12–10–96
Vol. 61 No. 238
Pages 64959–65146

federal register

Tuesday
December 10, 1996

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV96–920–3 FIR]

Kiwifruit Grown in California; Reduction of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule reducing the reporting requirements for California kiwifruit handlers who ship less than 10,000 trays or tray equivalents per fiscal year. The changes in reporting requirements were unanimously recommended by the Kiwifruit Administrative Committee (Committee), the agency responsible for the local administration of the Federal marketing order for kiwifruit grown in California. This final rule decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the ''Act.''

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

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

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

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

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

There are approximately 65 handlers of kiwifruit who are subject to regulation under the marketing order and approximately 500 producers of kiwifruit in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of kiwifruit handlers and producers may be classified as small entities.

This rule finalizes a reduction in the number of reports required to be filed by small kiwifruit handlers (those who handle less than 10,000 tray equivalents per year). The decrease in the number of reports required to be filed should not inhibit the effective operation of the order. It is estimated that less than 100,000 tray equivalents will be shipped by those eligible for the reduced reporting requirement, or approximately one percent of California kiwifruit production. A majority of these small volume handlers, eligible for the reduced reporting requirement, sell fruit for two to five growers. Generally, kiwifruit shipments are small and may consist of less than 50 trays at a time. Shipment information from these small volume handlers will be added into the total shipments at the end of each fiscal year. The lack of shipment information that will be provided by these handlers on a monthly basis is insignificant. The Committee is still able to levy assessments on those handlers eligible for the reduced reporting requirement based on the information in the shipment reports that is still required twice per season.

This rule directly benefits small kiwifruit handlers. It is anticipated that approximately 20 of the 65 handlers are eligible for the reduced reporting burden authorized by this rule. These handlers will not be required to file biweekly inventory reports and will be required to file shipment reports less frequently. It is estimated that the reporting burden for each of these 20 handlers will decrease by an average of 12 hours per year, for a total reduction of 240 hours.

The range of volume of kiwifruit handled by kiwifruit handlers is extremely broad with some handlers handling as few as 50 tray equivalents and others over 1 million tray equivalents. The majority of handlers fall in the middle and on average ship between 100,000 and 800,000 tray equivalents.

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

An interim final rule was issued on September 27, 1996, and published in the Federal Register (61 FR 51575, October 3, 1996), with an effective date of October 4, 1996. That rule amended § 920.160 (a) and (b), of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended November 4, 1996. No comments were received.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. In addition, the order authorizes the Committee to collect information from kiwifruit handlers in order to efficiently operate the program.

The Committee met on June 12, 1996, and unanimously recommended reducing the reporting burden for handlers who ship less than 10,000 tray equivalents per season. Such handlers, if they qualified with the Committee, will no longer be required to complete biweekly inventory reports and will only be required to fill out a monthly shipment report twice per year.

Section 920.60 of the order authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Prior to the effective date of the interim final rule, section 920.160(a) of the order's rules and regulations required a report of shipments to be filed with the Committee by the fifth day of the month following such shipment, or such other later time established by the Committee. This report is used to compile statistical information on shipments and to calculate assessments owed under the marketing order. Pursuant to § 920.160(b) each handler had to file a Kiwifruit Inventory Shipment System (KISS) report on the fifth and twentieth day of each month. The information collected in the KISS report is used to track inventories of California kiwifruit and provide inventory statistics, in aggregate, to the industry. Both of these reports are also required under the authority of the California Kiwifruit Commission (State Commission), which administers a State program.

Prior to the 1995–96 season, the State Commission determined that the reporting burden of the KISS report and the shipment report was disproportionately impacting small volume handlers. As a result, the State Commission created an alternate reporting system, known as ''Reporting EZ.'' It allows handlers who ship less than 10,000 tray equivalents per season to file the shipment report twice per season instead of monthly and exempts handlers from filing the KISS report.

Similarly, this rule reduces the frequency that the shipment report is filed and eliminates the filing of a KISS report for those handlers that ship less than 10,000 trays or tray equivalents per fiscal year so that the ''Reporting EZ'' program is authorized under both the State program and the Federal order. Handlers shipping under 10,000 trays or tray equivalents per season only have to fill out the shipment report twice per year. The first report is due January 5 or such other later time established by the Committee and includes information on fresh shipments from the beginning of the fiscal year (August 1 through December 31). The second shipment report is due the fifth day of the month following each handler's last shipment for the season and includes shipments from January 1 until the end of shipping season.

In order for a handler to qualify for the ''Reporting EZ'' program, the Committee must make a determination prior to October 31 (near the beginning of the shipping season). The information that the Committee will use to determine whether a handler is qualified is available from the State Commission. The State Commission already requires handlers to submit information in order to determine whether a handler intends to ship under 10,000 tray equivalents per year. Thus, the Committee does not need to place any additional reporting burden on kiwifruit handlers in order to determine handler eligibility for the ''Reporting EZ'' program. The State Commission and the Committee have a written memorandum of understanding that provides for the sharing of information while keeping proprietary information confidential. Once the handler has qualified, the Committee will then notify handlers that they are eligible for the ''Reporting EZ'' program.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (Pub. L. 104–13) and have been assigned OMB number 0581–0149.

This final rule reduces the reporting burden on approximately 20 handlers of kiwifruit who have been spending approximately 240 hours completing the shipment reports and the KISS reports.

After consideration of all relevant material presented, the information and recommendation submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 51575, October 3, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 61 FR 51575 on October 3, 1996, is adopted as a final rule without change.

Dated: December 4, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31350 Filed 12–9–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its assessment regulations by adopting interpretive rules pertaining to transactions in which an institution belonging to one insurance fund acquires deposits that are treated as insured by the other insurance fund (Oakar transactions). The FDIC is codifying and refining its procedures for determining the amount of the deposits so acquired and for attributing the deposits to the two insurance funds. In addition, recent merger and branch-sale cases have revealed certain weaknesses in the FDIC's procedures for computing the growth of the amounts so attributed.

The interpretive rules repair those weaknesses. The FDIC is also simplifying and clarifying the existing rule by making changes in nomenclature.

EFFECTIVE DATE: The final rule is effective January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance, (202) 898–8658; Allan Long, Assistant Director, Division of Finance, (202) 416–6991; Jules Bernard, Counsel, Legal Division, (202) 898–3731, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This interpretive regulation addresses the computation of assessments paid by Oakar institutions. An Oakar institution is one that is a member of one insurance fund (the institution's primary fund), but holds deposits that are treated as insured by the other fund (the institution's secondary fund). The regulation directly affects all Oakar institutions. The regulation also indirectly affects non-Oakar institutions, because it alters the business considerations that they must take into account when they transfer deposits to or from an Oakar institution (or to an institution that becomes an Oakar institution as a result of the transfer).

I. Background

Section 7(l) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(l), says that upon becoming insured, a depository institution becomes a member either of the Bank Insurance Fund (BIF) or of the Savings Association Insurance Fund (SAIF).

Section 5(d)(2) of the FDI Act, *id.* 1815(d)(2), maintains the separation between the BIF and the SAIF. Section 5(d)(2) says that no institution may participate in a ''conversion transaction'' without the FDIC's prior approval. *Id.* 1815(d)(2)(A)(i). A ''conversion transaction'' includes, *inter alia,* any inter-fund deposit-transfer transaction: that is, any merger, acquisition, or other transaction in which a BIF member assumes the obligation to pay deposits owed by a SAIF member (or conversely). *Id.* 1815(d)(2)(B) (ii), (iii) and (iv). Each institution that participates in such a transaction—whether as the acquiring or resulting institution (buyer) or as the transferring or merging institution (seller)—must pay an entrance fee to one insurance fund and an exit fee to the other fund. *Id.* 1815(d)(2)(F). The fees are substantial. *See* 12 CFR part 312.

When an institution acquires deposits pursuant to section 5(d)(2) and pays the requisite fees, the deposits so assumed become insured by the buyer's primary fund (primary-fund deposits). Until recently the SAIF assessment rate has been substantially higher than the BIF assessment rate. Some institutions that have assumed SAIF-assessable deposits have found it advantageous to pay the fees and convert the deposits to BIF-assessable ones.

There is also another avenue open to institutions that would like to engage in inter-fund deposit-transfer transactions. Section 5(d)(3) of the FDI Act, *id.* 1815(d)(3), known as the Oakar Amendment, allows institutions to participate in such transactions without paying entrance and exit fees, but only under certain conditions. The most prominent conditions are these:

—The buyer becomes subject to assessment by the seller's insurance fund, *see id.* 1815(d)(3)(B) and (D); and

—The acquired deposits remain insured by the seller's insurance fund, which is the secondary fund of the buyer (secondary-fund deposits). *Id.* 1815(d)(3) (B) and (H).

An inter-fund deposit-transfer transaction that proceeds under the authority of the Oakar amendment is called an Oakar transaction.

The Oakar Amendment introduces the concept of the ''adjusted attributable deposit amount'' (AADA). An AADA is an artificial construct: a number, expressed in dollars, that is generated in the course of an Oakar transaction, and that pertains to the buyer. When an AADA is first generated, its value is equal to the amount of the secondary-fund deposits that the buyer has acquired from the seller. The value remains constant until the end of the semiannual period in which the transaction occurs.

Thereafter the AADA increases or decreases at the same underlying rate as the buyer's overall deposit base—that is, at the rate of growth or shrinkage due to its ordinary business operations, not counting growth due to the acquisition of deposits from another institution (*e.g.*, in a merger or a branch purchase). *See id.* 1815(d)(3)(C).

An Oakar institution's AADA is used for the following purposes:

—*Assessments.* An Oakar institution pays two assessments: one for deposit in its secondary fund, and the other for deposit in its primary fund. The secondary-fund assessment is based on the portion of the assessment base that is equal to the AADA. The primary-fund assessment is based on the remaining portion of the assessment base.

—*Insurance.* The AADA fixes the amount of the institution's deposits that is to be ''treated as'' insured by an Oakar institution's secondary fund (secondary-fund deposits). The remaining portion of the institution's deposits is insured by the primary fund (primary-fund deposits). If an Oakar institution fails, and the failure causes a loss to the FDIC, the two insurance funds share the loss in proportion to the amounts of deposits that they insure.

An Oakar institution's AADA is used prospectively. That is to say, an Oakar institution's AADA for a current semiannual period is set at the start of that period, and is used to compute the institution's assessment for that current semiannual period.[1]

II. The Final Rule

The FDIC has issued a proposed rule asking for comment on the interpretations that are the subject of the final rule. 61 *FR* 34751 (July 3, 1996). The comment period remained open until September 4, 1996. The FDIC has received 20 comments: 10 from banks; eight from bank holding companies; and two from trade groups. After the comment period closed, however, Congress passed and the President signed the Deposit Insurance Funds Act of 1996 (Funds Act), Pub. L. 104–208, 110 Stat. 3009 *et seq.* The Funds Act has altered the economic environment for Oakar institutions, thereby mooting some of the comments.

