency would unduly restrict flexibility in this area. Therefore, the OCC adopts the final rule as proposed.

Marketable (§ 1.2(f))

At § 1.5(a), the former rule defined a ''marketable'' security as one that may be sold with reasonable promptness at a price that corresponds reasonably to its fair value. The proposal replaced this definition with a more objective test that lists particular indicators of a ready market for a security. The proposal defined marketable as: (1) Securities registered under the Securities Act; (2) certain government securities exempt from Securities Act registration; (3) municipal revenue bonds exempt from Securities Act registration; and (4) securities that are investment grade and sold pursuant to Securities Exchange Commission (SEC) Rule 144A (17 CFR 230.144A), which exempts certain private resales of securities to institutional investors from Securities Act registration.

The OCC requested comment on whether the proposed definition of ''marketable'' is sufficiently inclusive, particularly regarding other exemptions under the Securities Act and whether the definition is appropriately inclusive of foreign sovereign debt. The OCC also asked commenters to suggest alternative definitions of marketable that would address the OCC's concerns about liquidity.

The OCC received 12 comments on this issue. A majority of the commenters recommended that the OCC expand the proposed definition or retain the former definition of marketable. These commenters asserted that the proposed definition was too restrictive and did not include certain securities that are included within the definition in the former regulation. For example, the commenters noted that foreign sovereign debt, bank and savings and loan debt securities (which are exempt from registration under the Securities Act), and commercial paper were not identified in the proposed definition even though they may have been included within the former marketability test.

The OCC did not intend to prescribe a marketability test that, through its objectivity, eliminates flexibility available under the former rule and unnecessarily excludes a broad range of securities. Therefore, the final rule retains the list of marketable securities contained in the proposal and adds to that list the definition of marketable contained in the former regulation, *i.e.*, a security that may be sold with reasonable promptness at a price that corresponds reasonably to its fair value. Thus, certain foreign sovereign debt and other securities may qualify under the revised definition of marketable. This approach also provides additional flexibility for the OCC to review the permissibility of national bank investment in particular securities on a case-by-case basis.

Several commenters also asked the OCC to remove the requirement that Securities Exchange Commission Rule 144A, 17 CFR 230.144A (Rule 144A) securities be rated investment grade in order to fall within the definition of ''marketable.'' These commenters stated that many privately-placed securities are not rated. One commenter advocated that the OCC should not adopt the proposal, because Rule 144A provides no assurance of marketability.

The OCC agrees that a Rule 144A security need not be rated investment grade to be marketable; but, if it is not rated investment grade, it must be the credit equivalent of investment grade. The final rule therefore does not adopt the proposed requirement that an NRSRO rate a Rule 144A security investment grade in order for the security to be marketable. Instead, consistent with other investment securities under this part, a Rule 144A security may qualify as investment grade, when not rated, and therefore qualify as marketable, if the bank determines that it is the credit equivalent of an investment grade security. The OCC expects that, as a matter of safe and sound banking practices, a bank will conduct a thorough analysis of a security's creditworthiness in order to satisfy itself that a particular security is the credit equivalent of investment grade.

The OCC has also determined that proposed § 1.2(f)(2) is unnecessary. That provision listed as one component of the definition of marketability each of the securities that is included in the definition of a Type I security. Because Type I securities are not required to satisfy a marketability test under section 24(Seventh), it is unnecessary for the rule to include these Type I securities in the definition of marketable. Therefore, the final rule is adopted without proposed § 1.2(f)(2). The remainder of paragraph § 1.2(f) is renumbered accordingly.

NRSRO (§ 1.2(g))

The OCC did not use the term ''NRSRO'' in the proposal. In making changes to the final rule's definition of, and limitations on, Type IV securities, the OCC found that referring to nationally recognized statistical rating organizations (NRSROs) was the most direct and clear means of drafting the rule. The final rule, therefore, adds ''NRSRO'' as a defined term.

The OCC has not listed the rating organizations that qualify as NRSROs in this definition. The OCC generally follows the assessment of the SEC in acknowledging the organizations that are currently NRSROs. The SEC recognizes NRSROs through no-action letters. The most recent SEC no action letter in which the SEC expressed no opposition to the recognition of an NRSRO is Thomson Bankwatch, Inc., SEC No-Action Letter, [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) paragraph 79,800 (August 6, 1991). *See* also 59 FR 46314 (September 7, 1994) (publishing an SEC ''Concept release'' on NRSROs).[3]

Several commenters suggested that the OCC recognize foreign rating organizations. The OCC finds that most significant foreign debt securities are rated by the NRSROs to which the SEC has expressed no objection and, at this time, sees no need to depart from the SEC's assessment of the rating organizations that are nationally recognized.

Type I Security (§ 1.2(i))

The proposal used language similar to that in the former rule to define ''Type I security'' to mean any one of specified government securities. The former rule and the proposal also incorporated key elements of an OCC interpretation regarding securities backed by the full faith and credit of the U.S. Government.

The OCC received four comments on this definition. Three commenters recommended that, consistent with 12 U.S.C. 24(Seventh), the OCC should add qualified Canadian government obligations to the definition of a Type I security. The OCC received one comment recommending that the OCC add the debt securities of certain developed foreign sovereigns to the list of Type I securities.

In accordance with 12 U.S.C. 24(Seventh), the final rule adds qualified Canadian government obligations to the list of Type I securities. The OCC acknowledges that, in the future, other securities may fulfill the definitional requirements of a Type I security, and the OCC will review securities, as appropriate, to determine if they meet the statutory requirements.

Type II Security (§ 1.2(j))

The proposal redefined a ''Type II security'' to mean an investment security that is issued by certain state, international, or multilateral organizations or that is otherwise listed or described in 12 U.S.C. 24(Seventh). In contrast, the former rule defined a Type II security by identifying the investment limits that apply to it and by listing examples of qualifying types of issuers.

The OCC received no comments on this definition, which is adopted as proposed. The OCC notes that the definition of Type II security also includes other securities that the OCC deems eligible as Type II securities in accordance with 12 U.S.C. 24(Seventh). This provision gives the OCC flexibility, consistent with the authorizing statute, to review securities that may fulfill the definitional requirements of a Type II security but are not listed in the definition.

Type III Security (§ 1.2(k))

The former rule defined a Type III security as a security that a bank may purchase and sell for its own account, subject to the 10 percent limitation in 12 U.S.C. 24(Seventh). The proposal redefined a Type III security as an investment security that does not qualify as a Type I, II, IV, or V security. The proposal listed corporate bonds and municipal revenue bonds as examples of Type III securities.

The OCC requested comment on whether to reference specifically other examples of Type III securities in addition to corporate bonds and municipal revenue bonds. In particular, the OCC requested comment on whether to include as Type III securities foreign securities that are eligible for investment by foreign branches of U.S. banks.

The OCC received seven comments on the definition of a Type III security. The majority of these commenters recommended that the OCC include in the list of examples that qualify as Type III securities foreign securities that are eligible for investment by foreign branches of national banks and mortgage backed securities (MBSs) that do not qualify as Type IV or Type V securities. One commenter also recommended that the OCC permit national banks to underwrite and deal in municipal revenue bonds.

The OCC has determined that the proposed definition of a Type III security provides appropriate examples of the scope of qualifying Type III securities. While certain mortgage backed securities and foreign securities eligible for investment by foreign branches of national banks will qualify as investment securities and are, therefore, Type III securities, others may not. The OCC has not concluded that all foreign securities eligible for investment by foreign branches of national banks qualify as a Type III investment security. Nor does the OCC want to imply that banks are precluded from purchasing other classes of securities,

[3] Currently, the NRSROs recognized by the SEC are: Duff and Phelps, Inc.; Fitch Investors Service, Inc.; IBCA Limited (and its subsidiary, IBCA Inc.); Moody's Investors Services Incorporated; Standard and Poor's Corporation; and Thomson Bankwatch, Inc.

which may meet the definition of ''investment security'' but are not specifically listed as a Type III security. This may be the case if, for example, the OCC were to add further to the list of examples, thereby appearing to create an exhaustive list of Type III securities. The OCC does not intend to create an exclusive list of Type III securities.

Type IV Security (§ 1.2(l))

The proposal added a new category of securities, Type IV securities, which SMMEA and CDRI made eligible for purchase by national banks in unlimited amounts. In 1984, the SMMEA amended 12 U.S.C. 24(Seventh) to permit national banks to purchase residential and commercial mortgage-related securities offered and sold pursuant to section 4(5) of the Securities Act of 1933 Act (Securities Act), 15 U.S.C. 77d(5), or residential mortgage-related securities as defined in section 3(a)(41) of the Exchange Act, 15 U.S.C. 78c(a)(41). The final rule incorporates the SMMEA amendments.

CDRI defined a new type of small business-related security in section 3(a)(53)(A) of the Exchange Act, 15 U.S.C. 78c(a)(53)(A), and added a class of commercial mortgage-related securities to section 3(a)(41) of the Exchange Act, 15 U.S.C. 78c(a)(41). CDRI's amendments to 12 U.S.C. 24(Seventh) removed limitations on purchases by national banks of certain small business-related and commercial mortgage-related securities. However, CDRI requires that certain residential and commercial mortgage-related securities must receive a rating from an NRSRO in one of the top *two* rating categories. Small business-related securities must receive a rating in one of the top *four* rating categories.

CDRI also authorized the OCC to prescribe regulations to ensure that acquisitions of statutorily defined residential and commercial mortgage-related securities and small business-related securities are conducted in a manner consistent with safe and sound banking practices. In its proposed definition of a Type IV security, the OCC sought to guard against undue concentration of risk that could arise were a bank to invest in a security backed by a small number of loans or if a small number of loans represents a large percentage of the assets in the pool. Therefore, the proposal required Type IV securities that are small business- or commercial mortgage-related securities to be fully secured by interests in a pool of homogeneous loans of numerous obligors.

To assure diversification, the proposal also provided that, for small business-related securities and commercial mortgage-related securities, the aggregate amount of collateral from loans of any one obligor could not exceed 5 percent of the total amount of the loans in the pool collateralizing the security (the ''5 percent collateral concentration limit'').

The OCC requested specific comment on whether to define the term ''homogeneous loans'' and whether the 5 percent collateral concentration limit was appropriate to assure adequate diversification of the collateral.

The OCC received 17 comments on the proposed definition of a Type IV security, particularly on the 5 percent collateral concentration limit and the homogeneity and numerous obligor requirements. Most commenters opposed the ''homogenous,'' ''numerous,'' and 5 percent collateral concentration restrictions, stating that they were impractical. Commenters opposing both the ''homogeneous'' and ''numerous obligor'' requirements asserted that those terms are vague and difficult to apply because they are not defined. In particular, the commenters asserted that the homogeneity requirement conflicts with the diversification objective of pooling commercial loans. These commenters stated that commercial loans, by their nature, are seldom homogeneous.

Most commenters also recommended that the OCC eliminate the 5 percent collateral concentration limit on loans of any one obligor in Type IV security loan pools. The commenters emphasized that the plain language of CDRI permits unlimited investment in commercial mortgage-related and small business-related securities. These commenters asserted that NRSROs consider concentration risk when they rate a particular security, thereby making the 5 percent collateral concentration limit unnecessary. They also asserted that the limit fails to consider compensating factors such as credit enhancements, stable cash flow, prime location of mortgage properties, construction quality of mortgaged property, and barriers to competition, which are all considered by rating agencies.

The commenters also cited the following reasons for their opposition to the 5 percent collateral concentration limit: (1) The 5 percent collateral concentration limit mistakenly focuses solely on the obligor, does not focus on the collateral for the security, and therefore fails to ensure diversification of collateral. A collateral pool that satisfies the 5 percent collateral concentration limit will not necessarily contain diverse collateral; however, a single borrower/obligor can produce a commercial mortgage-backed security pool that has diverse collateral. (2) The majority of commercial mortgage loans are nonrecourse to the borrower and, therefore, borrower diversity is less relevant than tenant creditworthiness. (3) The 5 percent collateral concentration limit will be unnecessarily burdensome and costly relative to any benefits it provides because it will require a transaction-by-transaction analysis and the production and maintenance of voluminous reports regarding the make-up of each commercial mortgage-related security pool.

Some commenters recommended raising the 5 percent collateral concentration limit to a 20 percent limit. One commenter recommended that the OCC use existing authority to assess a risk-based capital surcharge when holdings of a Type IV security exceed the aggregate amount of the appropriate percentage of capital and surplus.

The OCC agrees with many of the reasons cited by the commenters and has not adopted the homogeneity and 5 percent collateral concentration limit. In particular, the OCC believes that the statutory requirements for residential and commercial mortgage-related securities defined in 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), to have an NRSRO rating in one of the top two categories and for small business-related securities to receive a rating in one of the top four rating categories provide sufficient safeguards against investment risks. NRSRO ratings reduce the risk of investment posed to banks because of the NRSROs' resources and ability to analyze such factors as cash flow treatments, credit facilities, *and* collateral diversification. To ensure that banks do not purchase, in unlimited amounts, commercial and residential mortgage-related securities that are offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that are predominantly speculative in nature, the final rule requires that these securities at least be investment grade.

In addition, the final *retains* the requirement that the securities be composed of interests in a pool of loans to ''numerous'' obligors. The OCC believes that this requirement reflects an essential diversified risk characteristic of a mortgage-related or small business-related security and does not unduly limit a national bank's ability to invest in these asset-backed securities.

Type V Security (§ 1.2(m))

The proposal created a new category of securities, Type V, that are *investment grade* securities composed of loans in which a bank may invest directly. This definition reflected the OCC's long-standing interpretations that, in addition to the investments described in 12 U.S.C. 24(Seventh), a national bank may hold securitized forms of assets in which it may invest directly.[4]

Under the proposal, the definition of a Type V security included the same limitations that were included in the definition of a Type IV security (*i.e.*, ''homogeneous loans'' from ''numerous obligors'' with the obligations of any one obligor composing no more than 5 percent of the pool). In order to assure the high quality of this type of asset-backed security, the proposal also required that a Type V security be rated investment grade.

The commenters recommended that the OCC eliminate these requirements, citing many of the same reasons stated in their comments on the definition of a Type IV security. For the same reasons discussed in relation to Type IV securities previously, the OCC agrees with the commenters. Thus, the final rule does not include the proposed ''homogeneity'' and 5 percent collateral concentration limits but does *retain* the requirement that the securities be composed of a pool of loans to ''numerous'' obligors.

In addition, in order to ensure safe and sound investment in these securities, the final rule requires a Type V security to be ''marketable'' as defined in § 1.2(f). The marketability requirement is in addition to the investment grade requirement for a Type V security and further ensures that national banks do not acquire asset-backed securities that have speculative characteristics.

Limitations on Dealing in, Underwriting, and Purchasing and Selling Securities (§ 1.3)

The proposal consolidated the part 1 provisions that limit dealing in, underwriting, purchasing, and selling different types of securities. The proposal limited ''the aggregate par value of the obligations of any one obligor'' of a Type II, III, or V security that a bank may hold to a specific percentage limit. For example, the proposal restricted the aggregate par value of the obligations of any one Type II obligor held by the bank to no more than 10 percent of the bank's capital and surplus. The proposal also imposed a 10 percent limit on Type III securities and a 15 percent limit on Type V securities.