The Funds Act makes two changes that, taken together, will cause the FDIC to lower SAIF rates substantially. The Funds Act requires the FDIC to capitalize the SAIF—that is, to raise the Savings Association Insurance Fund reserve ratio to the designated reserve ratio (DRR)[2]—as of October 1, 1996, by imposing a special assessment on all SAIF-assessable institutions. Funds Act, section 2702(a); *see* 61 *FR* 53834 (Oct.

[1] Technically, each Oakar transaction generates its own AADA. Oakar institutions typically participate in several Oakar transactions. Accordingly, an Oakar institution generally has an overall or composite AADA that consists of all the individual AADAs generated in the various Oakar transactions, plus the growth attributable to each individual AADA. The composite AADA can generally be treated as a unit, however, because all the constituent AADAs (except initial AADAs) grow at the same rate.

[2] The Savings Association Insurance Fund reserve ratio is the ratio of the SAIF's net worth to the aggregate amount of deposits insured by the SAIF. 12 U.S.C. 1817(l)(7). The designated reserve ratio (DRR) is a target ratio that has a fixed value for each year. The DRR is currently set by statute at 1.25 percentum; the FDIC may increase the ratio under certain conditions. *Id.* 1817(b)(2)(A)(iv).

16, 1996) (imposing the special assessment). When the SAIF is capitalized at the DRR, the FDIC may not (generally) impose higher SAIF assessments than necessary to maintain the SAIF's capitalization at that level. 12 U.S.C. 1817(b)(2)(A)(iii).[3] In addition, the Funds Act has separated the assessments imposed by the Financing Corporation (FICO) from those imposed by the SAIF.[4] Beginning on January 1, 1997, the FICO assessments will no longer serve to reduce the amounts that the FDIC is authorized to assess for the SAIF: accordingly, the SAIF rates will no longer include the FICO draw.

In light of these developments, the FDIC has proposed to lower the most favorable SAIF rate to zero, and to modify the rest of the SAIF rate schedule. The proposed SAIF rates are set at the same levels as the current BIF rates. 61 *FR* 53867 (October 16, 1996).

These changes would reduce—but not eliminate—the difference between the rates for BIF-assessable deposits and SAIF-assessable ones. The Funds Act gives the FICO authority to assess all insured institutions, and also temporarily requires the FICO to assess SAIF-assessable deposits at a higher rate than BIFassessable deposits. From 1997 through 1999 (or when the last savings association ceases to exist, if that happens before the end of 1999), institutions will pay roughly 6.4 basis points to the FICO on their SAIF-assessable deposits, and roughly 1.3 basis points to the FICO on their BIF-assessable deposits. 12 U.S.C. 1441(f)(2)(A); *see* Funds Act, section 2703(a)(1). Accordingly, institutions still have some incentive to ''game'' the assessment rules for the purpose of shifting deposits from SAIF-assessable status to BIF-assessable status, although the incentive is much less than before.

The final rule ends some of the anomalies that institutions can use to engage in ''gaming'' strategies. The final rule also strengthens the correlation between the assessment that an institution pays to an insurance fund and the risk that the institution poses to that fund, and helps preserve the balance in the insurance responsibilities of the two funds.

A. Attribution of Transferred Deposits

Neither section 5(d)(2) nor the Oakar Amendment explicitly addresses the case of an Oakar institution that transfers deposits to another institution. The FDIC has by interpretation developed a procedure for attributing the transferred deposits to the BIF and the SAIF. *See* FDIC Advisory Op. 90–22, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4452 (1990) (*Rankin* letter). The *Rankin* letter adopts the principle that an Oakar institution transfers its primary-fund deposits first, and only begins to transfer its secondary-fund deposits after its primary-fund deposits have been exhausted.

The FDIC has asked for comment on the relative merits of the *Rankin* principle and an alternative approach: treating the transferred deposits as a blend of primary-fund and secondary-fund deposits. Under the blended-deposits approach, the FDIC would attribute the transferred deposits to the insurance funds in the same ratio as the overall deposits of the transferring Oakar institution (seller) were attributed immediately prior to the transfer.

The FDIC has received 15 comments that address this issue. Eight commenters (including one of the trade groups) favor the *Rankin* principle over the blended-deposits rule. Three prefer the blended-deposits rule to the *Rankin* principle. The remaining four (including the other trade group) express no preference as between these alternatives. Several commenters suggest other options (discussed below).

Having considered the comments, the FDIC has determined that the *Rankin* approach is preferable both to the blended-deposits rule and to the other options suggested by the commenters.

As a preliminary matter, it should be noted that two commenters aver that there is no statutory foundation for either the *Rankin* principle or the blended-deposits approach. The FDIC rejects this contention. The FDIC considers that it has ample authority to adopt either one of these deposit-attribution plans, and more generally has ample authority to prescribe a method for attributing deposits that an Oakar institution transfers to another institution. The contrary view would render section 5(d)(2) and the Oakar Amendment meaningless. If the FDIC had no such power, a BIF-member buyer could acquire deposits from a SAIF-member seller without paying entrance and exit fees simply by passing the deposits through an intermediary BIF-member Oakar bank. The barrier between the insurance funds would effectively disappear. Moreover, the acquired deposits would be neither SAIF-assessed nor SAIF-insured: contrary to Congress' intent, the private capital of the banking system would not help to bolster the SAIF. *See* 135 Cong. Rec. H4970 (Aug. 3, 1989) (statement of Rep. Oakar).

The FDIC accepts the proposition that an Oakar institution is a member of its primary fund only, and is not a member of its secondary fund even though it holds secondary-fund deposits. The FDIC adopted this view in the context of the original version of the Oakar Amendment, which as in effect at the time when the FDIC adopted the *Rankin* principle, and which made it abundantly clear that a BIF-member bank continued to be a BIF member after acquiring deposits from a SAIF member in an Oakar transaction. The Amendment carefully avoided characterizing the buyer as a SAIF member. On the contrary, the Amendment emphasized the point that the buyer was a BIF member that happened to owe a payment to the SAIF. To be sure, the SAIF was obliged to insure some of the buyer's deposits—but the Amendment went out of its way to say that the deposits were only ''treated as'' SAIF insured, not simply ''insured'' by the SAIF. 12 U.S.C. 1815(d)(3)(B)(iii) (Supp. I 1989). The FDIC holds this view today. *See* Treatment of Assessments Paid by ''Oakar'' Banks and ''Sasser'' Banks on SAIF-Insured Deposits, General Counsel's Opinion No. 7, 60 *FR* 7059 (Feb. 6, 1995).

But the FDIC also takes the position that nominal fund membership is not the touchstone for determining whether a transaction is a conversion transaction within the meaning of section 5(d)(2), and accordingly does not determine whether a transaction comes within the scope of the Oakar Amendment. ''Membership'' is a label that denotes the formal relationship of an insured institution to the FDIC as insurer within the context of the two-fund system. Ordinarily—that is, in the case of non-Oakar institutions—membership correctly signifies the relationship between an institution and the FDIC. Membership entails a well-defined set of obligations that the institution and the FDIC have to each other. A member of a fund must pay assessments to the FDIC for deposit in that fund. The FDIC must use the resources of that fund to insure the member's deposits. The assessment that the FDIC imposes on the member is determined by the strength of the fund relative to the fund's insurance responsibilities.

But membership does not correctly express the relationship between Oakar institutions and the FDIC as insurer. Oakar institutions owe assessments to both funds, and both funds must share

[3] If the Savings Association Insurance Fund reserve ratio falls below the DRR, the FDIC may set rates that increase the reserve ratio to the DRR. *Id.* 1817(b)(2)(A)(iii).

[4] The FDIC must still approve the FICO's assessments, and the FICO must still impose its assessments ''in the same manner'' as the FDIC assesses institutions. 12 U.S.C. 1441(f)(2).

the loss that the FDIC would suffer if an Oakar institution were to fail.

The FDIC resolves these conflicting themes by focusing on the relationship of an Oakar institution to the FDIC—the set of obligations that the label ''BIF member'' or ''SAIF member'' ordinarily signifies—and not on nominal fund membership. The FDIC takes the position that the substance of the relationship, and the effect of a deposit-transfer on that relationship, is the touchstone for determining whether the deposit-transfer is a conversion transaction within the meaning of section 5(d)(2). Put another way, the FDIC considers that the label ''member'' must be given only that degree of significance that is appropriate to preserve the integrity of the two-fund structure.

In proposing the blended-deposits rule, the FDIC has suggested that institutions might adopt ''gaming'' strategies that use the *Rankin* principle to convert SAIF-assessed deposits into BIF-assessed ones. One commenter, a trade group, urges the FDIC to prevent ''gaming'' strategies, but has not endorsed any particular method of prevention. Three commenters express doubt that institutions will engage in ''gaming'' strategies. Finally, two commenters say that the FDIC cannot fairly oppose such strategies if the FDIC is willing to countenance tandem-banking plans and deposit-migration programs. These two commenters further urge the FDIC to view such ''gaming'' strategies as beneficial rather than pernicious, on the ground that the strategies are equivalent to the options available to non-Oakar thrifts, and that the strategies therefore place Oakar banks on an equal competitive footing with other institutions.

The FDIC considers that these comments have all been overtaken by events. On one hand, notwithstanding the doubts expressed by the commenters, the FDIC has found that, prior to enactment of the Funds Act, a number of institutions had begun to pursue ''gaming'' strategies. For example, some holding companies had proposed elaborate schemes to purge AADAs from their Oakar banks by means of linked deposit-transfer transactions and deposit-migration programs. But on the other hand, the Funds Act has considerably reduced the threat posed by ''gaming'' strategies. Institutions will have much less incentive to adopt such strategies once the SAIF rates have been reduced to the level that maintains the SAIF's capitalization at the DRR. In addition, the Funds Act gives the FDIC and the other federal banking agencies broad and flexible authority to interdict strategies that facilitate or encourage the shifting of deposits from SAIF-assessable deposits to BIF-assessable deposits. Funds Act, section 2703(d).

One reason the FDIC has decided to retain the *Rankin* principle rather than shift to the blended-deposits approach is that the *Rankin* principle has the virtue of simplicity. Sellers rarely transfer all their primary-fund deposits. A seller ordinarily has the same AADA after the transaction as before, and a buyer does not ordinarily become an Oakar institution. Six commenters agree that simplicity was one advantage of the *Rankin* principle.

The *Rankin* principle also has the virtue of being well established and well understood. Three commenters agree with this point. Two commenters take issue with it, however. They point out that the *Rankin* principle was first articulated in a staff opinion letter, not in a rulemaking with public notice and comment, and declare that it is implausible for the FDIC to assert that the *Rankin* principle is well established or well understood in these circumstances.

The FDIC considers that commenters' point is not well taken. The FDIC issued the *Rankin* letter more than six years ago, and has applied its principles on a consistent basis. The FDIC accordingly has had a consistent, well settled interpretation of section 5(d)(2) and the Oakar Amendment since 1990; the *Rankin* letter expresses that interpretation. Moreover, the FDIC has published the *Rankin* letter, thereby providing public notice of the interpretation.

One commenter points out that, under the *Rankin* principle, SAIF-insured deposits have a greater propensity to move from SAIF-member savings associations to BIF-member Oakar banks than the other way around. The *Rankin* principle therefore has the effect of reducing the store of deposits available for assessment by the FICO. The FDIC considers that the Funds Act has mooted this point, however, as the FICO now has authority to assess deposits held by BIF members. *See* 12 U.S.C. 1441(f)(2).

Another commenter objects to the *Rankin* principle on the ground that when a BIF-member Oakar bank buys a branch from a SAIF-member institution, and incurs an obligation to the SAIF as a result, the Oakar bank cannot escape the obligation merely by selling off the branch. This commenter—along with several others—also makes the more general point that the statutory rules for determining the AADA do not reflect practical business realities. These commenters say the branches and customers that they have acquired from SAIF-member institutions do not make a proportionate contribution to the overall growth of their deposits: as a result, the assessment base for their SAIF assessments is artificially large.

The FDIC considers, however, that these objections touch upon the structure and purposes of the Oakar Amendment, rather than upon the *Rankin* principle. The Oakar Amendment is specifically designed to avoid deposit-tracing—that is, keeping track of deposits based on their origin. An AADA's initial value may be equal to the amount of the secondary-fund deposits that the buyer acquires from the seller. But the Oakar Amendment does not connect the AADA to those particular deposits, or to the customers that hold them, or to the branches in which the deposits are located. The Oakar Amendment treats an Oakar institution as a unit. The Amendment uses the institution's overall rate of growth to compute the institution's AADA, thereby—in effect—applying that growth equally to the institution's primary-fund and secondary-fund deposits. In objecting to that effect, the commenters challenge the basic principles of the Oakar Amendment itself. The commenters' redress lies with Congress.

The blended-deposits approach, for its part, has certain attractions. It helps prevent ''gaming''. It also maintains the relative proportions of the seller's primary-fund deposit-base and the secondary-fund deposit base, just as those proportions are preserved in the ordinary course of business. By contrast, as one commenter has pointed out, the *Rankin* principle tends to inflate the AADA. When an institution buys branches from a member of the opposite fund, the buyer gains secondary-fund deposits and increases its AADA. But when it acts as the seller, it does not normally lose any secondary-fund deposits, because it does not normally sell off all its primary-fund deposits: its AADA remains the same.

At the same time, however, the blended-deposits approach has a number of disadvantages. As nine commenters point out, the blended-deposits rule would cause Oakar institutions to proliferate. If a non-Oakar institution were to acquire deposits from an Oakar institution, the buyer would necessarily assume secondary-fund deposits, and would therefore become an Oakar institution in its own right. Six commenters observe that the blended-deposits rule would generate burdensome reporting and record-keeping obligations. Six commenters

(not all the same ones) say further that the blended-deposit approach would result in higher costs for buyers and lost sales for sellers. Four commenters indicate that the blended-deposits rule could cause uncertainty or confusion in determining the assessment costs with respect to transferred deposits, particularly in light of the uncertain prospects for future assessment rates. One says the blended-deposits rule would impede banks in selling off branches in order to rationalize branch networks or for other corporate purposes.

These comments continue to have force despite the economic and legal changes made by the Funds Act. Buyers would have to bear the extra record-keeping and reporting burdens associated with secondary-fund deposits. Moreover, even though the disparity between BIF rates and SAIF rates will be reduced, the FICO's rates retain a differential: institutions will still have to pay higher rates to the FICO on SAIF-insured deposits than on BIF-insured deposits, at least temporarily. *Id*. 1441(d)(2); *see* Funds Act section 2703(c). The differential (roughly five basis points) is smaller than the recent differential between the BIF and SAIF assessment rates, and is short-lived as well. But so long as it persists, buyers will be less willing to assume SAIFassessable deposits.

One commenter objects to the blended-deposits rule on the ground that it would force banks that acquire deposits from an Oakar bank—and banks that purchase deposits from those subsequent acquirers, and so on, *ad infinitum*—to pay SAIF assessments. The commenter says this result is improper. The commenter asserts that a buyer always loses a significant portion of the acquired deposits soon after acquiring them, and that accordingly a third-generation or fourth-generation buyer does not assume any of the SAIF-insured deposits that changed hands in the original Oakar transaction. The FDIC does not agree with this point, however. As discussed above, the FDIC considers that the Oakar Amendment does not contemplate deposit-tracing. The FDIC further considers that the Oakar Amendment is designed to preserve precisely the obligation that the commenter seeks to end: namely, the buyer's duty to pay SAIF assessments on the SAIF-insured deposits it has acquired, and to do so an on-going basis, without regard for whether any particular customers of the buyer have withdrawn their funds after the Oakar transaction has taken place.

Several commenters offer deposit-attribution rules of their own. Three commenters propose that the parties to a transaction should be able to determine the attribution of the transferred deposits by agreement. One of the commenters says the attribution-by-agreement rule would minimize the creation of Oakar institutions, would reduce the incentive to engage in the ''gaming'' strategies that the FDIC had discussed in the proposed rule, and would not entail any heavier reporting or record-keeping obligations than the blended-deposits approach. A second commenter says this proposal would eliminate uncertainty in pricing deposits and, from the point of view of a BIF-member Oakar bank acting as the seller, would be fairer and more flexible than the *Rankin* principle. The third commenter does not give its reasons for supporting the proposal.

The FDIC declines to adopt the attribution-by-agreement rule, however. The FDIC recognizes that its assessment rules and procedures provide the environment within which parties negotiate transactions, and that as a matter of course, the parties consider the likely consequences of their agreements within that environment. But the FDIC rejects the proposition that parties should be able to determine, by agreement among themselves, which set of rules the FDIC will apply to them. The FDIC considers that, as a matter of principle, its relationship to the institutions that it insures and assesses derives from its supervisory and rule-making authority, and accordingly is not a fit subject for private negotiation. The FDIC also notes that, as a practical matter, parties do not always take the same view of their agreements after the agreements have been completed.

Another commenter proposes that the buyer's primary fund should determine which of the seller's deposits are transferred first. Under the buyer's-fund rule, any deposits transferred by the seller would be attributed to the buyer's primary fund until the seller has exhausted its store of such deposits; thereafter, transferred deposits would be attributed to the buyer's secondary fund. The chief advantages of the proposal, according to the commenter, are that it offers the simplicity of the *Rankin* principle while helping to preserve or increase the deposit-base subject to assessment by the FICO.

Here again, however, events have overtaken the comment. The FICO may now assess both BIF and SAIF members. 12 U.S.C. 1441(f)(2). Under these conditions, the buyer's-fund proposal has no material advantage over the *Rankin* principle, while the *Rankin* principle has the advantage of being a well-established precept.

B. FDIC Computation of the AADA; Reporting Requirements

In the past, every Oakar institution has prepared an annual growth worksheet for submission to the FDIC. The worksheet shows the growth or shrinkage of the institution's AADA during the prior calendar year, and the computations used to determine that growth or shrinkage. In addition, each institution that has acquired secondary-fund deposits in an Oakar transaction (Oakar buyer) has prepared and submitted a transaction worksheet for each such transaction. The FDIC has supplied the worksheet, and has also provided the name of the Oakar buyer, the name of the seller, and the date of the transaction. The Oakar buyer has provided the volume of the acquired deposits and the AADA so generated.

As part of the changeover to the quarterly adjustment of AADAs (see II.C. below), the FDIC is lifting the burden of computing AADA growth from Oakar institutions entirely. Oakar institutions will no longer prepare annual growth worksheets or transaction worksheets, and will not report their AADAs in their quarterly reports of condition. Instead, each Oakar institution will provide the following three pieces of information in its quarterly reports of condition:

—total deposits acquired during the quarter;
—secondary-fund deposits acquired in the quarter; and
—total deposits sold in the quarter.[5]

The FDIC will use this information to calculate the institution's AADA, and will show the AADA (and the way it has been computed) in the institution's quarterly assessment invoices.

The FDIC has received nine comments on this program. Four (including a trade group) favor it; five (including another trade group) are opposed. The supporters agree the program would reduce regulatory burden. The opponents say the program would not lighten the record-keeping burden of Oakar institutions, and could well increase that burden, because the institutions would have to verify the accuracy of the FDIC's figures. One of the opponents—the trade group—says

[5] The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the FDIC have issued a joint proposal calling for institutions to report the three items in their quarterly reports of condition. 61 *FR* 48687, 48693–48694 (Sept. 16, 1996). The Office of Thrift Supervision has issued a similar proposal with respect to the institutions it supervises. *Id.* 53262, 53263 (Oct. 10, 1996). The FDIC expects both proposals to be adopted. The alternative is for institutions to prepare and transmit quarterly worksheets with the requisite information directly to the FDIC.

further that the program's reporting requirements are burdensome. The commenter notes that Oakar institutions have not reported their deposit-sales in the past, and have reported their acquired secondary-fund deposits and their acquired total deposits annually, not quarterly.

The FDIC considers that the reporting burden associated with its program is minimal, however, especially as compared with the burden of preparing and filing the two worksheets. Indeed, the program may not constitute a net increase in burden at all in most cases. The items to be reported are zero in most quarters; and even in other quarters, the information should be readily available and easy to calculate. Moreover, Oakar institutions have already been providing two of the three items in their annual growth worksheets: only the last item is new.

As an alternative, the FDIC has considered replacing the annual growth worksheet with a more detailed quarterly worksheet, and retaining the transaction worksheet. The FDIC has determined that this approach would impose an additional and unnecessary burden on Oakar institutions, however. The FDIC has further determined that this approach could increase the frequency of errors associated with AADA calculations.

C. Quarterly Treatment of AADAs

The FDIC is adopting the view that an AADA for a semiannual period may be regarded as having two quarterly components. The increment by which an AADA grows during a semiannual period is the result of the growth of each quarterly component. Five commenters (including one trade group) generally support this interpretation.

Three commenters oppose quarterly determination of AADAs, chiefly on the ground that this procedure would cause increased recordkeeping and reporting burdens. The burdens the commenters cite are essentially the same as those discussed above (see II.B.) with respect to the FDIC's computation of the AADA. For the reasons presented in that discussion, the FDIC does not consider that the net increase in burden—if any—will be material.

1. Quarterly Components

a. In General. The FDIC's assessment regulation speaks of an institution's AADA ''for any semiannual period''. 12 CFR 327.32(a)(3). The FDIC has previously interpreted this phrase to mean that an AADA has a constant value throughout a semiannual period. Recent changes in the Oakar Amendment give the FDIC room to alter its view.