The OCC requested specific comment on whether using the aggregate par value of obligations of any one obligor is an appropriate measure of value.

Four commenters recommended that the OCC replace ''par value'' with ''market value,'' asserting that par value does not account for obligations acquired either at a discount or premium.

The OCC has determined, however, that par value is the practical and objective gauge by which to measure value in this context, and the final rule therefore uses par value.

Some commenters also recommended that the OCC permit banks to use a netting approach in calculating limitations by which a bank could reduce its ownership exposure (long position) in a security by taking a short position in that same security. The commenters suggested that the OCC authorize banks to net their long and short positions in a security because the investment limitations in part 1 apply not only to amounts held by a bank but also to obligations that a bank is ''legally committed to purchase and sell.'' These commenters assert that banks should be able to exclude from their investment limit calculations any securities for which there is both a commitment by a bank to sell and by a third party to buy.

The OCC agrees that a netting of long and short position in a particular security may be appropriate for purposes of calculations under part 1, and the language of the final rule, noted above, will accommodate this approach. However, the OCC's responses on this issue are likely to be more detailed than is appropriate for a regulation, and will be based on the transaction at issue. Therefore, specific issues on this point will be addressed by the OCC on a case-by-case basis.

The final rule also makes several minor clarifying changes to § 1.3.

Type II and III Securities; Other Investment Securities Limitations (§ 1.3(d))

The proposal provided that a national bank may not hold Type II and Type III securities of any one obligor that have a combined aggregate par value exceeding 10 percent of the bank's capital and surplus. However, the proposal did not require aggregation with respect to industrial development bonds. Instead, the proposal applied the 10 percent limitation separately to each security issue of a single obligor when the proceeds of that issuance are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and the issuance is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases.

The OCC received no comments on this section, which is adopted as proposed.

Type IV Securities (§ 1.3(e))

The proposal provided that national banks could purchase, without limitation, securities that meet the definition of a Type IV security. This proposal relied on the authority granted to national banks by SMMEA and CDRI to purchase and sell certain mortgage- and small business-related securities in unlimited amounts.

The proposal also incorporated OCC interpretations concerning the authority of a national bank to deal in obligations that are fully secured by Type I securities.[5] These interpretations reflect the OCC's consistent approach of looking to the underlying substance of an instrument to determine whether a bank may deal in, underwrite, purchase, or sell the instrument. In the case of a Type IV security that is fully secured by Type I securities, the ultimate source of repayment is Type I securities. The proposal did not limit the categories of Type IV securities in which banks may deal, if the securities are fully collateralized by Type I securities. Thus, under the proposal, a bank's authority to deal in these securities would be determined with reference to the standards that apply to Type I securities. (The ability of a bank to

[4] *Securities Industry Ass'n v. Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990) (national bank authority to securitize assets); Interpretive Letter No. 540 (December 12, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables); Interpretive Letter No. 514 (May 5, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Investment Securities Letter No. 29 (August 3, 1988), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,899 (investment limits for asset-backed securities consisting of GMAC receivables); Interpretive Letter No. 416 (February 16, 1988), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); No Objection Letter No. 87–9 (December 16, 1987), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038 (securitization of commercial loans originated by the bank); Interpretive Letter No. 388 (June 16, 1987), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (mortgage-backed pass-through certificates); Interpretive Letter No. 362 (May 22, 1986), *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (bonds collateralized by mortgages).

[5] *See* Interpretive Letter No. 514 (May 5, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218; Interpretive Letter No. 362 (May 22, 1986), *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532.

securitize and sell loans and other obligations it holds, including loans that qualify as collateral for Type IV securities, is addressed in § 1.3(g).)

Congress made clear that it intended the OCC and other bank regulatory agencies to have authority to limit or restrict bank purchases of securities in order to ensure the safety and soundness of insured depository institutions. See H.R. Conf. Rep. No. 652, 103rd Cong., 2nd Sess. sec. 347, at 184 (1994). The OCC believes that it can ensure safe and sound investments involving purchases of small business-related securities, as defined in section 3(a)(53)(A) of the Exchange Act, 15 U.S.C. 78c(a)(53)(A), if the OCC permits purchases in unlimited amounts only if the small business-related securities are rated in one of the top two rating categories by an NRSRO. In addition, however, the final rule permits a national bank to purchase small business-related securities that an NRSRO has rated in the top third or fourth rating category, provided the bank may not hold small business-related securities from a single issuer if the aggregate par value of the security exceeds 25 percent of the bank's capital and surplus. The OCC has imposed this 25 percent limit as a safety and soundness-based prudential limit.

Type V Securities (§ 1.3(f))

The proposal limited a national bank's holding of Type V securities from any one obligor (or certain related issuers) to 15 percent of the bank's capital and surplus. The OCC requested specific comment on whether a higher limit, such as 25 percent, would be sufficient to prevent excess concentration.

Four commenters questioned whether the OCC intended the term ''obligor,'' in this context, to mean the underlying borrowers whose notes comprise a security. The OCC did not intend that result. The 15 percent limit applied to the entity that was issuer of the security, not to each obligor on the loans that back a particular security. The final rule clarifies this point by substituting the word ''issuer'' for ''obligor.''

One of these commenters noted that the OCC used the terms obligor and issuer interchangeably in other sections of the rule and recommended that the OCC clarify the terms. To address this concern, the text of the final rule has been revised to use the two terms in a more precise fashion and rephrase certain sections to enhance clarity.

Many commenters recommended that the OCC raise the capital limitation for Type V securities from 15 percent to 25 percent. These commenters asserted that Type V securities are analogous to secured loans and therefore should be eligible for the 25 percent limit of 12 U.S.C. 84.

The OCC has carefully considered these comments, and the final rule replaces the proposed 15 percent limitation with a 25 percent of capital limitation. The OCC believes the 25 percent of capital limit is a prudential limit that provides sufficient protection against undue risk concentrations. This limit parallels the 25 percent credit concentration benchmark in the Comptroller's Handbook for National Bank Examiners. The Handbook identifies credit concentrations in excess of 25 percent of a bank's capital as raising potential safety and soundness concerns. For this purpose, the Handbook guidance aggregates direct and indirect obligations of an obligor or issuer and also specifically contemplates application of the 25 percent benchmark to concentrations that may result from an acquisition of a volume of loans from a *single source*, regardless of the diversity of the individual borrowers. *See* Comptroller's Handbook § 215. Accordingly, national banks are urged to monitor carefully their aggregate credit exposure to any single obligor or issuer in order to avoid imprudent concentrations of credit.

This provision is otherwise adopted as proposed.

Securitization (§ 1.3(g))

The proposal added this section to incorporate the OCC's long-standing position that a national bank may securitize and sell loan assets that it holds. The ability of a bank to sell loans and other obligations through the issuance and sale of certificates evidencing interests in pools of the assets provides flexibility that can enhance bank safety and soundness.[6] The provision is adopted substantially as proposed and reflects the OCC's long-standing treatment of national banks' securitization activities as affirmed by case law.[7] National banks engaging in securitization activities should consult OCC Bulletin 96–52 (September 25, 1996), which provides guidelines for national banks on their securitization activities.

Investment Company Shares (§ 1.3(h))

The proposal incorporated OCC interpretations concerning the authority of a national bank to hold instruments representing indirect interests in assets in which the bank could invest directly.[8] Former part 1 did not address a national bank's investment in an investment company. The proposal permitted a national bank to purchase and sell for its own account shares of a

[6] *See, e.g.*, Remarks by Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System before the American Bankers Association (October 8, 1994). *See also* Statement by Donald G. Coonley, Chief National Bank Examiner, OCC, *Asset Securitization and Secondary Markets: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs*, 102d Cong., 1st Sess. 2–4 (1991), *reprinted in OCC Quarterly Journal* (December 1991); and Joint Statement by Richard Spillenkothen, Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, and Donald H. Wilson, Financial Markets Officer, Federal Reserve Bank of Chicago, *Secondary Market for Commercial Real Estate Loans: Hearings Before the Subcomm. on Policy, Research, and Insurance of the Comm. on Banking, Finance and Urban Affairs*, 102d Cong., 2d Sess. 16–19 (1992), *reprinted in* 78 *Fed. Res. Bull.* 492 (1992).

[7] *See, e.g.*, Interpretive Letter No. 585 (June 8, 1992), *reprinted in* [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,406 (securitized motor vehicle retail installment sales contracts purchased from automobile dealers); Interpretive Letter No. 540 (December 12, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252 (securitized credit card receivables originated by bank or purchased from others); Interpretive Letter No. 514 (May 5, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitized mortgages); Interpretive Letter No. 416 (February 16, 1988), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitized automobile loans); Interpretive Letter No. 388 (June 16, 1987), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612 (sale of mortgage-backed pass-through certificates); No Objection Letter No. 87–9 (December 16, 1987), *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038 (securitization of commercial loans originated by the bank); Interpretive Letter No. 362 (May 22, 1986), *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,532 (sales of bonds collateralized by mortgages). Regarding sales of participations in pools of loans, *see* Letter from Billy C. Wood, Deputy Comptroller, Multinational Banking (May 29, 1981), *reprinted in* [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,275; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (February 1, 1980), *reprinted in* [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,213; Letter from John M. Miller, Deputy Chief Counsel (July 31, 1979), *reprinted in* [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,182; Letter from Paul M. Homan, Senior Deputy Comptroller for Bank Supervision (April 20, 1979), *reprinted in* [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,167; Letter from H. Joe Selby, Deputy Comptroller for Operations (October 17, 1978), *reprinted in* [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,144; Letter from John G. Heimann, Comptroller of the Currency (May 18, 1978), *reprinted in* [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,116; Letter from Charles B. Hall, Deputy Comptroller for Banking Operations (February 14, 1978), *reprinted in* [1978–79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,100; Letter from Robert Bloom, Acting Comptroller of the Currency (March 30, 1977), *reprinted in* [1973–78 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 97,093. Regarding national bank authority to securitize assets, *see Security Pacific* v. *Clarke*, 885 F.2d 1034 (2d Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990).

[8] Banking Circular 220 (November 21, 1986); An Examiner's Guide to Investment Products and Practices at 23 (December 1992).

registered investment company, subject to two requirements: First, the investment company's portfolio must be composed entirely of assets in which the bank could invest directly. Second, the amount of the bank's investment in shares of any one investment company is subject to the most stringent investment limitations applicable to the underlying securities and loans that compose that investment company's portfolio.

The proposal permitted banks to purchase shares in investment companies, including mutual funds, that are registered under section 8 of the Investment Company Act of 1940 ('40 Act), 15 U.S.C. 80a-8. *See* § 1.2(c) (defining ''investment company''). The OCC requested comment on whether the OCC should permit banks to purchase shares of limited partnerships with fewer than 100 investors, *i.e.*, a partnership that would not qualify as an investment company within the meaning of section 3(c)(1) of the '40 Act, if the partnerships' portfolios consist solely of Type I securities that the bank may purchase and sell for its own account. The '40 Act's definition of ''investment company'' excludes issuers whose outstanding securities are beneficially owned by 100 or fewer persons and who are not making, or do not presently propose to make, a public offering of their securities.

Several commenters recommended that the OCC permit banks to purchase shares in entities with 100 or fewer investors, although these entities would not be subject to '40 Act regulation. The commenters asserted that so long as the pass-through entity allows a bank to invest solely in investments that the bank could purchase directly for its own account, the number of investors should not matter.

One commenter opposed expanding the proposed definition asserting that the '40 Act establishes a regulatory framework for investment companies that addresses the unique risks posed by pooled investment vehicles. The commenter asserted that to allow national banks to invest in entities not subject to the '40 Act, for their own accounts, could leave bank capital open to substantial risk.

The OCC agrees with this commenter that the absence of a regulatory scheme, such as the '40 Act, could pose additional risk for national banks. Therefore, the final rule adopts the definition of ''investment company'' as proposed in § 1.2(c). Further, the final rule does not expressly permit banks to purchase shares from entities with 100 or fewer investors that are exempt from '40 Act registration.

However, the OCC recognizes that there may be circumstances in which a bank's purchase of interests in a certain exempt investment fund would be acceptable. Therefore, the final rule provides that, on a case-by-case basis, the OCC may determine that interests in other entities, the portfolios of which consist exclusively of investments eligible for national banks to hold directly, also are permissible for national banks.

The final rule also relocates the provision that limited the amount of the bank's investment in shares of any one investment company to the most stringent investment limitations applicable to the underlying securities that compose that investment company's portfolio. The OCC has determined that, for clarity, this limitation belongs in § 1.4, which governs the calculation of limits. As discussed later, the final rule also changes this limitation.

Securities Held Based on Estimates of Obligor's Performance (§ 1.3(i))

The proposal retained the flexibility contained in the former rule that permitted a bank, notwithstanding the general definition of an investment security in § 1.2(e), to treat certain debt securities, (such as pools of mortgage or business loans in moderate and low-income areas or community development loans), as investment securities when the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to meet its obligations under that security.

The OCC requested comment on whether it should provide further clarification of the standards applicable to securities held based on estimates of obligor's performance and, if so, what clarification is needed.

The majority of the commenters on this section asserted that it would not be helpful for the OCC to provide further clarification of the standards applicable to securities held based on estimates of an obligor's performance. Therefore, the OCC adopts the final rule as proposed.

Calculation of Limits (§ 1.4)

The proposal added a section that consolidated the calculation of limits requirements of part 1.

Proposed paragraphs (a) and (b) § 1.4 prescribed the dates for calculating capital and surplus and stated the OCC's authority to require more frequent calculations. The proposal required a bank to calculate its investment limitations as of the most recent of: (1) The date on which the bank's Consolidated Report of Condition and Income (call report) is properly signed and submitted; (2) the date on which the bank's call report is required to be submitted; or (3) the date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

The OCC received no significant comments on these paragraphs. The final rule makes the following changes to the proposal to conform to the OCC's recently proposed changes to its lending limit regulation, 12 CFR part 32. *See* 61 FR 37227 (July 17, 1996). The final rule requires a bank to determine its investment limitations as of the most recent of: (1) The last day of the preceding calendar quarter; or (2) the date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

The final rule prescribes an effective date for a bank's investment limit. The final rule provides that an investment limit that is calculated as of the last day of the preceding calendar quarter becomes effective on the earlier of the date on which the bank's call report is submitted or the date on which the bank's call report is required to be submitted. An investment limit calculated as of the date on which there is a change in the bank's capital category becomes effective on that day.

The effective date requirements are added in a new paragraph § 1.4(b). The final rule moves proposed paragraph § 1.4(b), which stated the OCC's authority to require more frequent calculations, to § 1.4(c), to accommodate the insertion of new paragraph § 1.4(b) and otherwise adopts that paragraph § 1.4(c) as it was proposed.