The constant-value concept derived from the 1989 version of the Oakar Amendment. *See* 12 U.S.C. 1815(d)(3) (Supp. I 1989). That version of the Amendment said that an Oakar bank's AADA measured the portion of the average assessment base that the SAIF could assess. *Id.* 1815(d)(3)(B). The FDI Act (as then in effect) defined the average assessment base as the average of the institution's assessment bases on the two dates for which the institution was required to file a call report. *Id.* 1817(b)(3). As a result, an AADA—even a newly created one, and even one that was generated in a transaction during the latter quarter of the prior semiannual period—served to allocate an Oakar bank's entire assessment base for the entire current semiannual period. The FDIC issued rules in keeping with this view. 54 FR 51372 (Dec. 15, 1989).[6]

Congress has decoupled the AADA from the assessment base as part of the changeover to a risk-based assessment system. *See* Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, section 302 (e) and (g), 105 Stat. 2236, 2349 (Dec. 19, 1991); *see also* Defense Production Act Amendments of 1992, Pub L. 102–558, section 303(b)(6)(B), 106 Stat. 4198, 4225 (Oct. 28, 1992); *cf.* 58 *FR* 34357 (June 23, 1993). The Oakar Amendment no longer expressly links the AADA directly to the assessment base. The Amendment now says that the AADA measures the amount of an Oakar institution's deposits that are to be treated as secondary-fund deposits. *See* 12 U.S.C. 1815(d)(3).

Accordingly, the FDIC is no longer compelled to retain the constant-value view of the AADA. Furthermore, as discussed below, the FDIC has found that the constant-value concept has certain disadvantages. The FDIC is therefore re-interpreting the phrase ''for any semiannual period'' as used in 12 CFR 327.32(a)(3) in the light of the FDIC's quarterly assessment program. The FDIC is taking the position that, consistent with this phrase, an Oakar institution's AADA for a semiannual period is to be determined on a quarter-by-quarter basis—just as the assessment base for a semiannual period is so determined—and is to be used to measure the portion of each quarterly assessment base that is assessed by the institution's secondary fund. The FDIC is also adopting the view that, if an AADA is generated in a transaction that occurs during the second calendar quarter of a semiannual period, the first quarterly component of the AADA for the current (following) semiannual period is zero; only the second quarterly component is equal to the volume of the secondary-fund deposits that the buyer has so acquired.

The FDIC considers that this view of the phrase ''for any semiannual period'' is appropriate because the phrase is the counterpart of, and is meant to interpret, the following language in the Oakar Amendment:

> (C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period * * *.

12 U.S.C. 1815(d)(3)(C).

This passage speaks of the assessment—not the AADA—''for any semiannual period''. Insofar as the AADA is concerned, the statute merely specifies the semiannual period for which the AADA is to be computed: the period for which the assessment is due. The FDIC believes that the phrase ''for any semiannual period'' in its own regulation may properly be read to have the same meaning.

Moreover, while the Amendment says the AADA must ''be taken into account'' in determining a semiannual assessment, the Amendment does not prescribe any particular method for doing so. The FDIC considers that this language provides enough latitude for the FDIC to apply the AADA in a manner that is appropriate to the quarterly payment program.

The FDIC's existing regulation is compatible with this interpretation. The regulation speaks of an assessment base for each quarter, not of an average of such bases. The regulation further says that an Oakar institution's AADA fixes a portion of its ''assessment base''. *See* 12 CFR 327.32(a)(2) (i) and (ii). Accordingly, the FDIC is not modifying the text that specifies the method for computing AADAs.

One commenter urges the FDIC to apply the revised interpretation on a retroactive basis, effective either as of January 1, 1994 (when the statutory changes took effect) or as of June 1, 1995 (when the BIF was capitalized, and the most favorable BIF rate dropped substantially). To apply the revised interpretation retroactively could cause considerable difficulties for the FDIC, however, and perhaps for some institutions. The FDIC would have to

[6] The FDIC revised its collection procedure late in 1994, and began collecting the semiannual assessment in two quarterly installments. 59 FR 67153 (Dec. 29, 1994). The new procedure did not affect the relationship between an Oakar institution's AADA and its assessment base.

identify every Oakar transaction occurring after the effective date of the revision, and the amount of the assumed deposits; redetermine every Oakar institution's initial AADA in such a transaction; recompute the assessments payable to each insurance fund for every semiannual assessment; restate the balance of each insurance fund; re-allocate the insurance funds' earnings and expenses; and redetermine each insurance fund's reserve ratio. A retroactive revision could even affect the data used for determining the recent special assessment that recently capitalized the SAIF. The FDIC has accordingly determined to apply the revised interpretation only on a prospective basis.

b. Need for Quarterly Components: Appearance of Double-Counting Under certain conditions, the FDIC's constant-value view of the AADA appears to be tantamount to double-counting transferred deposits for a calendar quarter. The appearance of double-counting occurs when an Oakar institution acquires secondary-fund deposits in the latter half of a semiannual period—*i.e.*, in the second or fourth calendar quarter. The seller has the deposits at the end of the first (or third) quarter; its first payment for the upcoming semiannual period is based on them. At the same time, the buyer's secondary-fund assessment is approximately equal to an assessment on the transferred deposits for both quarters in the semiannual period.

The source of this apparent effect is that, under the FDIC's constant-value interpretation, an AADA—even a newly generated one—applies to an Oakar institution's entire assessment base for the entire semiannual period. The following example illustrates the point: [7]

	Seller (SAIF)	Buyer (BIF)	Industry total
Before the transaction:			
Starting assessment bases (ignoring float, &c.):			
SAIF	$200	0	$200
BIF	0	$100	$100
	$200	$100	$300
The transaction (May 1):			
March call report	$200	$100	$300
Deposits sold	($100)	+$100 (AADA)	([1])
June call report	$100	$200	$300
After the transaction:			
Ending assessment bases (ignoring float, &c.):			
SAIF	$100	$100 (AADA)	$200
BIF	0	$100	$100
	$100	$200	$300
Average assessment bases:			
(ignoring float, &c.):			
SAIF	$150	$100 (AADA)	$250
BIF	0	$50	$50
	$150	$150	$300

[1] Neutral.

In this illustration, the buyer is a BIF member with $100 in deposits, all insured by the BIF. The seller is a SAIF member with $200 in deposits, all insured by the SAIF. The buyer acquires $100 from the thrift. The transaction takes place in May (the second half of the first semiannual period).

The transaction generates an AADA for the buyer; the value of the AADA is $100. The buyer's SAIF assessment is based on that amount (more exactly, on the portion of its assessment base that is equal to that amount). But the average of the buyer's SAIF insured deposits for the prior two quarters is only $50. The buyer's SAIF assessment base—and its SAIF assessment—is twice as large as it would have been had it been computed in the ''usual'' way (that is, in the manner that applies to non-Oakar institutions). The difference is roughly equivalent to ''double counting the acquired deposits'': counting the transferred $100 in the buyer's deposit-base for both quarters rather than just for the second one.[8]

The anomaly is most apparent from the standpoint of the industry as a whole. The aggregate amount of the SAIF-assessable deposits temporarily balloons to $250, while the aggregate amount of the BIF-assessable deposits shrinks to $50. But the anomaly only lasts for one semiannual period. In the following period, the seller's assessment base is $100 for both quarters, making its average assessment base $100. The buyer's AADA remains $100. Accordingly, the aggregate amount of SAIF-assessable deposits retreats to $200 once more; and the aggregate amount of BIF-assessable deposits is back to the full $100.

Broadening the focus to include both insurance funds also brings out a more subtle point: the anomaly is not tantamount to double-counting the

[7] In order to bring out the relationship between the AADA and the assessment base more clearly, the table refers to the average assessment base of an institution. The average assessment base is derived from the average of the deposits that the institution has reported in its two reports of condition for the prior semiannual period. The FDIC has used the average assessment base to compute the semiannual assessment for most of the time that Oakar institutions have existed. The FDIC has collected the semiannual assessments in a single payment.

The FDIC has recently changed its collection procedures, however. Beginning with the second semiannual period of 1995, the FDIC collects the semiannual assessment in two installments. The first installment is computed using the assessment base that derives from the deposits reported in the institution's first report of condition for the prior quarter; the second installment is computed using the assessment base derived from the second such report of condition. 59 FR 67153 (Dec. 29, 1994).

The new collection procedure does not affect the amount that an institution owes for a semiannual period. Accordingly, the effect described in the example remains valid.

[8] The equivalence is not so close as it appears. For one thing, an Oakar institution's secondary-fund assessment base is not a proportional part of the overall base, but rather is equal to the full value of its AADA. *See id.* 327.32(a)(2). For another, an initial AADA remains fixed during the semiannual period in which it is generated, even though the Oakar institution's total deposits rise or fall between the time of the transaction and the end of the period.

transferred deposits for a quarter, but rather to re-allocating the buyer's assessment base from the BIF to the SAIF. The BIF-assessable portion of the buyer's average assessment base is $50, not $100. The difference is equivalent to cutting the buyer's BIF assessment base by $100 for half the semiannual period.

The FDIC's quarterly-payment procedure has brought attention to these anomalous effects. The quarterly-payment schedule is merely a new collections schedule, not a new method for determining the amount due. *See* 59 *FR* 67153 (Dec. 29, 1994). Accordingly, under current procedures, the buyer and the seller in the illustration would pay the amounts specified therein even under the quarterly-payment schedule.

When an Oakar transaction occurs in the latter half of a semiannual period, however, the buyer's call report for the prior quarter does not show an AADA. The buyer's first payment for the current semiannual period is therefore based on its assessment base for that quarter, not on its AADA. Moreover, the entire payment is computed using the assessment rate for the institution's primary fund. The FDIC therefore adjusts (and usually increases) the amount to be collected in the second quarterly payment in order to correct these defects.

Interpreting the semiannual AADA to consist of two quarterly components eliminates this anomaly. Three commenters endorse the quarterly determination of AADAs for that reason.

2. Quarterly Growth

a. In General. The Oakar Amendment says that the growth rate for an AADA during a semiannual period is equal to the ''annual rate of growth of deposits'' of the Oakar institution. The FDIC has previously interpreted the phrase ''annual rate'' to mean a rate determined over the interval of a full year. Under the procedures prescribed by the FDIC, each Oakar institution has computed its ''annual rate of growth'' at the end of each calendar year, and has used this figure to calculate the AADA for use during the following year.

This procedure has a weakness. An Oakar institution's AADA has tended to drift out of alignment with its deposit base, because the AADA remains constant while the deposit base changes. At the end of the year, when the institution computes its AADA for the next year, the AADA suddenly—but only temporarily—snaps back into its proper proportion.

The FDIC does not believe that Congress intended to cause such a fluctuation in the relation between an institution's AADA and its deposit base. Moreover, from the FDIC's standpoint as insurer, it is appropriate to maintain a relatively steady correlation between the AADA and the total deposit base. The FDIC is therefore revising its view, and is taking the position that-after the end of the semiannual period in which an institution's AADA has been established—the AADA grows and shrinks at the same underlying rate as the institution's domestic deposit base (that is, excluding acquisitions and deposit sales), measured contemporaneously on a quarter-by-quarter basis. Over a full semiannual period, any increase or decrease in the AADA automatically occurs at a rate equal to the ''rate of growth of deposits'' during the semiannual period, thereby satisfying the statutory requirement.