Calculation of Type III and Type V Securities Holdings (§ 1.4(d))

Proposed § 1.4(c) limited a national bank's holdings of Type III investment securities of any one issuer/obligor (or certain related issuer/obligors) to 10 percent of the bank's capital and surplus. The proposal limited a national bank's holdings of Type V securities of any one issuer/obligor to 15 percent of the bank's capital and surplus. In calculating these capital limits, the proposal required a bank to combine: (1) Obligations of issuer/obligors that are related directly or indirectly through common control; and (2) securities of issuer/obligors that are credit-enhanced by the same entity.

The OCC requested comment on other bases upon which a bank should combine its holdings when calculating its investment in Type III or Type V securities of any one issuer/obligor. Specifically, the OCC asked whether a bank should combine obligations that

are predominately collateralized by loans made by the same originator or by originators that are related directly or indirectly through common control. In addition, commenters were asked to address whether and under what circumstances an issuer or affiliate of the issuer would provide a guarantee or other form of credit enhancement for Type V securities that could be a source of credit exposure of the investing bank to the issuer or its affiliate. Comment was also invited on whether the 15 percent investment limitation or a lower limitation is appropriate under these circumstances.

Five commenters stated that the OCC should not require banks to combine obligations of issuer/obligors of Type V securities that are related through common control. These commenters asserted that the risk assessment for the securities is based on the creditworthiness of the underlying *borrowers* whose loans collateralize the issuance, and on the credit enhancement rather than on the creditworthiness of the Type V issuer/obligor. They stated that, if the parent company provides no guarantee, there is no common source of risk and that applying a limitation on common sources of credit enhancement is sufficient to safeguard against risk concentrations. Similarly, a few commenters also recommended that the OCC remove the requirement to aggregate holdings of entities under direct or indirect common control for Type III securities. They asserted that the requirement would be unduly burdensome for banks.

The OCC continues to believe that combining obligations of issuer/obligors that are related through common control represents a prudent supervisory response, given the effect of common control on underwriting standards and servicing effectiveness, and especially in light of other burden reducing changes the OCC has made to the final rule. Thus, the final rule retains the requirement that banks aggregate issuer/obligors of Type III and Type V securities, respectively, that are under common ownership or control.

The comments demonstrate that the proposal left unclear whether it required banks to aggregate Type III and Type V securities issued by the same issuer/obligor. The final rule adds a new provision to clarify that the aggregation requirement applies separately to Type III and Type V securities. The OCC emphasizes, however, that the Comptroller's Handbook for National Bank Examiners identifies credit concentrations in excess of 25 percent of a bank's capital as raising potential safety and soundness concerns. For this purpose, the Handbook guidance does aggregate direct and indirect obligations of an issuer/obligor. Thus, if a bank's aggregate holdings of Type III and Type V securities issued by the same issuer/obligor exceed 25 percent of the bank's capital, the bank, as a matter of safety and soundness, should have carefully considered whether, and be able to demonstrate why, the characteristics of the Type III and Type V securities it holds do not entail an undue concentration.[9]

As noted in the earlier discussion of § 1.3(f), the final rule changes the Type V limitation from 15 percent to 25 percent of capital and surplus. The final rule also changes proposed paragraph § 1.3(c) to paragraph § 1.3(d) to accommodate the insertion of new paragraph § 1.3(b).

Calculation of Investment Company Holdings (§ 1.4(e))

In § 1.4(d), the proposal required a bank to use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolio of each investment company with the bank's direct holdings of securities of that issuer. In § 1.3(h), the proposal required the bank to apply the most stringent investment limit that would apply to the underlying securities in the investment company's portfolio.

For example, if the investment company holds a Type III security, the proposal limited the bank's holdings of shares of that investment company to 10 percent of the bank's capital and surplus. The proposal would thereby have codified Banking Circular 220 (BC 220) (Nov. 21, 1986), which authorizes national banks to purchase the shares of investment companies whose portfolios are comprised entirely of bank-eligible securities.

One commenter asserted that application of the most restrictive limit at the investment company level unnecessarily constrains a national bank's ability to buy investment company shares, especially when the company's portfolio contains only a proportionately small amount of securities subject to an investment limit. As the commenter noted, the treatment prescribed by the proposal would restrict the bank's purchase of the shares of the hypothetical mutual fund described above to 10 percent of capital and surplus even if the fund's portfolio was not evenly divided between Type I and Type III securities but contained 95 percent Type I and 5 percent Type III securities.

The commenter recommended that the OCC permit banks to use a ''pass-through'' analysis instead, that is, that the OCC permit banks to disregard the investment company level for purposes of applying the investment limits and allow banks to apply the applicable limit only to the pro rata portion of the underlying securities. This commenter also noted that allowing pass-through treatment is more consistent with the requirement in proposed § 1.4(d), by which banks must make ''reasonable efforts'' to aggregate their direct and indirect holdings of a security.

The final rule consolidates the two investment limit requirements set forth in §§ 1.3(h) and 1.4(d) into a single investment limit calculation provision, paragraph § 1.4(e). The final rule also modifies these provisions significantly in consideration of the comment received.

The OCC agrees that the OCC should give banks the flexibility to apply a pass-through analysis to determine the applicable investment limit if the bank aggregates its pro rata holdings of a security in an investment company with the bank's direct and other indirect holdings of that security. Therefore, the final rule permits banks to look through to the securities in the portfolio of an investment company and apply the appropriate limitation to the aggregate of the bank's pro rata interest in securities of a particular issuer that are held in an investment company's portfolio and the bank's direct holdings of the same securities.

The OCC recognizes that some institutions may prefer the method set forth in proposed § 1.3(h), which implemented BC 220 and required banks to apply the most stringent applicable investment limit to the bank's entire holdings of a particular investment company. Because calculating *pro rata* holdings of securities that the bank holds through an investment company may be burdensome for some institutions, the final rule gives a bank the option to apply the most stringent investment limit to the bank's entire holdings of a

[9] Similarly, a bank may acquire debt obligations of an issuer/obligor pursuant to the bank's authority to make loans, (provided appropriate underwriting standards are met) rather than under its authority to hold investment securities. *See* OCC Interpretive Letter No. 663, *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,611 (June 8, 1995); OCC Interpretive Letter No. 600, *reprinted in* [1992–1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,427 (July 31, 1992); OCC Banking Circular 181 (Rev) (Purchase of loans in whole or in part-participations) (August 2, 1984). In such a case, the holding would be permissible under a separate authority of the bank, but the credit concentration standards described in the Comptroller's Handbook would still be applicable and could curtail the amount of the bank's holdings under the two different sources of authority.

particular investment company if the investment company is diversified. An investment company is diversified if its holdings of the securities of any one issuer do not exceed 5 percent of the investment company's total portfolio.

For institutions that choose to calculate an investment limit using the most stringent applicable limit, the final rule does not require a bank to aggregate the investment company's holdings of a security with the bank's direct holdings of the security. The OCC believes that the 5 percent diversification requirement applicable to diversified investment companies provides sufficient protection against risk concentrations when a bank elects to apply the most stringent investment limit to the bank's investment in the investment company.

Safe and Sound Banking Practices; Credit Information Required (§ 1.5)

The proposal changed the requirement that, in addition to the specific requirements of part 1, a bank must exercise ''prudent banking judgment'' to a requirement that a bank must adhere to ''safe and sound banking practices,'' and identified certain risks that a bank should consider as part of safe and sound banking. The proposal also required each bank to obtain credit information that demonstrates the ability of issuer/obligors to satisfy their obligations and to maintain records that document the bank's compliance with this section.

The OCC received no comments on this section. The proposal required banks to consider market, interest rate, liquidity, legal, and operations and systems risks, as well as credit risk. The final rule conforms the list of risks identified by the proposal to the risks that are now specified in the OCC's risk-based supervision approach. The final rule requires banks to consider interest rate, credit, liquidity, price, foreign exchange, transaction, compliance, strategic, and reputation risks. The final rule also makes minor stylistic changes to this section.

Convertible Securities (§ 1.6)

The proposal set forth the restrictions on investment in certain convertible securities. The proposal required a bank to write down the carrying value of a convertible security to an amount that represents the value of the security considered independently of the conversion feature or attached stock purchase warrant. The proposal also prohibited a bank from purchasing securities convertible into stock at the option of the issuer.

The OCC received no comments on this section. However, the OCC has determined that requiring a bank to write down the carrying value of a security independently of the conversion feature is not consistent with generally accepted accounting principles (GAAP). Therefore, the final rule eliminates this requirement. While the final rule does not specifically state that a bank must account for convertible securities in accordance with GAAP, it is the OCC's policy that if the OCC is silent on accounting treatment, the OCC requires banks to conform with GAAP.

The final rule adopts as proposed the provision prohibiting national banks from purchasing securities convertible into stock at the option of the issuer.

Securities Held in Satisfaction of Debts Previously Contracted; Holding Period; Disposal; Accounting Treatment; Non-Speculative Purpose (§ 1.7)

The proposal added new provisions to clarify how a bank must treat securities held in satisfaction of debts previously contracted (DPC). These provisions embodied standards prescribed in the OCC's regulation on other real estate owned (OREO), 12 CFR part 34, and the OCC's related interpretation, *see* Interpretive Letter No. 604 (October 8, 1992). The proposal provided that a national bank holding securities in satisfaction of DPC may do so for a period of five years from the date that ownership of the securities was originally transferred to the bank, plus, if permitted by the OCC, an additional five years. The proposal also required a bank to mark-to-market securities held in satisfaction of DPC.

The OCC received one comment on this section. The commenter suggested that the OCC should avoid specifying an accounting treatment in the rule. Instead, the commenter recommended that a reference be made to the call report instructions.

The OCC agrees that it is unnecessary to specify the accounting treatment for DPC securities in the regulation. Accordingly, the final rule removes the reference to mark-to-market accounting and simply says that banks should account for DPC securities consistent with GAAP. In addition, the OCC emphasizes that extensions of the five-year holding period for shares acquired DPC are not automatic. While the five year holding period, plus extensions up to an additional five years, is based on the OCC's OREO standards, the OCC expects that a bank should, in general, be able to dispose of DPC securities more quickly than real estate. Accordingly, the OCC will require a clearly convincing demonstration of why any additional holding period is needed for securities acquired DPC.

Nonconforming Investments (§ 1.8)

The proposal clarified that a bank does not violate an applicable investment limitation when an investment in securities that was legal when made becomes nonconforming as a result of certain enumerated events, if the bank exercises reasonable efforts to bring the investment into conformity with applicable limitations.

The OCC asked commenters to address whether: (1) the phrase ''reasonable efforts'' needs additional clarification; (2) the OCC should require a bank to make ''reasonable efforts'' to bring into conformity an investment where the quality of a security deteriorates so that the security is no longer an investment security; and (3) any other events should be added to the list of circumstances that may cause an investment in securities to become nonconforming.

Two commenters recommended that the OCC eliminate the requirement that a bank must make reasonable efforts to conform an asset to the appropriate investment limit. The commenters stated that the requirement should not apply because the factor that caused nonconformity is beyond the bank's ability to control. One commenter noted that the reasonable efforts language might require a bank to sell securities at an exaggerated loss. Similarly, two commenters asked the OCC to clarify that a bank will have a substantial period of time before it is required to sell a non-conforming investment if the sale would result in a loss to the bank.

The OCC does not intend ''reasonable efforts'' to mean that a bank should sell a nonconforming investment at an exaggerated or unnecessary loss. The OCC intends a bank to use sound banking judgment to determine when it would be inappropriate to sell or reduce its holdings of a nonconforming investment. In the final rule, the OCC adopts the requirement that a bank must use reasonable efforts to bring an investment into conformity with the understanding that ''reasonable efforts'' should not pose significant harm to the bank if a reasonable probability exists that a loss can be avoided in the foreseeable future. The final rule makes minor clarifying changes to this section.

Amortization of Premiums (Former § 1.10)

The proposal removed former § 1.10 because the OCC believes that GAAP appropriately governs the treatment of premiums. GAAP requires that a bank defer recognition of a premium paid for

an investment security and amortize the premium over the period to maturity of the security. In contrast, former § 1.10 permitted a bank to charge off the entire premium at the time of purchase or to amortize the premium in any manner the bank considers appropriate as long as the premium is extinguished entirely at or before the maturity of the security.

The OCC received no comments on the removal of this section, which is therefore removed in the final rule.

Interpretations

Indirect General Obligations (§ 1.100)

The proposal clarified and shortened former § 1.120 and renumbered it § 1.100. The proposal removed former paragraphs (f) ''Tax anticipation notes,'' and (g) ''Bond anticipation notes'' as unnecessary.

The OCC received no significant comments on this section, which is adopted as proposed.

Eligibility of Securities for Purchase, Dealing in, and Underwriting by National Banks; General Guidelines (Former § 1.100)

The proposal removed former § 1.100, which contained introductory and explanatory comments that the OCC believes are unnecessary in light of other proposed changes to part 1.

The OCC received no comments on the proposal's removal of this section.

Taxing Powers of a State or a Political Subdivision (§ 1.110)

The proposal shortened former § 1.130, removed portions that are no longer necessary, and renumbered it § 1.110. The proposal added new text to provide standards for determining when obligations that are expressly or implicitly dependent upon voter or legislative authorization of appropriations are considered supported by the full faith and credit of a State or political subdivision.

The OCC received no significant comments on this section, which is adopted as proposed.

Prerefunded or Escrowed Bonds and Obligations Secured by Type I Securities (§ 1.120)

The proposal made former § 1.120(e) proposed § 1.120. The OCC proposed no substantive changes to this provision.

The OCC received no comments on this section, which is adopted as proposed.

Type II Securities; Guidelines for Obligations Issued for University and Housing Purposes (§ 1.130)

The proposal streamlined former § 1.140, clarified the types of issuers whose obligations qualify as Type II securities, and renumbered the section § 1.130.

The OCC received no comments on this section, which is adopted as proposed.

Effective Date

The final rule takes effect on December 31, 1996. The OCC finds good cause for prescribing this year-end effective date in that it will enable national banks to adjust their practices to conform with the regulation at the beginning of a calendar quarter, which also marks the beginning of a reporting period for purposes of the Consolidated Report of Condition and Income (Call Report). 5 U.S.C. 553(d)(3).