The FDIC considers that the statutory reference to an ''annual rate'' does not foreclose this approach. In ordinary usage, ''annual rate'' can refer to a rate that is expressed as an annual rate, even though the interval during which the rate applies, and over which it is determined, is a shorter interval such as a semiannual period (*e.g.*, in the case of six-month time deposits). For example, until recently, the FDIC's rules regarding the payment of interest on deposits spoke of ''the annual rate of simple interest''—a phrase that pertained to rates payable on time deposits having maturities as short as seven days. See 12 CFR 329.3 (1993).

One commenter agrees with the FDIC that the statutory phrase permits the computation of growth on a quarter-by-quarter basis. No commenter takes the opposite view.

b. Annual vs. Quarterly Growth Adjustment

An AADA remains fixed until a growth adjustment is applied. Total deposits fluctuate from day to day in the normal course of business, however. These fluctuations are reflected entirely in an institution's primary-fund deposits until the growth adjustment occurs. That adjustment has hitherto been made on an annual basis: Accordingly, the relationship between an institution's total deposits on one hand, and its primary-fund deposits and its AADA on the other, has often varied significantly. By contrast, the quarterly-adjustment method causes primary-fund deposits and the AADA vary together with total deposits. Three commenters cite this result as a reason for supporting the quarterly determination of AADAs.

Consider an Oakar institution that has total deposits of $15 as of 12/31/93, with an AADA of $6.5. Further assume that the institution's total deposits grow by $1 every quarter, and that the institution does not participate in any additional acquisitions or deposit sales. The following graphs show the effects of making growth adjustments to the institution's AADA on an annual basis versus a quarterly basis:

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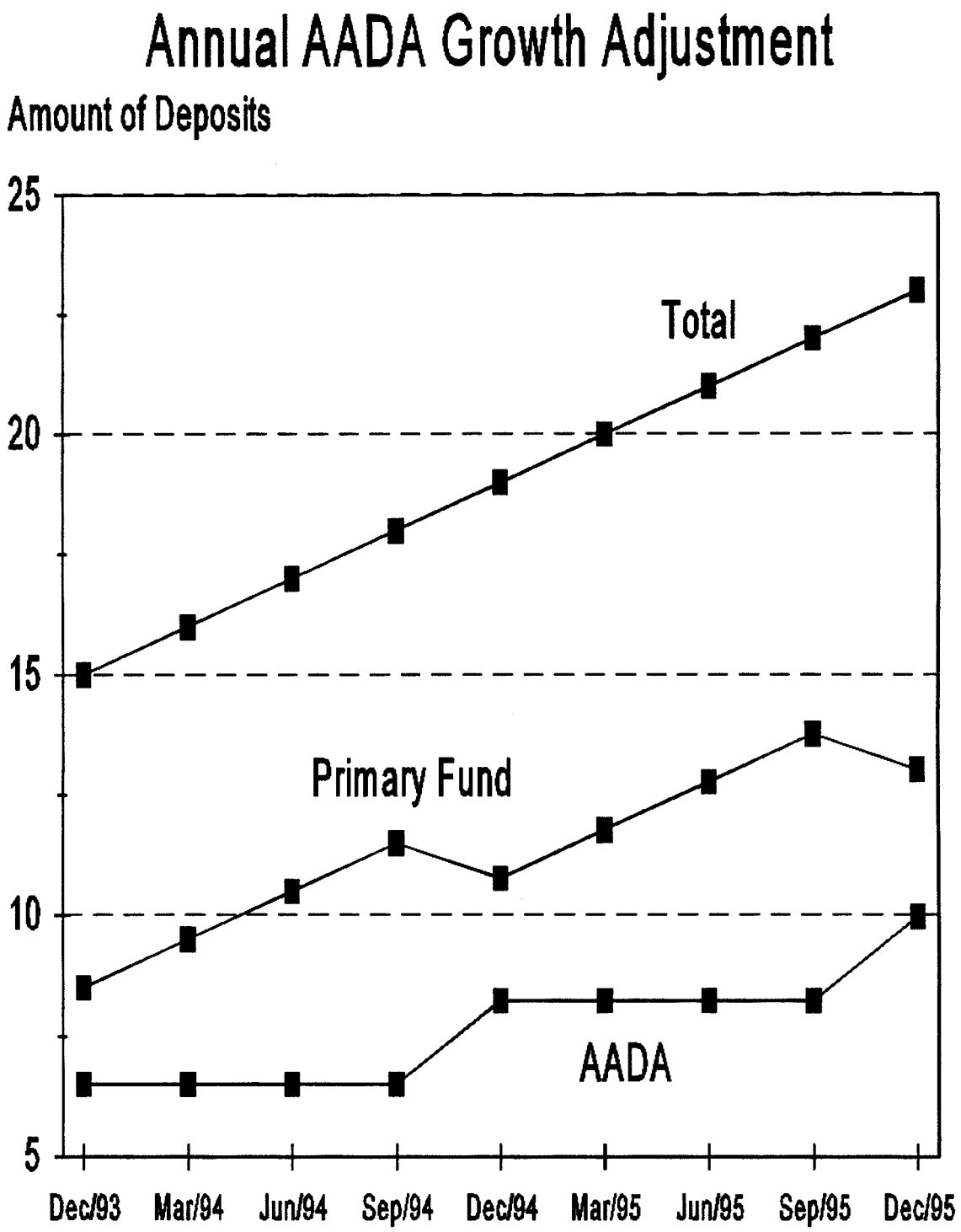
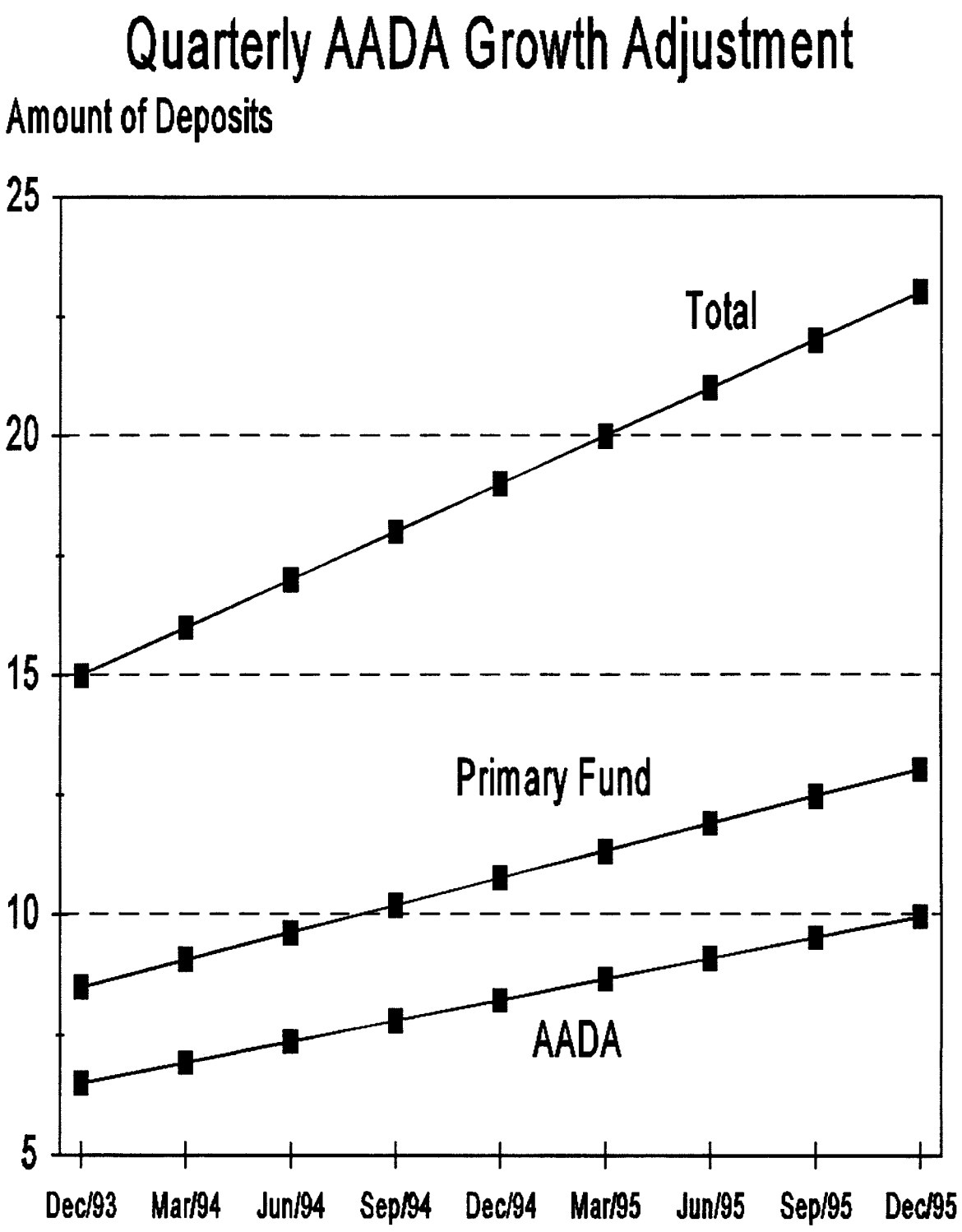
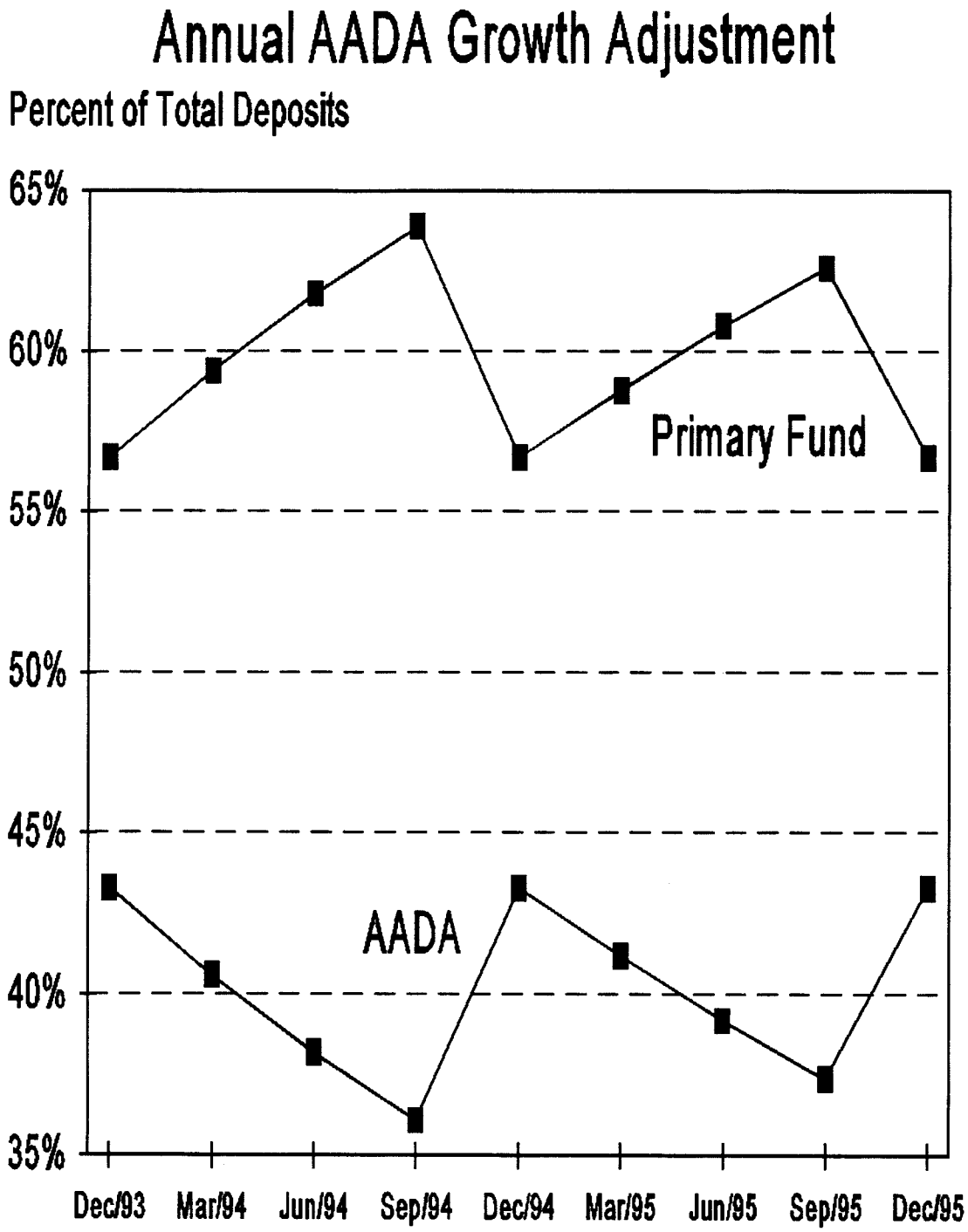
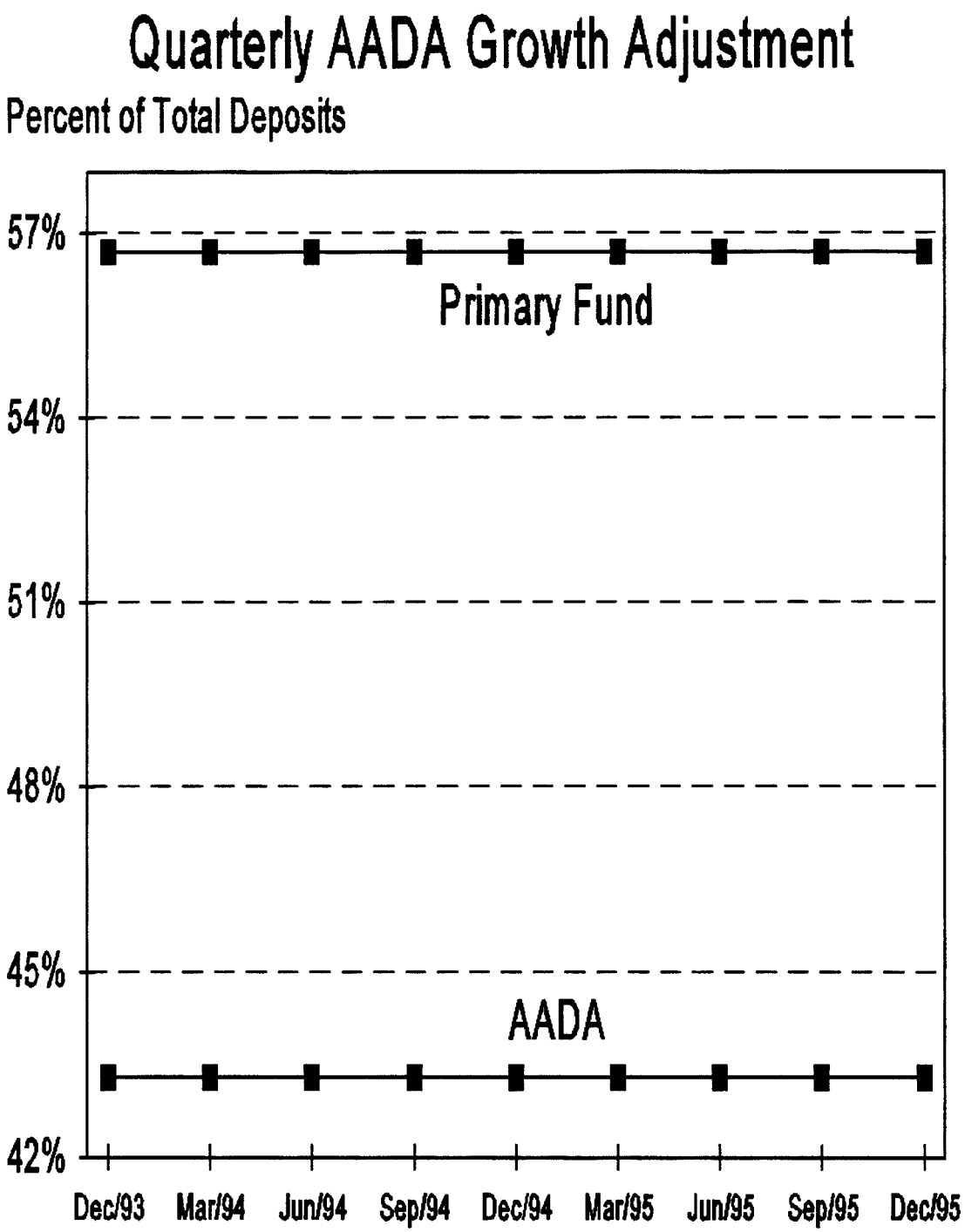

Annual AADA Growth Adjustment
Amount of Deposits
25
20
15
10
5
Total
Primary Fund
AADA
Dec/93
Mar/94
Jun/94
Sep/94
Dec/94
Mar/95
Jun/95
Sep/95
Dec/95


Quarterly AADA Growth Adjustment
Amount of Deposits
25
20
15
10
5
Total
Primary Fund
AADA
Dec/93
Mar/94
Jun/94
Sep/94
Dec/94
Mar/95
Jun/95
Sep/95
Dec/95

The following graphs express this difference in terms of percents of total deposits:



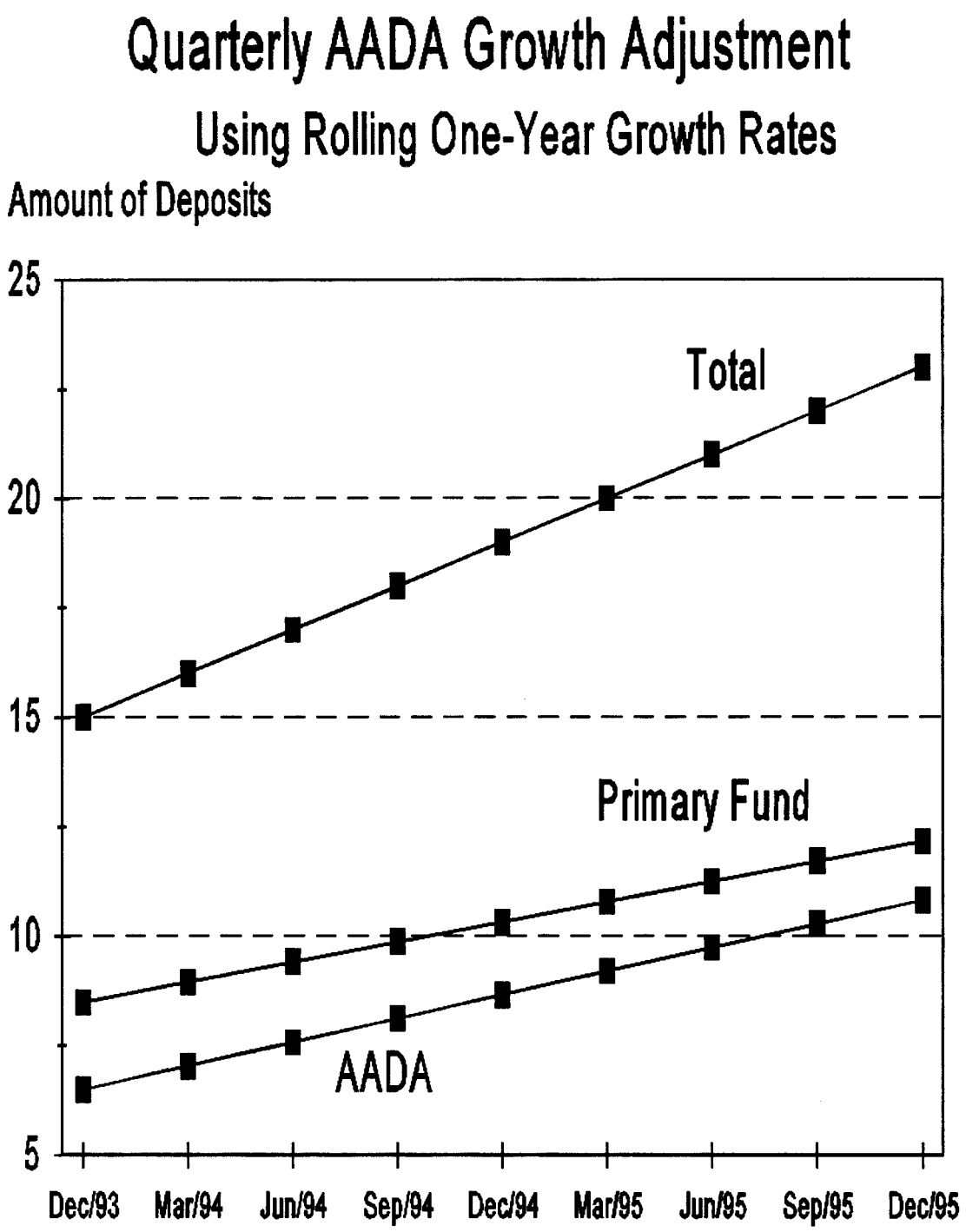

Quarterly AADA Growth Adjustment
Percent of Total Deposits
57%
54%
51%
48%
45%
42%
Primary Fund
AADA
Dec/93
Mar/94
Jun/94
Sep/94
Dec/94
Mar/95
Jun/95
Sep/95
Dec/95