DERIVATION TABLE

[Only substantive modifications, additions and changes are indicated]

Revised provision	Original provision	Comments
§ 1.1	§§ 1.1, 1.2	Modified.
§ 1.2(a)		Added.
§ 1.2(b)	§ 1.3(g)	Modified.
§ 1.2(c)	—	Added.
§ 1.2(d)	—	Added.
§ 1.2(e)	§ 1.3(b)	Modified.
§ 1.2(f)	§ 1.5(a)	Significant change.
§ 1.2(g)	—	Added.
§ 1.2(h)	§ 1.3(f)	
§ 1.2(i)	§§ 1.3(c), 1.110	Modified.
§ 1.2(j)	§ 1.3(d)	Modified.
§ 1.2(k)	§ 1.3(e)	Modified.
§ 1.2(l)	—	Added.
§ 1.2(m)	—	Added.
	§ 1.3(a)	Removed.
§ 1.3(a)	§ 1.4	Modified.
§ 1.3(b)	§§ 1.3(d), 1.6, 1.7(a)	Modified.
§ 1.3(c)	§§ 1.3(e), 1.7(a)	Modified.
§ 1.3(d)	§ 1.7(a), 12 CFR 7.1021	Modified.
§ 1.3(e)	—	Added.
§ 1.3(f)	—	Added.
§ 1.3(g)	—	Added.
§ 1.3(h)	—	Added.
§ 1.3(i)	§§ 1.5(b), 1.7(b)	Modified.
§ 1.4	—	Added.
§ 1.5	§ 1.8	Significant change.
§ 1.6	§ 1.9	Modified.
§ 1.7(a)	§ 1.11	
§ 1.7(b)	—	Added.
	§ 1.7(c)	Removed.
	§ 1.7(d)	Added.
§ 1.7(c)	—	Added.
§ 1.8	—	Added.
	§ 1.10	Removed.
	§ 1.100	Removed.
§ 1.100(a)	§ 1.120	

DERIVATION TABLE—Continued

[Only substantive modifications, additions and changes are indicated]

Revised provision	Original provision	Comments
§ 1.100(b)(1)	§ 1.120(a)	
§ 1.100(b)(2)	§ 1.120(b)	
§ 1.100(b)(3)	§ 1.120(c)	
§ 1.100(b)(4)	§ 1.120(d)	
§ 1.110	§ 1.130	Modified.
	§ 1.120(f)	Removed.
	§ 1.120(g)	Removed.
§ 1.120	§ 1.120(e)	
§ 1.130(a)	§ 1.140(a)	Modified.
§ 1.130(b)	§ 1.140(b)	
§ 1.130(c)	§ 1.140(c)	Modified.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Paperwork Reduction Act of 1995

The OCC invites comments on:

(1) Whether the collections of information contained in this notice of final rule are necessary for the proper performance of OCC functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Respondents/recordkeepers are not required to respond to these collections of information unless this displays a currently valid OMB control number.

The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget under OMB control number 1557–0205 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0205), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this final rule are found in 12 CFR 1.3 and 1.7. This information is required to enable the OCC to make determinations as to the safety and soundness of activities. The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 18.4 hours.

Estimated number of respondents and/or recordkeepers: 25.

Estimated total annual reporting and recordkeeping burden: 460 hours.

Start-up costs to respondents: None.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the final rule has the effect of reducing burden and increasing the discretion of national banks regarding their sound investment activities.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

1. Part 1 is revised to read as follows:

PART 1—INVESTMENT SECURITIES

Sec.

Interpretations

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

§ 1.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.,* 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

(b) *Purpose* This part prescribes standards under which national banks may purchase, sell, deal in, underwrite, and hold securities, consistent with the authority contained in 12 U.S.C. 24 (Seventh) and safe and sound banking practices.

(c) *Scope.* The standards set forth in this part apply to national banks, District of Columbia banks, and federal branches of foreign banks. Further, pursuant to 12 U.S.C. 335, State banks that are members of the Federal Reserve System are subject to the same limitations and conditions that apply to national banks in connection with purchasing, selling, dealing in, and underwriting securities and stock. In addition to activities authorized under this part, foreign branches of national banks are authorized to conduct international activities and invest in securities pursuant to 12 CFR part 211.

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in appendix A to 12 CFR part 3 (or comparable capital guidelines of the appropriate Federal banking agency) as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161 (or under 12 U.S.C. 1817 in the case of a state member bank); plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161 (or under 12 U.S.C. 1817 in the case of a state member bank).

(b) *General obligation of a State or political subdivision* means:

(1) An obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(c) *Investment company* means an investment company, including a mutual fund, registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8.

(d) *Investment grade* means a security that is rated in one of the four highest rating categories by:

(1) Two or more NRSROs; or

(2) One NRSRO if the security has been rated by only one NRSRO.

(e) *Investment security* means a marketable debt obligation that is not predominantly speculative in nature. A security is not predominantly speculative in nature if it is rated investment grade. When a security is not rated, the security must be the credit equivalent of a security rated investment grade.

(f) *Marketable* means that the security:

(1) Is registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*;

(2) Is a municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2);

(3) Is offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and rated investment grade or is the credit equivalent of investment grade; or

(4) Can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

(g) *NRSRO* means a nationally recognized statistical rating organization.

(h) *Political subdivision* means a county, city, town, or other municipal corporation, a public authority, and generally any publicly-owned entity that is an instrumentality of a State or of a municipal corporation.

(i) *Type I security* means:

(1) Obligations of the United States;

(2) Obligations issued, insured, or guaranteed by a department or an agency of the United States Government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(3) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a State of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of non-payment by the third party obligor(s);

(4) General obligations of a State of the United States or any political subdivision;

(5) Obligations authorized under 12 U.S.C. 24 (Seventh) as permissible for a national bank to deal in, underwrite, purchase, and sell for the bank's own account, including qualified Canadian government obligations; and

(6) Other securities the OCC determines to be eligible as Type I securities under 12 U.S.C. 24 (Seventh).

(j) *Type II security* means an investment security that represents:

(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes;

(2) Obligations of international and multilateral development banks and organizations listed in 12 U.S.C. 24 (Seventh);

(3) Other obligations listed in 12 U.S.C. 24 (Seventh) as permissible for a bank to deal in, underwrite, purchase, and sell for the bank's own account, subject to a limitation per obligor of 10 percent of the bank's capital and surplus; and

(4) Other securities the OCC determines to be eligible as Type II securities under 12 U.S.C. 24 (Seventh).

(k) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security, such as corporate bonds and municipal revenue bonds.

(l) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is rated investment grade or is the credit equivalent thereof, that is fully secured by interests in a pool of loans to numerous obligors.

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is rated investment grade or is the credit equivalent thereof, or a commercial mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that is rated investment grade in one of the two highest investment grade rating categories, and that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of loans to numerous obligors.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is rated investment grade or is the credit equivalent thereof, or a residential mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)), that is rated investment

grade in one of the two highest investment grade rating categories, and that does not otherwise qualify as a Type I security.

(m) *Type V security* means a security that is:

(1) Rated investment grade;

(2) Marketable;

(3) Not a Type IV security; and

(4) Fully secured by interests in a pool of loans to numerous obligors and in which a national bank could invest directly.

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

(a) *Type I securities.* A national bank may deal in, underwrite, purchase, and sell Type I securities for its own account. The amount of Type I securities that the bank may deal in, underwrite, purchase, and sell is not limited to a specified percentage of the bank's capital and surplus.

(b) *Type II securities.* A national bank may deal in, underwrite, purchase, and sell Type II securities for its own account, provided the aggregate par value of Type II securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type II securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(c) *Type III securities.* A national bank may purchase and sell Type III securities for its own account, provided the aggregate par value of Type III securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type III securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(d) *Type II and III securities; other investment securities limitations.* A national bank may not hold Type II and III securities issued by any one obligor with an aggregate par value exceeding 10 percent of the bank's capital and surplus. However, if the proceeds of each issue are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants, and if each issue is payable solely from and secured by a first lien on the revenues to be derived from rentals paid by the lessee under net noncancellable leases, the bank may apply the 10 percent investment limitation separately to each issue of a single obligor.

(e) *Type IV securities*—(1) *General.* A national bank may purchase and sell Type IV securities for its own account. A national bank may deal in Type IV securities that are fully secured by Type I securities. Except as described in paragraph (e)(2) of this section, the amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

(2) *Limitation on small business-related securities rated in the third and fourth highest rating categories by an NRSRO.* A national bank may hold small business-related securities, as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), of any one issuer with an aggregate par value not exceeding 25 percent of the bank's capital and surplus if those securities are rated investment grade in the third or fourth highest investment grade rating categories. In applying this limitation, a national bank shall take account of securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings. No percentage of capital and surplus limit applies to small business related securities rated investment grade in the highest two investment grade rating categories.

(f) *Type V securities.* A national bank may purchase and sell Type V securities for its own account provided that the aggregate par value of Type V securities issued by any one issuer held by the bank does not exceed 25 percent of the bank's capital and surplus. In applying this limitation, a national bank shall take account of Type V securities that the bank is legally committed to purchase or to sell in addition to the bank's existing holdings.

(g) *Securitization.* A national bank may securitize and sell assets that it holds, as a part of its banking business. The amount of securitized loans and obligations that a bank may sell is not limited to a specified percentage of the bank's capital and surplus.

(h) *Investment company shares*—(1) *General.* A national bank may purchase and sell for its own account investment company shares provided that:

(i) The portfolio of the investment company consists exclusively of assets that the national bank may purchase and sell for its own account under this part; and

(ii) The bank's holdings of investment company shares do not exceed the limitations in § 1.4(e).

(2) *Other issuers.* The OCC may determine that a national bank may invest in an entity that is exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940, provided that the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account under this part.

(i) *Securities held based on estimates of obligor's performance.* (1) Notwithstanding §§ 1.2(d) and (e), a national bank may treat a debt security as an investment security for purposes of this part if the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to satisfy its obligations under that security, and the bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

(2) The aggregate par value of securities treated as investment securities under paragraph (i)(1) of this section may not exceed 5 percent of the bank's capital and surplus.

§ 1.4 Calculation of limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 24 (Seventh) and this part, a bank shall determine its investment limitations as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3.

(b) *Effective date.* (1) A bank's investment limit calculated in accordance with paragraph (a)(1) of this section will be effective on the earlier of the following dates:

(i) The date on which the bank's Consolidated Report of Condition and Income (Call Report) is submitted; or

(ii) The date on which the bank's Consolidated Report of Condition and Income is required to be submitted.

(2) A bank's investment limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) *Authority of OCC to require more frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its investment limits more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its investment limitations at a more frequent interval. The bank shall thereafter calculate its investment limits at that interval until further notice.

(d) *Calculation of Type III and Type V securities holdings*—(1) *General.* In calculating the amount of its investment in Type III or Type V securities issued

by any one obligor, a bank shall aggregate:

(i) Obligations issued by obligors that are related directly or indirectly through common control; and

(ii) Securities that are credit enhanced by the same entity.

(2) *Aggregation by type.* The aggregation requirement in paragraph (d)(1) of this section applies separately to the Type III and Type V securities held by a bank.

(e) *Limit on investment company holdings*—(1) *General.* In calculating the amount of its investment in investment company shares under this part, a bank shall use reasonable efforts to calculate and combine its pro rata share of a particular security in the portfolio of each investment company with the bank's direct holdings of that security. The bank's direct holdings of the particular security and the bank's pro rata interest in the same security in the investment company's portfolio may not, in the aggregate, exceed the investment limitation that would apply to that security.

(2) *Alternate limit for diversified investment companies.* A national bank may elect not to combine its pro rata interest in a particular security in an investment company with the bank's direct holdings of that security if:

(i) The investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio; and

(ii) The bank's total holdings of the investment company's shares do not exceed the most stringent investment limitation that would apply to any of the securities in the company's portfolio if those securities were purchased directly by the bank.

§ 1.5 Safe and sound banking practices; credit information required.

(a) A national bank shall adhere to safe and sound banking practices and the specific requirements of this part in conducting the activities described in § 1.3. The bank shall consider, as appropriate, the interest rate, credit, liquidity, price, foreign exchange, transaction, compliance, strategic, and reputation risks presented by a proposed activity, and the particular activities undertaken by the bank must be appropriate for that bank.

(b) In conducting these activities, the bank shall determine that there is adequate evidence that an obligor possesses resources sufficient to provide for all required payments on its obligations, or, in the case of securities deemed to be investment securities on the basis of reliable estimates of an obligor's performance, that the bank reasonably believes that the obligor will be able to satisfy the obligation.

(c) Each bank shall maintain records available for examination purposes adequate to demonstrate that it meets the requirements of this part. The bank may store the information in any manner that can be readily retrieved and reproduced in a readable form.

§ 1.6 Convertible securities.

A national bank may not purchase securities convertible into stock at the option of the issuer.

§ 1.7 Securities held in satisfaction of debts previously contracted; holding period; disposal; accounting treatment; non-speculative purpose.

(a) *Securities held in satisfaction of debts previously contracted.* The restrictions and limitations of this part, other than those set forth in paragraphs (b),(c), and (d) of this section, do not apply to securities acquired:

(1) Through foreclosure on collateral;

(2) In good faith by way of compromise of a doubtful claim; or

(3) To avoid loss in connection with a debt previously contracted.

(b) *Holding period.* A national bank holding securities pursuant to paragraph (a) of this section may do so for a period not to exceed five years from the date that ownership of the securities was originally transferred to the bank. The OCC may extend the holding period for up to an additional five years if a bank provides a clearly convincing demonstration as to why an additional holding period is needed.

(c) *Accounting treatment.* A bank shall account for securities held pursuant to paragraph (a) of this section in accordance with Generally Accepted Accounting Principles.

(d) *Non-speculative purpose.* A bank may not hold securities pursuant to paragraph (a) of this section for speculative purposes.

§ 1.8 Nonconforming investments.

(a) A national bank's investment in securities that no longer conform to this part but conformed when made will not be deemed in violation but instead will be treated as nonconforming if the reason why the investment no longer conforms to this part is because:

(1) The bank's capital declines;

(2) Issuers, obligors, or credit-enhancers merge;

(3) Issuers become related directly or indirectly through common control;

(4) The investment securities rules change;

(5) The security no longer qualifies as an investment security; or

(6) Other events identified by the OCC occur.

(b) A bank shall exercise reasonable efforts to bring an investment that is nonconforming as a result of events described in paragraph (a) of this section into conformity with this part unless to do so would be inconsistent with safe and sound banking practices.

Interpretations

§ 1.100 Indirect general obligations.

(a) *Obligation issued by an obligor not possessing general powers of taxation.* Pursuant to § 1.2(b), an obligation issued by an obligor not possessing general powers of taxation qualifies as a general obligation of a State or political subdivision for the purposes of 12 U.S.C. 24 (Seventh), if a party possessing general powers of taxation unconditionally promises to make sufficient funds available for all required payments in connection with the obligation.

(b) *Indirect commitment of full faith and credit.* The indirect commitment of the full faith and credit of a State or political subdivision (that possesses general powers of taxation) in support of an obligation may be demonstrated by any of the following methods, alone or in combination, when the State or political subdivision pledges its full faith and credit in support of the obligation.

(1) *Lease/rental agreement.* The lease agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise to pay rentals that, together with any other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. These lease/rental agreement may, for instance, provide support for obligations financing the acquisition or operation of public projects in the areas of education, medical care, transportation, recreation, public buildings, and facilities.

(2) *Service/purchase agreement.* The agreement must be valid and binding on the State or the political subdivision, and the State or political subdivision must unconditionally promise in the agreement to make payments for services or resources provided through or by the issuer of the obligation. These payments, together with any other available funds, must be sufficient for the timely payment of interest on, and principal of, the obligation. An agreement to purchase municipal sewer, water, waste disposal, or electric services may, for instance, provide support for obligations financing the construction or acquisition of facilities supplying those services.

(3) *Refillable debt service reserve fund.* The reserve fund must at least equal the amount necessary to meet the annual payment of interest on, and principal of, the obligation as required by applicable law. The maintenance of a refillable reserve fund may be provided, for instance, by statutory direction for an appropriation, or by statutory automatic apportionment and payment from the State funds of amounts necessary to restore the fund to the required level.

(4) *Other grants or support.* A statutory provision or agreement must unconditionally commit the State or the political subdivision to provide funds which, together with other available funds, are sufficient for the timely payment of interest on, and principal of, the obligation. Those funds may, for instance, be supplied in the form of annual grants or may be advanced whenever the other available revenues are not sufficient for the payment of principal and interest.

§ 1.110 Taxing powers of a State or political subdivision.

(a) An obligation is considered supported by the full faith and credit of a State or political subdivision possessing general powers of taxation when the promise or other commitment of the State or the political subdivision will produce funds, which (together with any other funds available for the purpose) will be sufficient to provide for all required payments on the obligation. In order to evaluate whether a commitment of a State or political subdivision is likely to generate sufficient funds, a bank shall consider the impact of any possible limitations regarding the State's or political subdivision's taxing powers, as well as the availability of funds in view of the projected revenues and expenditures. Quantitative restrictions on the general powers of taxation of the State or political subdivision do not necessarily mean that an obligation is not supported by the full faith and credit of the State or political subdivision. In such case, the bank shall determine the eligibility of obligations by reviewing, on a case-by-case basis, whether tax revenues available under the limited taxing powers are sufficient for the full and timely payment of interest on, and principal of, the obligation. The bank shall use current and reasonable financial projections in calculating the availability of the revenues. An obligation expressly or implicitly dependent upon voter or legislative authorization of appropriations may be considered supported by the full faith and credit of a State or political subdivision if the bank determines, on the basis of past actions by the voters or legislative body in similar situations involving similar types of projects, that it is reasonably probable that the obligor will obtain all necessary appropriations.

(b) An obligation supported exclusively by excise taxes or license fees is not a general obligation for the purposes of 12 U.S.C. 24 (Seventh). Nevertheless, an obligation that is primarily payable from a fund consisting of excise taxes or other pledged revenues qualifies as a ''general obligation,'' if, in the event of a deficiency of those revenues, the obligation is also supported by the general revenues of a State or a political subdivision possessing general powers of taxation.

§ 1.120 Prerefunded or escrowed bonds and obligations secured by Type I securities.

(a) An obligation qualifies as a Type I security if it is secured by an escrow fund consisting of obligations of the United States or general obligations of a State or a political subdivision, and the escrowed obligations produce interest earnings sufficient for the full and timely payment of interest on, and principal of, the obligation.

(b) If the interest earnings from the escrowed Type I securities alone are not sufficient to guarantee the full repayment of an obligation, a promise of a State or a political subdivision possessing general powers of taxation to maintain a reserve fund for the timely payment of interest on, and principal of, the obligation may further support a guarantee of the full repayment of an obligation.

(c) An obligation issued to refund an indirect general obligation may be supported in a number of ways that, in combination, are sufficient at all times to support the obligation with the full faith and credit of the United States or a State or a political subdivision possessing general powers of taxation. During the period following its issuance, the proceeds of the refunding obligation may be invested in U.S. obligations or municipal general obligations that will produce sufficient interest income for payment of principal and interest. Upon the retirement of the outstanding indirect general obligation bonds, the same indirect commitment, such as a lease agreement or a reserve fund, that supported the prior issue, may support the refunding obligation.

§ 1.130 Type II securities; guidelines for obligations issued for university and housing purposes.

(a) *Investment quality.* An obligation issued for housing, university, or dormitory purposes is a Type II security only if it:

(1) Qualifies as an investment security, as defined in § 1.2(e); and

(2) Is issued for the appropriate purpose and by a qualifying issuer.

(b) *Obligation issued for university purposes.* (1) An obligation issued by a State or political subdivision or agency of a State or political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions, qualifies as a Type II security. Facilities financed in this manner may include student buildings, classrooms, university utility buildings, cafeterias, stadiums, and university parking lots.

(2) An obligation that finances the construction or improvement of facilities used by a hospital may be eligible as a Type II security, if the hospital is a department or a division of a university, or otherwise provides a nexus with university purposes, such as an affiliation agreement between the university and the hospital, faculty positions of the hospital staff, and training of medical students, interns, residents, and nurses (*e.g.*, a ''teaching hospital'').

(c) *Obligation issued for housing purposes.* An obligation issued for housing purposes may qualify as a Type II security if the security otherwise meets the criteria for a Type II security.

PART 7—INTERPRETIVE RULINGS

2. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

§ 7.1021 [Removed]

3. Section 7.1021 is removed.

Dated: November 22, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–30779 Filed 11–29–96; 8:45 am]

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Federal Register

Monday
December 2, 1996

Part VII

Pension Benefit Guaranty Corporation

29 CFR Parts 4001, 4043 and 4065
Reportable Events; Annual Report; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4043 and 4065

RIN 1212–AA80

Reportable Events; Annual Report

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its reportable events regulation. The Retirement Protection Act of 1994 made significant changes to the reportable events requirements, including adding four new events. This rule addresses the statutory changes and provides extensions of time and waivers for certain filings. The PBGC developed the proposed rule through negotiated rulemaking. The final rule makes only minor modifications and clarifications.

EFFECTIVE DATE: January 1, 1997. This regulation is applicable for reportable events under subpart B that occur on or after January 1, 1997, and for reportable events under subpart C and Form 200 filings under Subpart D for which notice is due on or after January 1, 1997. The PBGC will treat any waivers or extensions under the rule as if they had been in effect as of the effective date of the Retirement Protection Act amendments to section 4043 of the Employee Retirement Income Security Act of 1974.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On July 24, 1996, the Pension Benefit Guaranty Corporation published in the Federal Register (61 FR 38409) a proposed rule amending its regulation on reportable events (29 CFR part 4043).

The proposed rule provided guidance with respect to amendments made by the Retirement Protection Act of 1994, added new reportable events, and provided extensions of time and waivers for certain filings. It was the result of a negotiated rulemaking process involving a committee consisting of representatives of employers, participants, pension practitioners, and the PBGC. The PBGC received only one written comment on the proposed rule. The final rule follows the proposed rule except for a few minor modifications and clarifications.

The commenter sought clarification of the types of ''transactions'' that will result in one or more persons ceasing to be members of the plan's controlled group and therefore trigger reporting under § 4043.29. The final rule clarifies that a binding agreement to transfer ownership of a controlled group member, such as an agreement to transfer a subsidiary to a new controlled group in a stock sale or to spin off a subsidiary to shareholders, triggers reporting.

In response to an inquiry, the final rule provides that, when there is a change in plan administrator or contributing sponsor, the person who is obligated to report is the plan administrator or contributing sponsor on the 30th day after the reportable event occurs (for post-event reporting) or the notice date (for advance reporting). Since filings may be made by designated representatives, the parties may negotiate which party actually prepares and submits the reportable event filing. The regulation merely identifies which party will be liable for penalties if no report is filed.

Under the final rule, the PBGC will permit filing by electronic mail or facsimile transmission. The proposed regulation provided a special rule for electronic filings that was limited to advance reporting. The final regulation extends the benefit of this rule to all filings under the regulation. Under the rule, a filing will be timely if certain minimal information is submitted electronically by the due date and the remaining information is received by the PBGC within one day after the due date for advance notice and Form 200 filings and two days after the due date for post-event notice.

The commenter sought clarification on proof of filing by electronic mail or facsimile transmission. Facsimiles and some other electronic filings generally provide proof of receipt. The PBGC will provide automatic receipts for electronic mail submissions. If these automatic receipts prove inadequate in the future, the PBGC will work with filers to establish alternative receipts.

The final regulation provides that, for post-event information sent to the PBGC by commercial delivery service, the date of filing is the date of deposit with the delivery service, provided the information is received by the PBGC within two regular business days.

The proposed rule added a requirement to report certain defaults on a loan with an outstanding balance exceeding $10 million. The rule requires reporting of a default with respect to such a loan if the debtor receives written notice of the default on account of, among other things, ''a persisting failure by the debtor to attain agreed-upon performance levels.'' The commenter suggested that the PBGC clarify this language and, in particular, clarify ''performance levels'' and delete the word ''persisting.''

In response to this comment and to conform with the recommendation of the negotiated rulemaking committee, the PBGC has added the word ''financial'' before the term ''performance levels.'' The PBGC agrees with the committee's recommendation that a failure to meet agreed-upon financial performance levels that does not persist should not be reportable and therefore has not deleted the word ''persisting.''

The PBGC also has made minor clarifying and editorial changes.

Compliance With Rulemaking and Paperwork Guidelines

The PBGC submitted the proposed rule as a ''significant regulatory action'' under Executive Order 12866 because the rule was the product of the PBGC's first use of the negotiated rulemaking process. There are no material changes in the final rule. This action is not economically significant.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. For most reportable events, waivers based on plan size or funding level will exempt reporting for small plans. Even where reporting is required, there is no significant economic impact because the filing burden averages only 8.2 hours. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

The collection of information requirements in this rule and the related forms and instructions have been approved by the Office of Management and Budget. The collection of information requirements relating to reportable events (Subparts A through C of part 4043, Form 10, and Form 10–ADVANCE) were approved under control number 1212–0013. The collection of information requirements relating to notice of failure to make required contributions (Subpart D of part 4043 and Form 200) were approved under control number 1212–0041. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

29 CFR Part 4001

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4043

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4065

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4001, 4043, and 4065 of 29 CFR chapter LX as follows.

PART 4001—[AMENDED]

1. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

2. Section 4001.2 is amended by adding the following definitions:

§ 4001.2 Definitions.

* * * * *

EIN means the nine-digit employer identification number assigned by the Internal Revenue Service to a person.

* * * * *

PN means the three-digit plan number assigned to a plan.

* * * * *

3. Section 4001.2 is further amended by adding the following to the end of the definition of controlled group:

* * * * *

Controlled group * * * Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

* * * * *

4. Part 4043 is revised to read as follows:

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Sec.
4043.1 Purpose and scope.
4043.2 Definitions.
4043.3 Requirement of notice.
4043.4 Waivers and extensions.
4043.5 How and where to file.
4043.6 Date of filing.
4043.7 Computation of time.
4043.8 Confidentiality.

Subpart B—Post-Event Notice of Reportable Events

4043.20 Post-event filing obligation.
4043.21 Tax disqualification and Title I noncompliance.
4043.22 Amendment decreasing benefits payable.
4043.23 Active participant reduction.
4043.24 Termination or partial termination.
4043.25 Failure to make required minimum funding payment.
4043.26 Inability to pay benefits when due.
4043.27 Distribution to a substantial owner.
4043.28 Plan merger, consolidation, or transfer.
4043.29 Change in contributing sponsor or controlled group.
4043.30 Liquidation.
4043.31 Extraordinary dividend or stock redemption.
4043.32 Transfer of benefit liabilities.
4043.33 Application for minimum funding waiver.
4043.34 Loan default.
4043.35 Bankruptcy or similar settlement.

Subpart C—Advance Notice of Reportable Events

4043.61 Advance reporting filing obligation.
4043.62 Change in contributing sponsor or controlled group.
4043.63 Liquidation.
4043.64 Extraordinary dividend or stock redemption.
4043.65 Transfer of benefit liabilities.
4043.66 Application for minimum funding waiver.
4043.67 Loan default.
4043.68 Bankruptcy or similar settlement.

Subpart D—Notice of Failure To Make Required Contributions

4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner.

In addition, for purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first $200 million in net tangible assets at the end of the fiscal year(s); or

(iii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

De minimis 5-percent segment has the same meaning as a *de minimis* 10-percent segment, except that ''5 percent'' is substituted for ''10 percent'' each time it appears.

Event year means the plan year in which the reportable event occurs.

Fair market value of the plan's assets means the fair market value of the plan's assets as of the testing date for the applicable plan year, including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

Foreign entity means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

Foreign-linked entity means a person that—

(1) Is neither a foreign entity nor a contributing sponsor of a plan; and

(2) Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor.

Form 5500 due date means the deadline (including extensions) for filing the annual report under section 103 of ERISA.

Notice date means the deadline (including extensions) for filing notice of the reportable event with the PBGC.

Participant means a participant as defined in § 4006.2.

Public company means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Testing date means, with respect to a plan year—

(1) The last day of the prior plan year, except as provided in paragraphs (2) or (3) of this definition;

(2) In the case of a new or newly-covered plan (as defined in § 4006.2 of this chapter), the first day of the plan year or, if later, the date on which the plan becomes effective for benefit accruals for future service; or

(3) In the case of a plan described in § 4006.5(e)(2) of this chapter (relating to certain mergers or spinoffs), the first day of the plan year.

Ultimate parent means the parent at the highest level in the chain of corporations and/or other organizations constituting the parent-subsidiary controlled group.

Unfunded vested benefits means unfunded vested benefits determined in accordance with § 4006.4 of this chapter, without regard to the exemptions and special rules in § 4006.5(a)-(c) of this chapter. For purposes of subpart B only, unfunded vested benefits may be determined by subtracting the fair market value of the plan's assets from the plan's vested benefits amount.

Variable rate premium means the portion of the premium determined under section 4006(a)(3)(E) of ERISA and § 4006.3(b) of this chapter.

Vested benefits amount means the vested benefits amount determined under § 4006.4(b)(1) of this chapter.

§ 4043.3 Requirement of notice.

(a) *Obligation to file*—(1) *In general.* Each person that is required to file a notice under this part, or a duly authorized representative, shall submit the information required by this part by the time specified in § 4043.20 (for post-event notice), § 4043.61 (for advance notice), or § 4043.81 (for Form 200 filings). Any information previously filed with the PBGC may be incorporated by reference.

(2) *Multiple plans.* If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(3) *Optional consolidated filing.* A filing by any person will be deemed to be a filing by all persons required to notify the PBGC under this part. If notices are required for two or more events, the notices may be combined in one filing.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice shall provide, by the notice date, the following general information, along with any other information required for each reportable event under subpart B or C of this part:

(1) The name of the plan;

(2) The name, address, and telephone number of the contributing sponsor(s) and of an individual that should be contacted;

(3) The name, address, and telephone number of the plan administrator and of an individual that should be contacted;

(4) The EIN of the contributing sponsor and the EIN/PN of the plan;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document in effect, *i.e.*, the last restatement of the plan and all amendments thereto;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan; and

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion.

(c) *Optional reportable event forms.* The PBGC shall issue optional reportable events forms, which may provide for reduced initial information submissions.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information. Any such information shall be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, the PBGC may assess against each person required to provide the notice a separate penalty under section 4071 of ERISA of up to $1,000 a day for each day that the failure continues. The PBGC may pursue any other equitable or legal remedies available to it under the law.

§ 4043.4 Waivers and extensions.

(a) *Specific events.* For specific reportable events, waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, any event reportable under more than one section will be exempt from reporting only if it satisfies the requirements for a waiver under each section.

(b) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(c) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

(1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination; or

(2) A trustee is appointed for the plan under section 4042(c) of ERISA.

(d) *Other waivers and extensions.* The PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC and must state the facts and circumstances on which the request is based.

§ 4043.5 How and where to file.

Requests and information shall be filed in accordance with the instructions to the applicable PBGC reporting form.

§ 4043.6 Date of filing.

(a) *Post-event notice.* Information filed under subpart B of this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The document was mailed postage prepaid, properly addressed to the PBGC;

(2) On the date it is deposited for delivery to the PBGC with a commercial delivery service, provided it is received by the PBGC within two regular business days; or

(3) Except as provided in paragraphs (a)(1) and (a)(2), on the date it is received by the PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is considered filed on the date it is received by PBGC.

(c) *Electronic filing.* A reportable event notice or Form 200 will be deemed timely filed if—

(1) An electronic transmission containing at least the minimum initial information (as specified in the instruction to the applicable form) is filed on or before the notice date; and

(2) The remaining initial information is received by the PBGC on or before—

(i) The first regular business day following the notice date, in the case of advance notice or a Form 200; or

(ii) The second regular business day following the notice date, in the case of post-event notice.

(d) *Receipt date.* Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 4043.7 Computation of time.

In computing any period of time, the day of the event from which the period of time begins to run shall not be included. The last day so computed shall be included, unless it is a weekend or Federal holiday, in which case the period runs until the end of the next regular business day.

§ 4043.8 Confidentiality.

In accordance with section 4043(f) of ERISA and § 4901.21(a)(3) of this chapter, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-Event filing obligation.

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred are required to notify the PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies. If there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.

§ 4043.21 Tax disqualification and Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waivers.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waivers.* Notice is waived for this event.

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is reduced to less than 80 percent of the number of active participants at the beginning of the plan year, or to less than 75 percent of the number of active participants at the beginning of the previous plan year.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A statement explaining the cause of the reduction (*e.g.*, facility shutdown or sale); and

(2) The number of active participants at the date the reportable event occurs, at the beginning of the plan year, and at the beginning of the prior plan year.

(c) *Waivers*—(1) *Small plan.* Notice is waived if the plan has fewer than 100 participants at the beginning of either the current or the previous plan year.

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(3) *No facility closing event/80-percent funded.* Notice is waived if—

(i) The active participant reduction would not be reportable if only those active participant reductions resulting from cessation of operations at one or more facilities were taken into account; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) or (c)(3) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year'';

(2) *Form 5500 extension.* 30 days after the plan's Form 5500 due date that next follows the date the reportable event occurs, provided the event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(3) *Form 1–ES extension.* The due date for the Form 1–ES for the plan year following the event year if—

(i) The plan is required to file a Form 1–ES for the plan year following the event year;

(ii) The event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(iii) The participant reduction represents no more than 20 percent of the total active participants (at the beginning of the plan year(s) in which the reduction occurs) in all plans maintained by any member of the plan's controlled group.

(e) *Determination of the number of active participants*—(1) *Determination date.* The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year.

(2) *Active participant.* ''Active participant'' means a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waivers.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

(a) *Reportable event.* A reportable event occurs when a required installment or a payment required under section 302 of ERISA or section 412 of the Code (including a payment required as a condition of a funding waiver) is not made by the due date for the payment. In the case of a payment needed to avoid a deficiency in the plan's funding standard account, the due date is the latest date such payment may be made under section 302(c)(10)(A) of ERISA or section 412(c)(10)(A) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The due date and amount of the required minimum funding payment that was not made and of the next payment due;

(2) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(3) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waiver.* Notice is waived if the required minimum funding payment is made by the 30th day after its due date.

(d) *Form 200 filed.* If, with respect to the same failure, a Form 200 has been completed and submitted in accordance with § 4043.81, the Form 200 filing shall satisfy the requirements of this section.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan shall not be treated as being currently unable to pay benefits if its failure to pay is caused solely by the need to verify the person's eligibility for benefits; the inability to locate the person; or any other administrative delay if the delay is for less than the shorter of two months or two full benefit payment periods.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's ''liquid assets'' are less than two times the amount of the ''disbursements from the plan'' for such quarter. Liquid assets and disbursements from the plan have the same meaning as under section 302(e)(5)(E) of ERISA and section 412(m)(5)(E) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The date of any current inability and the amount of benefit payments not made;

(2) The next date on which the plan is expected to be unable to pay benefits, the amount of the projected shortfall, and the number of plan participants and beneficiaries expected to be affected by the inability to pay benefits;

(3) For a projected inability described in paragraph (a)(2), the amount of the plan's liquid assets at the end of the quarter, and the amount of its disbursements for the quarter; and

(4) The name, address, and phone number of the trustee of the plan (and of any custodian).

(c) *Waivers.* Notice is waived unless the reportable event occurs during a plan year for which the plan is described in section 302(d)(6)(A) of ERISA or section 412(l)(6)(A) of the Code.

§ 4043.27 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds $10,000;

(3) The distribution is not made by reason of the substantial owner's death; and

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5) that are not funded.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name, address and telephone number of the substantial owner receiving the distribution(s); and

(2) The amount, form, and date of each distribution.

(c) *Waivers.*—(1) *Distribution up to section 415 limit.* Notice is waived if the total of all distributions made to the substantial owner within the one-year period ending with the date of the distribution does not exceed the limitation (as of the date the reportable event occurs) under section 415(b)(1)(A) of the Code (as adjusted in accordance with section 415(d)) when expressed as an annual benefit in the form of a straight life annuity to a participant beginning at Social Security retirement age ($120,000 for calendar year 1996).

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iii) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(3) *Distribution up to one percent of assets.* Notice is waived if the sum of the values of all distributions that are made to the substantial owner within the one-year period ending with the date of the distribution is one percent or less of the end-of-year current value of the plan's assets (as required to be reported on the plan's Form 5500) for either of the two plan years immediately preceding the event year.

(d) *Form 1 extension.* The notice date is extended until 30 days after the plan's variable rate premium filing due date for the event year, provided that a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year.''

(e) *Determination rules*—(1) *Valuation of distribution.* The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution.* The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on

which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date.* The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

§ 4043.28 Plan merger, consolidation, or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waivers.* Notice is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in contributing sponsor or controlled group.

(a) *Reportable event.* A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan's controlled group. For purposes of this section, the term ''transaction'' includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. A transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's old and new controlled groups and the member's ownership relationship to other members of those groups;

(2) For each other plan maintained by any member of the plan's old or new controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate; and

(3) A copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the plan's contributing sponsor (both old and new, in the case of a change in the contributing sponsor) and any persons that will cease to be in the plan's controlled group.

(c) *Waivers.*—(1) *De minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year';

(2) *Foreign parent and foreign-linked entities.* With respect to a transaction in which only foreign parents or foreign-linked entities will cease to be members of the plan's controlled group, 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor before the effective date of the transaction is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

(e) *Examples.* The following examples assume that no waivers apply.

(1) *Controlled group breakup.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company C. As a result of a transaction, the controlled group will break into two separate controlled groups—one segment consisting of Company A and the other segment consisting of Companies B and C. Both Company A (Plan A's contributing sponsor) and the plan administrator of plan A are required to report that Companies B and C will leave plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.*, the binding contract), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If, on the 30th day after Company Q and Company R enter into the binding contract, the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become effective by the 30th day, Company R has the reporting obligation.

(3) *Merger/consolidation within a controlled group.* Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives). Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's controlled group before and after the liquidation and its ownership relationship to other members of that controlled group; and

(2) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers*—(1) *De minimis 10-percent segment.* Notice is waived if—

(i) The person or persons that liquidate represent a de minimis 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs; and

(ii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(2) *Foreign entity.* Notice is waived if each person that liquidates is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation and—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor is a public company;

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount; and

(iii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year';

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship, if the person liquidating is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 100.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend (as defined in paragraph (e)(3) of this section) or redeems its own stock, if the resulting distribution is reportable under this paragraph.

(1) *Cash distributions.* A cash distribution is reportable if—

(i) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the preceding fiscal year; and

(ii) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the four preceding fiscal years.

(2) *Non-cash distributions.* A non-cash distribution is reportable if its net value (as defined in paragraph (e)(4) of this section), when combined with the net value of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10 percent of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(3) *Combined distributions.* If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the cash distribution percentage (as defined in paragraph (e)(2) of this section) and the non-cash distribution percentages (as defined in paragraph (e)(5) of this section) for the fiscal year exceeds 100 percent.

(b) *Information required.* In addition to the information in § 4043.5(b), the notice shall include—

(1) Identification of the person making the distribution (by name and EIN); and

(2) The date and amount of any cash distribution during the fiscal year;

(3) A description of any non-cash distribution during the fiscal year, the fair market value of each asset distributed, and the date or dates of distribution; and

(4) A statement as to whether the recipient was a member of the plan's controlled group.

(c) *Waivers*—(1) *Extraordinary dividends and stock redemptions.* The reportable event described in section 4043(c)(11) of ERISA related to extraordinary dividends and stock redemptions is waived except to the extent reporting is required under this section.

(2) *De minimis 5-percent segment.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(3) *Foreign entity.* Notice is waived if the person making the distribution is a foreign entity other than a foreign parent.

(4) *Foreign parent.* Notice is waived if the person making the distribution is a foreign parent, and the distribution is made solely to other members of the plan's controlled group.

(5) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due

date for the event year if a waiver under any of paragraphs (c)(5)(i) through (c)(5)(iv) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year';

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the distribution and the controlled group relationship, if the person making the distribution is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the distribution; or

(ii) The date (if any) when a press release with respect to the distribution is issued.

(e) Definitions—(1) *Adjusted net income* means the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

(2) *Cash distribution percentage* means, for a fiscal year, the lesser of—

(i) The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the preceding fiscal year, or

(ii) The percentage that all cash distributions to one or more shareholders made during that fiscal year and the three preceding fiscal years bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the four preceding fiscal years.

(3) *Dividend* means a distribution to one or more shareholders. A payment by a person to a member of its controlled group is treated as a distribution to its shareholder(s).

(4) *Net value of non-cash distribution* means the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution shall be deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(5) *Non-cash distribution percentage* means the percentage that the net value of the non-cash distribution bears to one-tenth of the value of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(6) *Total net assets* means, with respect to the person declaring a non-cash distribution—

(i) If all classes of the person's securities are publicly traded, the total market value (immediately before the distribution is made) of the publicly-traded securities of the person making the distribution;

(ii) If no classes of the person's securities are publicly traded, the excess (immediately before the distribution is made) of the book value of the person's assets over the book value of the person's liabilities, adjusted to reflect the net value of the non-cash distribution; or

(iii) If some but not all classes of the person's securities are publicly traded, the greater of the amounts in paragraphs (e)(6)(i) or (ii) of this section.

§ 4043.32 Transfer of benefit liabilities.

(a) *Reportable event*—(1) *In general.* A reportable event occurs for a plan when—

(i) The plan or any other plan maintained by a person in the plan's controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(ii) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities shall be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(l) of the Code.

(2) *Date of transfer.* The date of transfer shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(l) of the Code, the date determined in accordance with 26 CFR 1.414(l)-1(b)(11) will be considered the date of transfer.

(b) *Initial information required.* In addition to the information required in § 4043.3(b), the notice shall include—

(1) Identification of the transferee(s) and each contributing sponsor of each transferee plan by name and EIN/PN or EIN, as appropriate;

(2) An explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, the value of plan assets) for each transfer; and

(3) An estimate of the amounts of assets and liabilities being transferred, and the number of participants whose benefits are transferred.

(c) *Waivers*—(1) *Complete plan transfer.* Notice is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets.* Notice is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(l) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor.* Notice is waived if the transfer complies with section 414(l) of the Code using the actuarial assumptions prescribed for valuing benefits in trusteed plans under § 4044.51–57 of this chapter.

(4) *Fully funded plans.* Notice is waived if the transfer complies with section 414(l) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in trusteed plans under § 4044.51–57) of this chapter.

(d) *Who must file.* Only the plan administrator and contributing sponsor of the plan that made the transfer described in paragraph (a)(1) of this section are required to file a notice of a reportable event under this section. Notice by any other contributing sponsor or plan administrator is waived.

§ 4043.33 Application for minimum funding waiver.

(a) *Reportable event.* A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 303 of ERISA or section 412(d) of the Code.

(b) *Initial information required.* In addition to the information in

§ 4043.3(b), the notice shall include a copy of the waiver application, including all attachments.

§ 4043.34 Loan default.

(a) *Reportable event.* A reportable event occurs for a plan whenever there is a default by a member of the plan's controlled group with respect to a loan with an outstanding balance of $10 million or more, if—

(1) The default results from the debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date);

(2) The lender accelerates the loan; or

(3) The debtor receives a written notice of default from the lender (and does not establish the notice was issued in error) on account of:

(i) A drop in the debtor's cash reserves below an agreed-upon level;

(ii) An unusual or catastrophic event experienced by the debtor; or

(iii) A persisting failure by the debtor to attain agreed-upon financial performance levels.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of the relevant loan documents (*e.g.*, promissory note, security agreement);

(2) The due date and amount of any missed payment;

(3) A copy of any notice of default from the lender; and

(4) A copy of any notice of acceleration from the lender.

(c) *Waivers*—(1) *Default cured.* Notice is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

(2) *Foreign entity.* Notice is waived if the debtor is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Notice date and extensions.*

(1) *In general.* Except as provided in paragraph (d)(2) or (d)(3) of this section, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

(2) *Cure period extensions.* The notice date is extended to one day after—

(i) The applicable cure period provided in the loan agreement (in the case of a reportable event described in paragraph (a)(1) of this section);

(ii) The date the loan is accelerated (in the case of a reportable event described in paragraph (a)(2) of this section); or

(iii) The date the debtor receives written notice of the default (in the case of a reportable event described in paragraph (a)(3) of this section).

(3) *Form 1 extension.* The notice date is extended to 30 days after the plan's variable rate premium filing due date for the event year, if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iv) of this section would apply if the ''the plan year preceding the event year'' were substituted for ''the event year.''

(4) *Foreign parent and foreign-linked entities.* With respect to a loan default involving only a foreign parent or a foreign-linked entity, the notice date is extended to 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the default and of the controlled group relationship.

(5) *Example.* Company A has a debt with an outstanding balance of $20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within 30 days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

§ 4043.35 Bankruptcy or similar settlement.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences a bankruptcy case (under the Bankruptcy Code), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of all papers filed in the relevant proceeding, including, but not limited to, petitions and supporting schedules;

(2) The last date for filing claims;

(3) The name, address, and phone number of any trustee or receiver (or similar person);

(4) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(5) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.* Notice is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(d) *Extensions.* Unless the controlled group member described in paragraph (a) of this section is the contributing sponsor of the plan, the notice date is extended until 30 days after the person required to notify the PBGC has actual knowledge of the reportable event.

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan for which a reportable event under this subpart is going to occur is required to notify the PBGC no later than 30 days before the effective date of the reportable event if the contributing sponsor is subject to advance reporting. If there is a change in contributing sponsor, the reporting obligation applies to the person who is the contributing sponsor of the plan on the notice date.

(b) Persons subject to advance reporting. A contributing sponsor is subject to the advance reporting requirement under paragraph (a) of this section if—

(1) Neither the contributing sponsor nor the member of the plan's controlled group to which the event relates is a public company; and

(2) The contributing sponsor is a member of a controlled group maintaining one or more plans that, in the aggregate (disregarding plans with no unfunded vested benefits) have—

(i) Vested benefits amounts that exceed the actuarial values of plan assets by more than $50 million; and

(ii) A funded vested benefit percentage of less than 90 percent.

(c) *Funding determinations.* For purposes of paragraph (b)(2) of this section—

(1) *Actuarial value of assets.* The actuarial value of plan assets is determined in accordance with § 4006.4(b)(2) of this chapter;

(2) *Funded vested benefit percentage.* The aggregate funded vested percentage of one or more plans is the percentage that the total actuarial values of plan assets bears to the plans' total vested benefits amounts; and

(3) *Testing date.* Each plan's assets and vested benefits amount are determined as of that plan's testing date for the plan year that includes the effective date of the reportable event.

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), the PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event and information required.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as described in § 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event.

(b) *Waivers.*

(1) *Small plan.* Notice is waived with respect to a change of contributing sponsor if the transferred plan has 500 or fewer participants.

(2) *De minimis 5-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event and information required.* Advance notice is required for a liquidation of a member of a plan's controlled group, as described in § 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event.

(b) *Waiver.* Notice is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event and information required.* Advance notice is required for a distribution by a member of a plan's controlled group that would be described in § 4043.31(a) if both assets and liabilities were valued at fair market value. The notice shall include the information described in § 4043.31(b).

(b) *Waiver.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event and information required.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b).

(b) *Waivers.* Notice is waived—

(1) In the circumstances described in § 4043.32 (c)(1), (c)(2), and (c)(4); and

(2) If the benefit liabilities of 500 or fewer participants are transferred, in the circumstances described in § 4043.32(c)(3).

§ 4043.66 Application for minimum funding waiver.

(a) *Reportable event and information required.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33(a), and the notice shall include the information described in § 4043.33(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.67 Loan default.

(a) *Reportable event and information required.* Advance notice is required for a loan default, as described in § 4043.34(a) (or that would be so described if ''10 days'' were substituted for ''30 days'' in § 4043.34(a)(1)). The notice shall include the information described in § 4043.34(b).

(b) *Waivers.* Notice is waived if the reportable default is cured, or the lender waives the default, within 10 days or, if later, by the end of any cure period.

(c) *Extensions.* The notice date is extended to the later of—

(1) *10 days after default.* 10 days after the default occurs (without regard to the time of any other conditions required for the default to be reportable); and

(2) *One day after subsequent event.* One day after—

(i) The applicable cure period provided in the loan agreement (in the case of a default described in § 4043.34(a)(1));

(ii) The date the loan is accelerated (in the case of a default described in § 4043.34(a)(2)); and

(iii) The date the debtor receives written notice of the default (in the case of a default described in § 4043.34(a)(3)).

§ 4043.68 Bankruptcy or similar settlement.

(a) *Reportable event and information required.* Advance notice is required for a bankruptcy or similar settlement, as described in § 4043.35(a), and the notice shall include the information described in § 4043.35(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

Subpart D—Notice of Failure To Make Required Contributions

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the ultimate parent must complete and submit in accordance with this section a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a required installment or any other payment required under section 302 of ERISA and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds $1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, the PBGC will consider the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of ERISA and section 412(n) of the Code, the PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with § 4043.3(d).

PART 4065—ANNUAL REPORT

5. The authority citation for part 4065 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1365.

6. Section 4065.3 is amended by redesignating the existing text as paragraph (b); and adding a new paragraph (a) to read as follows:

§ 4065.3 Filing requirement.

(a) The requirement to report the occurrence of a reportable event under section 4043 of ERISA in the Annual Report is waived.

Issued in Washington, DC, this 27th day of November 1996.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 96–30779 Filed 11–29–96; 8:45 am]

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Federal Register

Monday
December 2, 1996

Part VIII

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 8

Assessment Fees; National Banks, District of Columbia Banks; Interim Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 96–27]

RIN 1557–AB41

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulation governing assessments by providing that national banks that are not the largest national bank in a bank holding company (referred to as non-lead banks) will pay assessments that are less than these banks otherwise would pay. This amendment reflects the cost savings that are realized by the OCC's Supervision by Risk Program, whereby the OCC focuses on the risk profile of a consolidated company. The intended effect of this rulemaking is to enable the OCC to lower assessments on non-lead banks.

DATES: This interim rule is effective on December 2, 1996. Comments must be received by January 31, 1997.

ADDRESSES: Comments should be directed to, and may be inspected and copied at: Communications Division, OCC, 250 E Street, SW., Washington, D.C. 20219, Attention: Docket No. 96–27. In addition, comments may be sent via FAX, at (202) 874–5274 or via Internet at regs.comments@occ.treas.gov

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Assistant Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; Patricia S. Grady, Senior Attorney, Administrative and Internal Law Division, (202) 874–4460; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2,800 national banks and 66 federal branches and agencies of foreign banks in the U.S., accounting for more than half the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The OCC funds the activities that further this mission by imposing assessments, fees, and other charges on national banks, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank a semiannual assessment according to a formula that is described in part 8 of the agency's regulations (12 CFR part 8). In general, a national bank's semiannual assessment is computed as follows. First, the bank identifies its asset-size category by consulting the chart setting out ten such categories that is contained in part 8. Once the bank determines its asset-size category, the bank then calculates its assessment by adding two numbers. The first number is called the ''base amount,'' [1] and is provided by the OCC to all banks in the annual ''Notice of Comptroller of the Currency Fees'' (Notice of Fees) and in each semiannual assessment notice (Assessment Notice). Each bank derives the second number by multiplying the ''marginal rate'' for the bank's asset-size category, which also is provided by the OCC in the Notice of Fees and Assessment Notices, by the amount of the bank's assets that exceeds the next lowest asset-size category threshold. The bank then adds the product of this multiplication to the base amount to arrive at its total assessment.

The variables in this formula allow the OCC some flexibility in adjusting assessments to reflect its costs. For example, the applicable marginal rate declines as asset size grows, resulting in the lowest marginal rates applying to assets in the largest asset-size categories. This regressive rate structure reflects the OCC's experience that the economies of scale realized in the examination and supervision of large institutions allow a proportionately smaller expenditure of OCC resources than is required in the case of smaller banks.[2]

The regulation being amended by this rulemaking does not, however, reflect the significant additional economies now being realized as a result of the OCC's new risk-based approach to bank supervision. The OCC's Supervision by Risk Program creates the potential for cost savings in the OCC's supervision of banks in holding company structures that the current regulation does not reflect. Under this program, the OCC focuses on the risk profile of the consolidated company in recognition of the fact that exposure to risk at the national bank level may be either mitigated or increased by activities company-wide.[3]

To implement the Supervision by Risk program effectively, the OCC must obtain the information necessary to evaluate risks to a national bank that may be presented by other entities in the banking organization. Many banks already use information systems that integrate data from affiliated companies. This type of system facilitates retrieval of the data by OCC examiners, which, in turn, reduces the costs incurred by the OCC in obtaining the information that is essential to the supervisory process. In the OCC's experience, the largest national bank in a bank holding company often has systems that are sufficiently comprehensive, detailed, and reliable to facilitate company-wide risk evaluation.

The declining marginal rate structure in the current assessment regulation reflects the economies of scale realized in the OCC's examination and supervision of large banks, but the rule does not reflect the additional economies that result when the OCC can facilitate its supervision of smaller banks in a bank holding company by relying on information that is available from the largest national bank in that holding company. As a consequence, under the current regulation, a non-lead bank (defined as any national bank in a bank holding company other than the largest national bank) would pay an assessment that does not necessarily reflect these efficiencies.[4] This rulemaking changes the current regulation, consistent with the OCC's supervision-by-risk approach, to enable the OCC to reduce the assessments to be paid by non-lead national banks in a bank holding company.

Although the Supervision by Risk Program requires the OCC to focus on the risk profile of the consolidated company, the OCC also must continue to examine and supervise each national bank within a banking organization. Reviewing related banks in a banking

[1] The base amount for a given bank is calculated by the OCC by multiplying the lower endpoint of a bank's asset-size category by a ''marginal rate'' determined by the OCC. For a more complete description of the way in which the OCC computes the base amount, see 12 CFR 8.2(a)(1).

[2] *See, e.g.*, 53 FR. 31705 (August 19, 1988) (''Fixed costs of supervision, such as basic preparatory tasks, do not vary proportionately from small to large banks. Further, statistical techniques used in the examination process permit larger institutions to be examined with proportionately fewer resources.'').

[3] For further discussion of the OCC's Supervision by Risk Program, *see* various components of the *Comptroller's Handbook*, including especially the components entitled ''Bank Supervision Process'' (April 1996) and ''Large Bank Supervision'' (December 1995).

[4] This situation is not present in the case of a national bank that is not in a holding company structure, because there is no similar opportunity for the OCC to conduct a significant amount of its supervision of the bank by obtaining information from an affiliated bank.

organization as if they comprised one consolidated entity would ignore the fact that not all aspects of the OCC's supervision can be accomplished by viewing a banking organization on a whole-company basis. Important components of the OCC's supervision are charter-specific and require examination at the individual bank level. For example, if one national bank in a banking organization engages in certain specialized or sophisticated activities (such as capital markets activities) but the others do not, reviewing consolidated information on a whole-company basis may not permit the OCC to evaluate the condition of the bank engaged in the specialized or sophisticated activity. Careful review at the bank level is necessary to ensure that each national bank conducts its operations safely and soundly and in a manner that comports with applicable law.

The OCC also must examine each national bank to ensure each bank's compliance with the fair lending and consumer protection laws that the OCC administers. The Community Reinvestment Act (CRA), for instance, requires the OCC to assess each national bank's record of meeting the credit needs of the bank's entire community. 12 U.S.C. 2903. Consistent with this statutory mandate, the OCC conducts a CRA examination of every national bank. Similarly, the OCC examines every national bank in order to determine compliance with laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the Truth-in-Lending Act (15 U.S.C. 1601 *et seq.*). Effective supervision in these areas requires the OCC to conduct bank-by-bank reviews of loan files and practices.

In order to better reflect the costs incurred by the OCC in carrying out its diverse supervisory responsibilities, this interim rule retains the requirement that each national bank pay an assessment but adds a provision to part 8 that states that the OCC will charge a non-lead national bank an assessment that will be less than the bank otherwise would pay if it were either the lead bank in a holding company or independent.

Description of the Interim Rule

Pursuant to new § 8.2(a)(6), the OCC will charge a non-lead national bank an assessment that will be lower than the assessment the bank otherwise would pay. The specific percentage of the assessment reduction will be provided in the semiannnual Assessment Notice. New § 8.2(a)(6)(ii)(B) defines *lead bank* as the largest national bank controlled by a bank holding company, based on a comparison of the total assets held by each national bank owned by that bank holding company as reported in the Consolidated Reports of Condition and Income that the national banks in question file for the quarter immediately preceding the payment of a semiannual assessment. The rule defines *bank holding company* and *control* as having the same meanings as these terms have in section 2 of the Bank Holding Company Act of 1956 (BHCA) (12 U.S.C. 1841(a)(1) and (a)(2), respectively). Generally speaking, a company is a bank holding company under the BHCA if it controls a bank. A company will be deemed to control a bank if the company owns, controls, or has power to vote at least 25 percent of any class of the bank's voting securities, controls the election of a majority of the bank's directors, or is found to exercise a controlling influence over the management or policies of the bank.

Each non-lead national bank will continue to compute the components of its assessment under the interim rule in the same way as it currently does, as summarized at the outset of this preamble discussion. However, once a non-lead bank determines these components, it then will reduce the sum of the components by the percentage specified in the Notice of Fees in order to determine its assessment.

The interim rule also deletes the provisions in current part 8 prohibiting the proration of assessments. The current rule states that each bank and Federal branch or agency that is subject to the OCC's jurisdiction must pay the full amount of its assessment for the next six-month period, ''without proration for any reason.'' 12 C.F.R. § 8.2(a)(5) and (b). This prohibition is inconsistent with the reduction in non-lead banks'' assessments because the reduction is effectively a proration of these banks' assessments. The interim rule removes the prohibition against prorations in order to avoid creating an inconsistency within the regulation.

The OCC solicits comment on these amendments made to reflect differences in the costs of the OCC's supervision based on the organizational structure in which a national bank operates. The OCC also welcomes comment on any other aspect of this interim rule.

Use of Immediately Effective Interim Rule

The OCC has determined that notice and comment is not required before adopting the rule. The interim rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedures Act (5 U.S.C. 500 et seq.). The determination of how assessments are imposed is internal to the OCC, since the Comptroller is required to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks by enabling the OCC to lower the total amount of assessments paid by affiliated national banks. It will not have the effect of raising the assessment of any national bank.

The agency also has determined that the rule may be immediately effective pursuant to 5 U.S.C. 553(d)(1) and (d)(3). By enabling the OCC to reduce assessments, the rulemaking will have the effect of granting a partial exemption from the assessment obligations that otherwise would apply to non-lead banks. Accordingly, the rule may be immediately effective under 5 U.S.C. 553(d)(1). There also is good cause to dispense with a delayed effective date under 5 U.S.C. 553(d)(3), namely, that the interim rule needs to be effective in time to ensure that reductions will be reflected in the Notice of Comptroller of the Currency Fees that will be mailed in early December to all national banks.

The OCC will continue to provide each national bank a semiannual Assessment Notice, and national banks will continue to have at least 30 days following receipt of a semiannual assessment notice in which to pay the assessment. Although the OCC is not required to provide notice and public comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A) and (b)(B), the OCC invites comment on any aspect of this interim rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply to this interim rule. The Regulatory Flexibility Act applies whenever an agency is required by 5 U.S.C. 553 or any other law to publish general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603(a). As is explained more fully in the preceding section captioned ''Use of Immediately Effective Interim Rule,'' publication of this rule for comment is unnecessary and contrary to the public interest. Accordingly, section 553 does not require the OCC to publish general notice of a proposed rulemaking (*see* 5 U.S.C. 553(b)(A) and (b)(B)).

Further, there is no other law that requires the OCC to publish a proposed rule concerning assessments. Section 5240 of the Revised Statutes (12 U.S.C. 481 and 482) authorizes the OCC to impose and collect assessments as necessary or appropriate (12 U.S.C. 482), but does not require the OCC to implement that grant of authority by means of a regulation. Since the OCC is not required to publish a general notice of proposed rulemaking for this rule, the Regulatory Flexibility Act does not apply.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the interim rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As discussed in the preamble, the interim rule will enable the OCC to reduce the amount of the assessments paid by non-lead banks in a banking organization.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, and 3102; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. In § 8.2, paragraph (b) is redesignated as paragraph (b)(1) and the two undesignated paragraphs at the end of the section are designated as paragraphs (b)(2) and (b)(3), respectively.

3. In § 8.2, the last sentence of paragraph (a)(5) and the last sentence of newly designated paragraph (b)(3) are amended by removing the phrase ''without proration for any reason''.

4. Section 8.2 is amended by adding a new paragraph (a)(6) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(6)(i) Notwithstanding any other provision of this part, the OCC shall charge each non-lead bank a semiannual assessment that is less than the amount of the semiannual assessment that the bank otherwise would be required to pay under the Notice of Comptroller of the Currency Fees described in § 8.8. The OCC will specify the percentage of the reduction of assessments for non-lead banks in the Notice of Comptroller of the Currency Fees.

(ii) For purposes of this paragraph (a)(6):

(A) *Non-lead bank* means a national bank that is not the lead bank in a bank holding company that controls two or more national banks;

(B) *Lead bank* means the largest national bank controlled by a bank holding company, based on a comparison of the total assets held by each national bank owned by that bank holding company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment; and

(C) *Bank holding company* and *control* have the same meanings as these terms have in sections 2(a)(1) and 2(a)(2), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)(1) and (a)(2)).

* * * * *

Dated: November 27, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–30763 Filed 11–29–96; 8:45 am]

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Federal Register

Monday
December 2, 1966

Part IX

Nuclear Regulatory Commission

Power Authority of the State of New York

James A. Fitzpatrick Nuclear Power Plant, Environmental Assessment and Finding of no Significant Impact

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York, James A. Fitzpatrick Nuclear Power Plant, Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59, issued to Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant (JAFNPP), located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action: This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application to amend the JAFNPP operating license dated June 12, 1992, as supplemented by letters dated September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, December 29, 1993, June 29, 1995, August 15, 1996, October 3, 1996, and October 23, 1996. The proposed amendment would increase the licensed core thermal power from 2436 MWt to 2536 MWt, which represents an approximate increase of 4.1% thermal power over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) (Reference 1) and approved by the U.S. Nuclear Regulatory Commission (NRC) staff in a letter from W. Russell, NRC, to P. Marriotte, GE, dated September 30, 1991 (Reference 2). Implementation of the proposed power uprate at JAFNPP will result in a 4.8% increase in rated steam flow. New fuel designs are not needed for power uprate. New fuel designs may be used to provide additional operating flexibility and maintain fuel cycle length. The higher power level will be achieved by extending the power/flow map by increasing core flow along existing flow control lines. The maximum recirculation flow limit will not be increased. Uprated operation will involve a slightly higher reactor vessel dome pressure. Implementation of this proposed power uprate will require minor modifications, such as, resetting of the low set safety relief setpoints, as well as the calibration of plant instrumentation to reflect the uprated power. Plant operating, emergency, and other procedure changes will be made where necessary to support uprated operation.

The proposed action involves NRC issuance of a license amendment to uprate the authorized power level by changing the operating license, including Appendix A of the license (Technical Specifications).

The Need for the Proposed Action

The proposed action is needed to allow the licensee to increase the potential electrical output of JAFNPP by approximately 32 megawatts-electric. The power uprate program at JAFNPP would provide additional electric power to service domestic and commercial areas of the licensee's grid.
Environmental Impacts of the Proposed Action:

The ''Final Environmental Statement (FES) related to operation of FitzPatrick Nuclear Power Plant'' issued in March 1973 (Reference 4) assumed a maximum power level of 2550 MWt in it's analyses. By letter dated June 12, 1992, the licensee submitted the proposed amendment to implement power uprate for JAFNPP, which is the subject of this environmental assessment the uprated power level would be 2536 MWt. The uprated power level would be within the bounding analysis of the FES. Section 11.3 of the JAFNPP power uprate licensing topical report (GE report NEDC–32016P, Revision 1,) which was submitted on August 18, 1993, provided an environmental assessment of the proposed power uprate. Some environmental effects will remain the same, while power uprate may nominally increase others. Actual effects are at worst proportional to the approximately 4.8% increase of original steam flow.

The licensee provided information regarding the nonradiological and radiological environmental effects of the proposed action in the licensee's application to amend the JAFNPP operating license dated June 12, 1992, as supplemented by letters dated September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, December 29, 1993, June 29, 1995, August 15, 1996 October 3, 1996, and October 23, 1996.

The Commission has completed its evaluation of the proposed action and concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendment. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendments is provided below. Nonradiological Environmental Assessment:

Power uprate will not change the method of generating electricity nor the method of handling any influents from nor effluents to the environment. Therefore, no new or different types of environmental impacts are expected. The evaluation is based upon information provided by the licensee in an April 1993 GE licensing topical report supporting the JAFNPP power uprate.

The nonradiological environmental effects of the uprate will be controlled at the same levels as for the original analysis except for a small (<5%) heat addition to Lake Ontario. All other limits for the plant environmental releases, such as maximum lake return temperature, lake water maximum change in temperature, and plant vent radiological limits will not be increased or exceeded as a consequence of uprate. NYPA was notified by the New York State Department of Environmental Conservation, by letter dated December 1, 1995, that the State Pollutant Discharge Elimination System Permit for the facility was modified to allow a net heat addition of 6.00x109 Btu/hr to Lake Ontario.

This change will eliminate the need to reduce power during uprate operations during periods of high lake temperature. The vast majority of the time FitzPatrick can be operated at full uprated power and remain within pre-uprate limits. Therefore, the environmental impact of power uprate is not significant.

Nonradiological effluent discharges from other systems were also considered. Nonradiological effluent limits for systems such as floor and equipment drains are established in SPDES permit. Discharges from these systems are not expected to change significantly, if at all, because operation at uprated power levels are governed by the limits in the SPDES permit. Thus, the staff finds that the impact on the environment from those systems as a result of operation at uprated power levels is not significant.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Radiological Environmental Assessment

The licensee evaluated the impact of the proposed power uprate amendment to show that the applicable regulatory

acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. In conducting this evaluation, the licensee considered the effect of the higher power level on liquid radioactive wastes, gaseous radioactive wastes, and radiation levels both in the plant and offsite during both normal and post-accident conditions.

The liquid radwaste treatment systems receive inputs from a variety of sources (e.g. leakage from component cooling water system, reactor coolant system, condensate and feedwater system, turbine plant cooling water system, and auxiliary steam system). Leakages from these systems are not expected to increase significantly since the operating pressures of these systems are either being maintained constant or are being increased only slightly due to the proposed power uprate.

The largest single source of liquid radioactive waste is from the ultrasonic cleaning of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally to 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 result in a slight decrease in the time interval between ultrasonic cleaning or regeneration of the condensate demineralizers. The reported time between ultrasonic cleaning or regeneration is 65 days and is not expected to decrease significantly at uprate. Based on a review of plant effluent reports and the slight increase expected due to the proposed power uprate, the NRC staff has concluded that the slight increase in the processing of liquid radioactive wastes will not have a significant increase in environmental impact and that the requirements of 10 CFR Part 20 and 10 CFR Part 50, Appendix I, will continue to be met.

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 offgas 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. The concentration of activation products contained in the reactor coolant is expected to remain unchanged, since the linear increase in the production of these activation products will be offset by the linear increase in steaming rate. Therefore, based on its review of the various building ventilation systems, the NRC staff has concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 4.8% during uprated power conditions. The offgas system was originally designed for 105 percent of warranted steam flow which would not be exceeded during operation at the proposed uprated power level. Therefore, no changes will be required in the offgas system since the offgas system will be operated within the original evaluated design condition. There will be no environmental impact that was not previously evaluated.

The SGTS is designed to minimize offsite and control room radiation dose rates during venting and purging of both the primary and secondary containment atmosphere under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure (more negative than or equal to -0.25 inch water gauge) 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 affected by power uprate. The charcoal filter beds are unaffected by power uprate. The total post-LOCA iodine loading increases slightly at the uprated conditions, there are no radiological consequences because the increased loading remains within the design absorption capacity of the filter beds. Therefore, the staff finds there would be no significant increase in environmental impact.

The licensee has evaluated the effects of the power uprate on in-plant radiation levels in the JAFNPP facility during both normal operation and post-accident. The licensee has concluded that radiation levels during both normal operation and post-accident may increase slightly (at most, proportional to the increase in power level). The slight increases in in-plant radiation levels expected due to the proposed power uprate are not expected to affect radiation zoning or shielding requirements. Individual worker occupational exposures will be maintained within acceptable limits by the existing Health Physics program which the licensee uses to control access to radiation areas.

Therefore, the NRC staff has concluded that the slightly increased in-plant radiation levels will not have a significant environmental impact. The offsite doses associated with normal operation are not significantly affected by operation at the proposed uprated power level and are expected to remain well within the limits of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. These limits are imposed by Technical Specification which will not be changed by the proposed power uprate.

Therefore, the NRC staff has concluded that the offsite doses due to normal operation at the proposed uprate conditions will not result in a significant environmental impact.

The licensee considered the following design basis accidents in the re-assessment of the radiological consequences at JAFNPP under power uprate conditions:

(1) LOCA (drywell leakage and ESF component leakage pathways),

(2) Main Steam Line Break (MSLB) outside containment,

(3) Control Rod Drop Accident (CRDA), and

(4) Refueling Accident (RA)

The basic data and assumptions in each of the four accident scenarios are consistent with the current licensing basis and the models in the Standard Review Plan (US NRC NUREG–0800) and applicable regulatory guides. The highest immersion dose to an offsite receptor is 11.2 rem, to the thyroid at the low population zone following a design basis LOCA. The worst case offsite dose with respect to the regulatory limits is the post-LOCA whole body dose at the site boundary, which amounts to 8.5% of the limit. For the control room, the worst case immersion dose is to the thyroid following a CRDA. It amounts to approximately 77% of the regulatory limit. 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 SRP and 10 CFR Part 100 and also comply with the dose acceptance criteria for control room operators given in General Design

Criteria (GDC) 19 of Appendix A to 10 CFR Part 50. The staff concludes that the offsite radiological consequences and control room operator doses for all DBAs at the uprated power level will continue to meet the acceptance criteria of the SRP, 10 CFR Part 100, and GDC 19.

The power uprate will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Alternatives to the Proposed Action:

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on April 22, 1996, the staff consulted with the New York State official, F. William Valentino of the New York State Energy, Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 12, 1992, as supplemented by letters dated September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, December 29, 1993, and June 29, 1995, 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 Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

References

1. GE Nuclear Energy, ''Generic Guidelines for General Electric Boiling Water Reactor Power Uprate,'' Licensing Topical Report NEDO–31897, Class 1 (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. Final Environmental Statement related to operation of James A. FitzPatrick Nuclear Power Plant, March 1973.

Dated at Rockville, Maryland, this 26th day of November 1996.

For the Nuclear Regulatory Commission

S. Singh Bajwa,

Acting Director, Project Directorate I–1 Division of Reactor Projects-I/II Office of Nuclear Reactor Regulation

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Vol. 61, No. 232

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Japanese beetle; published 11-1-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

California coho salmon; published 10-31-96

Fishery conservation and management:

Northeastern United States fisheries--

Summer flounder and scup; published 10-31-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Organization, functions, and authority delegations:

Communications with agency; mailroom site creation, mailing addresses, etc.; published 11-1-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Operating permit program; published 10-31-96

Air quality implementation plans; approval and promulgation; various States:

Arizona; published 10-3-96

Kansas; published 10-2-96

New York; published 10-1-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Triadimefon; published 12-2-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

California; published 10-29-96

Kentucky; published 10-30-96

Texas; published 10-29-96

FEDERAL TRADE COMMISSION

Industry guides:

Leather and imitation leather products, select; published 10-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

New drug applications--

Pyrantel pamoate suspension; published 12-2-96

Sulfaquinoxaline solution; published 12-2-96

Sponsor name and address changes--

Biocraft Laboratories, Inc., et al.; published 12-2-96

Fort Dodge Animal Health; published 12-2-96

Hoechst Roussel Vet.; published 12-2-96

SOCIAL SECURITY ADMINISTRATION

Black lung benefits:

Overpayment appeal and waiver rights; published 10-31-96

Supplemental security income:

Aged, blind, and disabled--

Lawful admission for permanent residence in the U.S.; documentation requirements; published 10-31-96

STATE DEPARTMENT

Visas; immigrant and nonimmigrant documentation:

Designation by Deputy Assistant Secretary of geographical areas over which consular offices have jurisdiction to process nonimmigrant visas; published 11-1-96

TRANSPORTATION DEPARTMENT

Nondiscrimination on basis of handicap in federally assisted programs and activities and in air travel; published 11-1-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions--

de Havilland; DHC-8-400 airplane; published 11-1-96

TREASURY DEPARTMENT

Comptroller of the Currency

Fees assesment; national and District of Columbia banks:

Non-lead banks; lower assessments; published 12-2-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit research, promotion, and consumer information order; comments due by 12-2-96; published 10-2-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Ports designation--

Atlanta, GA; comments due by 12-6-96; published 10-7-96

Federal Seed Act:

Imported seed and screenings; comments due by 12-3-96; published 10-4-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Peanuts; comments due by 12-3-96; published 11-25-96

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Commerce control list--

Commercial communications satellites; enhanced national and foreign policy controls; comments due by 12-5-96; published 10-21-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:

Nucleotide and/or amino acid sequence listings; changes; comments due by 12-3-96; published 10-4-96

Patent practitioners; registration examination, continuing education requirement, and annual fee; comments due by 12-6-96; published 9-30-96

EDUCATION DEPARTMENT

Elementary and secondary education:

Impact aid program; comments due by 12-6-96; published 10-7-96

Postsecondary education:

Strengthening institutions program, strengthening historically black colleges and universities program, etc.; Federal regulatory review; comments due by 12-6-96; published 10-7-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection--

Refrigerant recycling; reclamation requirements extension; comments due by 12-2-96; published 11-1-96

Air quality implementation plans:

Preparation, adoption, and submittal--

Prevention of significant deterioration and nonattainment new source review; Federal regulatory review; comments due by 12-5-96; published 10-25-96

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-2-96; published 11-1-96

Colorado; comments due by 12-2-96; published 10-3-96

Maryland; comments due by 12-2-96; published 10-31-96

New Jersey; comments due by 12-2-96; published 10-31-96

New York et al.; comments due by 12-5-96; published 11-5-96

Virginia; comments due by 12-6-96; published 11-6-96

Hazardous waste:

State underground storage tank program approvals--

Massachusetts; comments due by 12-2-96; published 10-31-96

Pesticide programs:

Pesticides and ground water strategy; State management plan regulation; comments due by 12-6-96; published 11-6-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
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1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
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

Title	Stock Number	Price	Revision Date
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
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)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
*1927–End	(869–028–00116–5)	38.00	July 1, 1996
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	(869–028–00128–9)	26.00	July 1, 1996
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	(869–028–00133–5)	46.00	July 1, 1996
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	(869–028–00138–6)	34.00	July 1, 1996
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	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
*60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●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	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●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	(869–028–00170–0)	14.00	[6] 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

Title	Stock Number	Price	Revision Date
●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
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.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1995. The CFR volume issued October 1, 1995 should be retained.