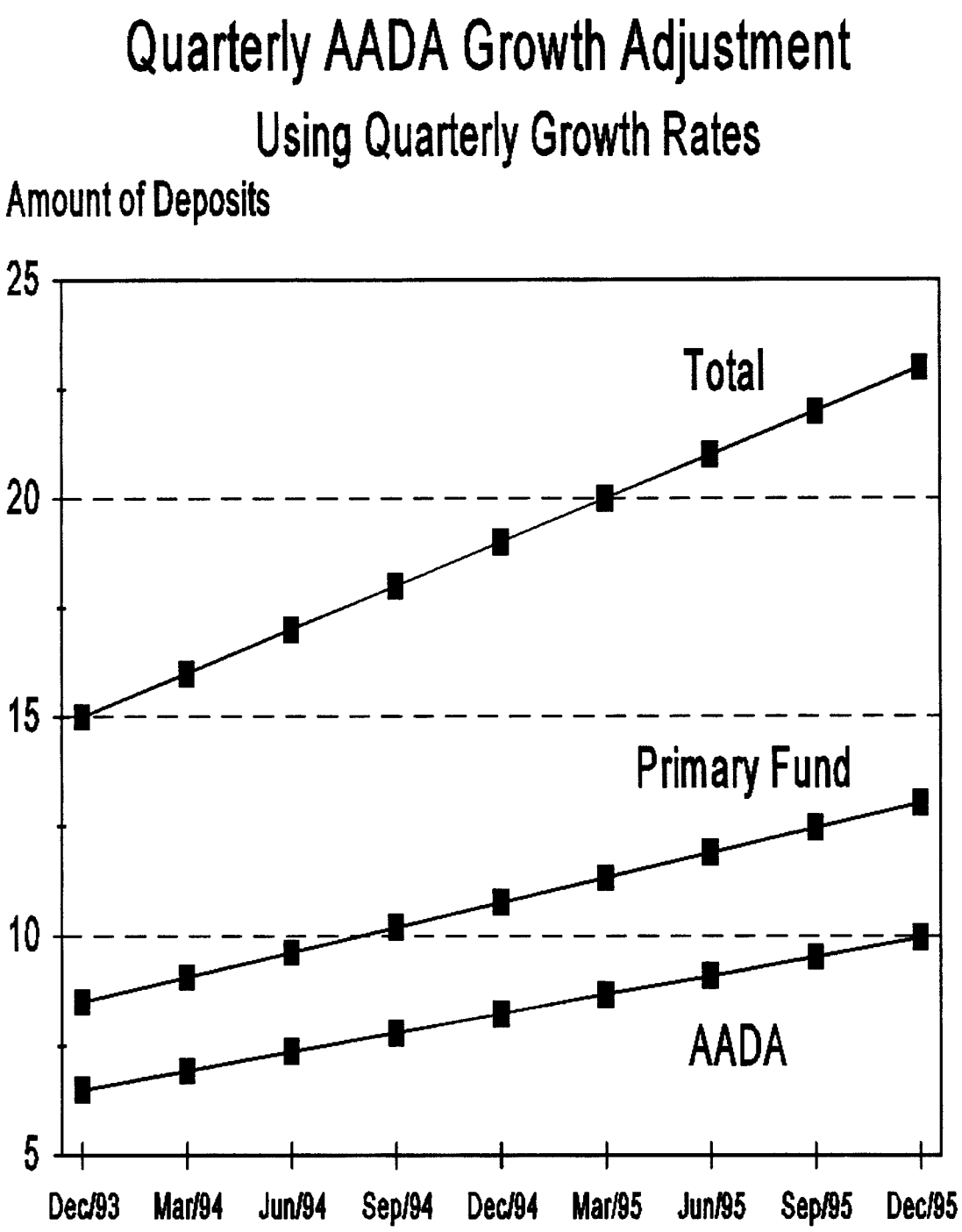
In the annual-adjustment method, the AADA becomes a smaller percent of total deposits as the total grows. In the quarterly-adjustment method, the AADA and the primary-fund deposits remain constant percents of total deposits.

c. Rolling One-Year Adjustments vs. Quarterly Adjustments

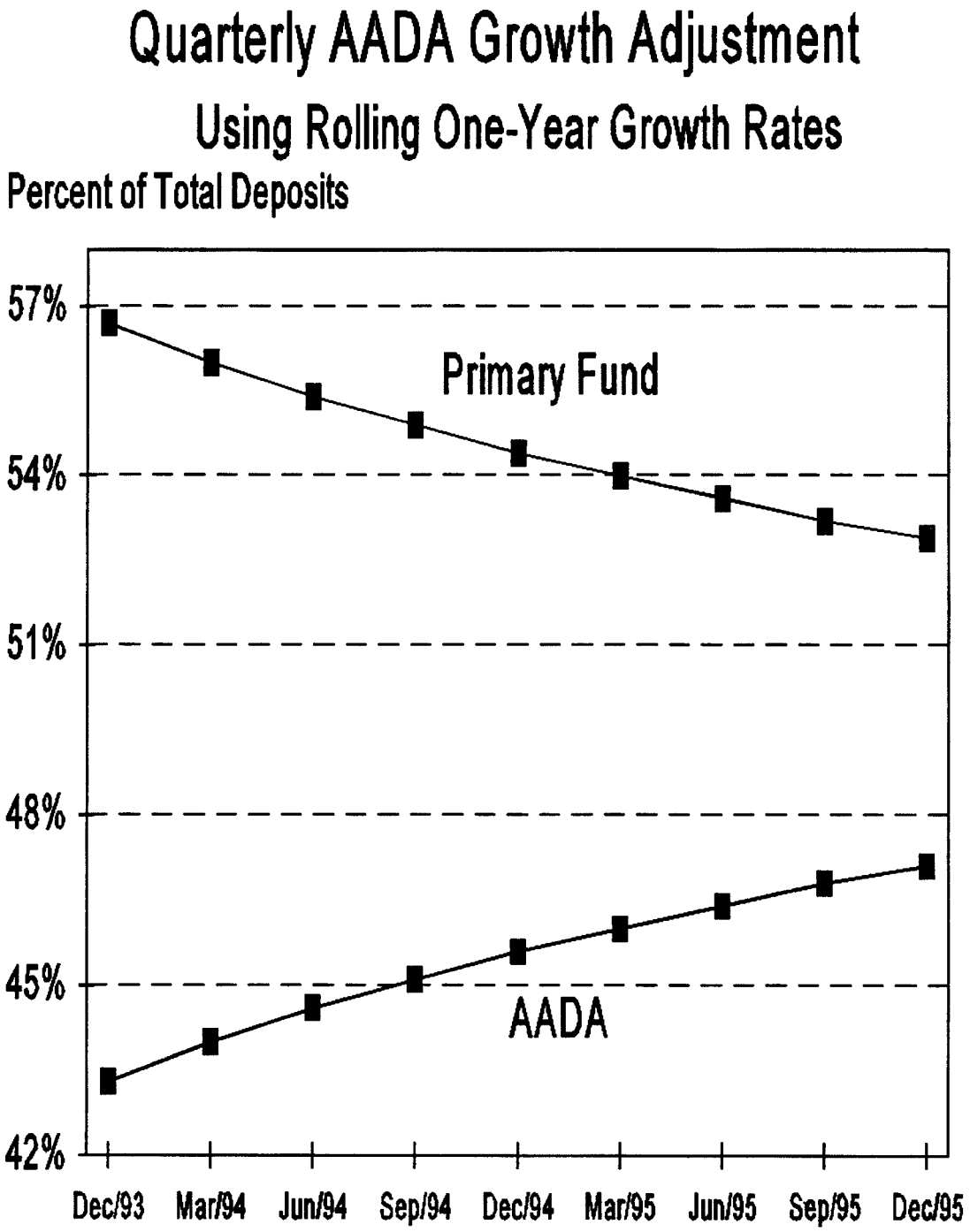
The FDIC also considered an alternative approach: Using the rate of growth in the institution's deposit base for the prior four quarters, measured from the current quarter. This technique would be as consistent with the letter of the statute as the current method. But the four-prior-quarters method would retain the lag between the AADA and the deposit base.

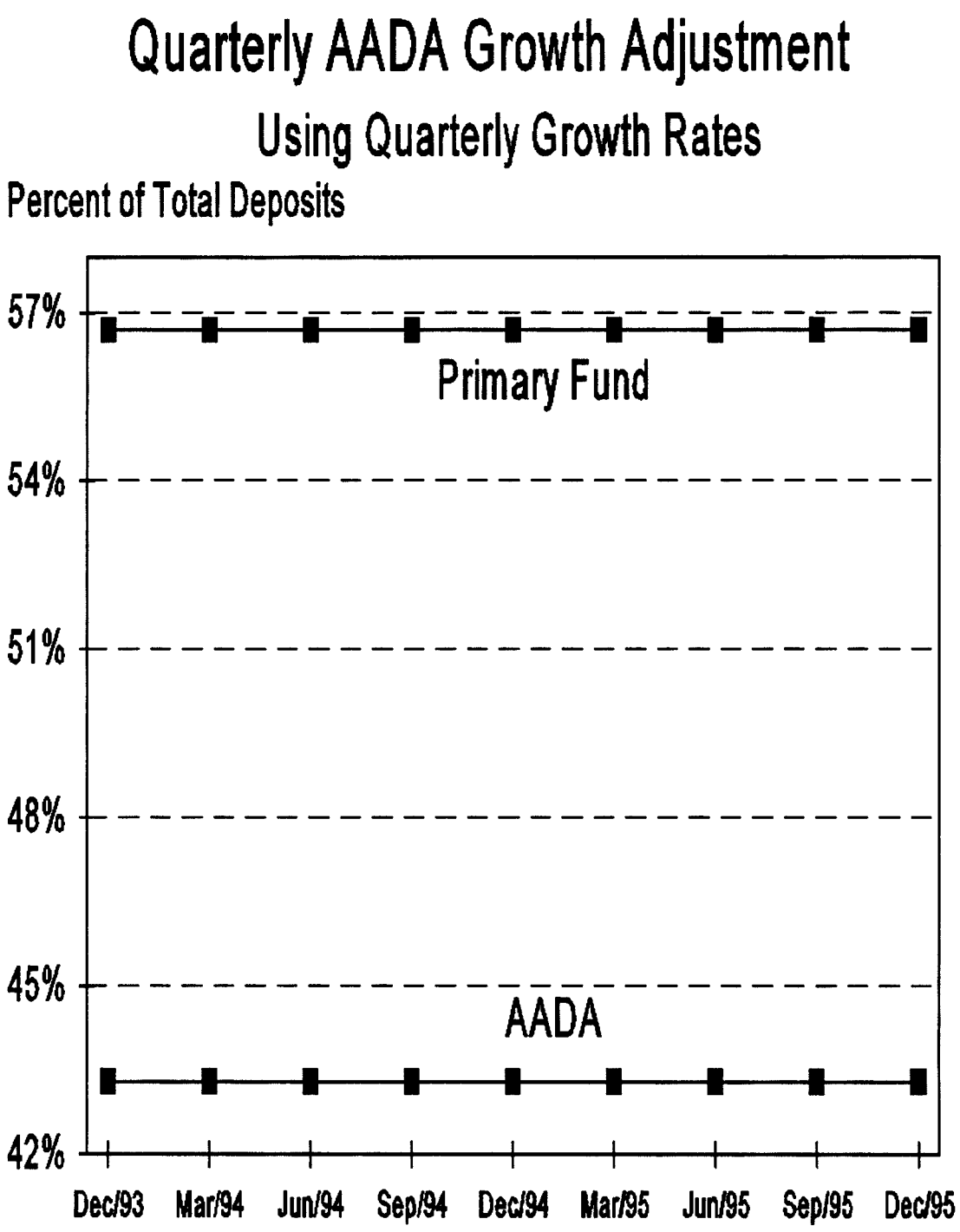
Consider the same Oakar institution with beginning total deposits of $15 and constant growth of $1 per quarter. The following graphs illustrate the effects on deposits of using total-deposit growth rates on two different bases—namely, rolling one-year growth rates, and quarter-to-quarter growth rates:


Quarterly AADA Growth Adjustment
Using Rolling One-Year Growth Rates
Amount of Deposits
25
20
15
10
5
Total
Primary Fund
AADA
Dec/93
Mar/94
Jun/94
Sep/94
Dec/94
Mar/95
Jun/95
Sep/95
Dec/95


Quarterly AADA Growth Adjustment
Using Quarterly Growth Rates
Amount of Deposits
25
20
15
10
5
Total
Primary Fund
AADA
Dec/93
Mar/94
Jun/94
Sep/94
Dec/94
Mar/95
Jun/95
Sep/95
Dec/95

In both cases, the primary-fund deposits and the AADA appear to vary together with total deposits, but it is difficult to discern their precise relationship. Graphs of the same effects in terms of percents of total deposits are more illustrative:





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In the percent-of-deposits graphs, the AADA and the primary-fund deposits are shown to converge when the AADA growth adjustment is based on rolling one-year growth rates. In this particular example, the effect occurs because the institution's constant growth of $1 per quarter results in a steadily decreasing rate of growth of total deposits. Therefore, a rolling one-year growth rate of those total deposits at any point in time will be more than the actual rate of growth over the quarter to which the rolling rate is being applied. While different growth characteristics for total deposits would yield different relationships between the AADA and the primary fund over time, the general point is that the relationships of the AADA and the primary-fund deposits can vary when the AADA is adjusted, unless the total-deposit rate of growth used for the adjustment is drawn from the same period for which the rate is applied to the AADA.

As the latter graph shows, applying the actual quarterly growth rate for total deposits to the AADA results in stable percents of total deposits for the AADA and primary fund deposits.

In sum, the FDIC considers that the quarterly approach is permissible under the statute, and is preferable to any approach that relies on a yearly interval to determine growth in the AADA.

D. Negative Growth of the AADA

One element of an Oakar institution's AADA for a current semiannual period is ''the amount by which [the AADA for the preceding semiannual period][9] would have increased during the preceding semiannual period if such increase occurred at a rate equal to the annual rate of growth of [the Oakar institution's] deposits''. 12 U.S.C. 1815(d)(3)(C)(iii). The FDIC is codifying its view that the terms ''growth'' and ''increase'' encompass negative growth (shrinkage). But the FDIC is changing its interpretation by excluding shrinkage due to deposit sales.

1. Negative Growth in General

The 1989 version of the Oakar Amendment focused on an Oakar bank's underlying rate of growth for the purpose of determining the Oakar bank's AADA. The 1989 version of the Amendment set a minimum growth rate for an AADA of seven percent. The Amendment then specified that, if an Oakar bank's deposit base grew at a higher rate, the AADA would grow at the higher rate too. But the Amendment excluded growth attributable to mergers, branch purchases, and other acquisitions of deposits from other BIF members: the deposits so acquired were to be subtracted from the Oakar bank's total deposits for the purpose of determining the growth in the Oakar bank's deposit base (and therefore the rate of growth of the AADA). *See* 12 U.S.C. 1813(d)(3)(C)(3)(iii) (Supp. I 1989).

The 1989 version of the Oakar Amendment spoke only of ''growth'' and ''increases'' in the AADA. *Id.* The statute was internally consistent in this regard, because AADAs could never decrease.

Congress eliminated the minimum growth rate as of the start of 1992. FDICIA section 501 (a) and (b), 105 Stat. 2389 and 2391. As a result, the Oakar Amendment now specifies that an Oakar institution's AADA grows at the same rate as its domestic deposits (excluding mergers, branch acquisitions, and other acquisitions of deposits). 12 U.S.C. 1813(d)(3)(C).

The modern version of the Oakar Amendment continues to speak only of ''growth'' and ''increases'', however. Congress has not—at least not explicitly—modified it to address the case of an institution that has a shrinking deposit base. Nor has Congress addressed the case of an institution that transfers deposits in bulk to another insured institution.

The FDIC regards this omission as a gap in the statute that requires interpretation. The FDIC does so because, if the statute were read to allow only increases in AADAs, the statute would generate a continuing shift in the relative insurance burden toward the SAIF. Most Oakar institutions—and nearly all large Oakar institutions—are BIF-member Oakar banks. If an Oakar bank's deposit base were to shrink through ordinary business operations, but its AADA could not decline in proportion to that shrinkage, the SAIF's share of the risk presented by the Oakar bank would increase. But the reverse would not be true: if an Oakar bank's deposit base increased, its AADA would rise as well, and the SAIF would continue to bear the same share of the risk. The result would be a tendency to displace the insurance burden from the BIF to the SAIF.[10]

The FDIC further considers that the main themes of the changes that Congress made to the Oakar Amendment in 1991 are those of simplification, liberalization, and symmetry. Congress allowed savings associations to acquire banks, as well as the other way around. Congress allowed institutions to deal with one another directly, eliminating the requirement that the institutions must belong to the same holding company (and the need for approval by an extra federal supervisor). Congress established a mirrorimage set of rules for assessing Oakar banks and Oakar thrifts. As noted above, Congress repealed the seven percentum floor on AADA growth, thereby removing the most prominent cause of divergence between an Oakar institution's assessment base and its deposit base. Congress expanded the scope of the Oakar Amendment and made it congruent with the relevant provisions of section 5(d)(2). See FDICIA section 501(a), 105 Stat. 2388–91.

In keeping with this view of the 1991 amendments, the FDIC interprets the growth provisions of the Oakar Amendment symmetrically: that is, to encompass negative growth rates as well as positive ones. Nine commenters support this view; none oppose it. Accordingly, the FDIC is taking the position that an Oakar institution's AADA grows and shrinks at the same underlying rate of growth as the institution's domestic deposits.

The FDIC considers that this interpretation is appropriate because it accords with customary usage in the banking industry, and because it is consistent with the purposes and the structure of the statute. Under the FDIC's interpretation, each fund continues to bear a constant share of the risk posed by the institution, and continues to draw assessments from a constant proportion of the institution's deposit base.

Moreover, the FDIC's interpretation encourages banks to make the investment that Congress wished to promote. If ''negative increases'' were disallowed, Oakar banks would see their SAIF assessments (which currently carry a much higher rate) grow disproportionately when their deposits shrank through ordinary business operations.

Finally, the interpretation is designed to avoid—and has generally avoided—the anomaly of an institution having an AADA that is larger than its total deposit base.

2. Negative Growth due to Deposit-Transfers

The FDIC considers that—consistent with the principle of separation between the insurance funds embodied in section 5(d)(2)—a deposit-transfer from

[9] Theoretically, the growth is not applied directly to the prior AADA, but rather to an amount that is computed afresh each time—which amount is the sum of the various elements of the prior AADA.

[10] A shrinking Oakar thrift would have the opposite effect: the BIF's exposure would increase, and the SAIF's exposure would decrease. Oakar thrifts are comparatively rare, however. The net bias would run against the SAIF.

an Oakar institution to another institution should have no effect on the industry-wide stock of BIF-insured and SAIF-insured deposits.

The FDIC's procedure for calculating the growth of the AADA has upset that balance, however. A deposit sale reduces the Oakar bank's total deposit base by a certain percentage: accordingly, the Oakar bank's AADA—and therefore its volume of SAIF-insured deposits—has been reduced by the same percentage. Its BIF-insured deposits have increased correspondingly. In effect, SAIF deposits have been converted into BIF deposits, in violation of the moratorium, and without generating any entrance or exit fees for the insurance funds.[11]

The FDIC is curing this defect by excluding deposit sales from the growth computation. The FDIC continues to believe that the terms ''growth'' and ''increase'' as used in the statute are broad enough to refer to a negative rate as well as a positive one. But the FDIC does not consider that it is required to extend these terms beyond reasonable limits. In particular, the FDIC does not believe that it must necessarily interpret these terms to include a decrease that is attributable to a bulk transfer of deposits. The statute itself excludes the effect of an acquisition or other deposit-assumption from the computation of growth. The FDIC considers that it has ample authority to make an equivalent exclusion for deposit sales.

The FDIC believes its interpretation is sound because deposit sales do not—in and of themselves—represent any change in the industry-wide deposit base of each fund. It is inappropriate for the FDIC to generate such a change on its own as a collateral effect of its assessment procedures. Moreover, the interpretation is in accord with the tenor of the amendments made by the FDICIA, because it treats deposit sales symmetrically with deposit-acquisitions.

Two commenters—both trade groups—support the FDIC's position. Five commenters oppose the deposit-sale exclusion rule. Four of them do so for the very reason that the FDIC is adopting it: when the *Rankin* principle is in force, the deposit-exclusion rule prevents an institution's store of secondary-fund deposits from shrinking except insofar as the seller transfers the deposits to the buyer. One commenter also objects to the deposit-sale exclusion rule on the ground that the rule treats SAIF-member Oakar institutions (whose AADA represents BIF-assessable deposits) more favorably than BIF-member Oakar institutions, based on the higher rates in effect for SAIF-assessable deposits at the time the comment was filed. The FDIC considers that the Funds Act has deprived this comment of much of its force. The SAIF rates are to be reduced significantly. The remaining differential between the rates on SAIF-assessable and BIF-assessable deposits is relatively small, and will soon expire.

One commenter, which opposed the deposit-sale exclusion rule if the FDIC retained the *Rankin* principle, said further that the FDIC should not apply the deposit-sale exclusion rule to sales that occur prior to the effective date of the final rule. The commenter declared that the FDIC should not expect institutions to make business decisions based upon proposed rules. As a technical matter, of course, the FDIC is not adopting the deposit-sale exclusion rule retroactively: rather, the FDIC is changing the method for computing future assessments, beginning with the assessment due for the first semiannual period of 1997. At the same time, the FDIC acknowledges that the change would affect the business decisions of institutions prior to that time, because institutions must look ahead to consider the consequences of their actions. The FDIC considers that institutions have had ample advance notice of the deposit-sale exclusion rule, however. Moreover, the rule repairs a significant weakness in the growth calculation. The adverse effects resulting from that weakness must be eliminated without delay. The FDIC will therefore apply the deposit-sale exclusion rule when computing assessments for the first semiannual period of 1997.

E. Value of an Initial AADA

By statute, an Oakar institution's initial AADA is equal to ''the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction)''. *Id.* 1815(d)(3)(C). The FDIC has interpreted and explained three aspects of this phrase.

1. The Nominal-Amount Principle

The FDIC has adopted an interpretive regulation specifying that the ''amount of any deposits acquired'' by the buyer—and therefore the value of the buyer's initial AADA—is (generally) equal to the full nominal amount of the deposits that the buyer assumes from the seller. 12 CFR 327.32(a)(3)(4). The FDIC is retaining the substance of this provision. The final rule continues to emphasize the point that the amount of the transferred deposits is measured by focusing on the volume divested by the seller. The FDIC's purpose is to make it clear that post-transaction events—such as deposit run-off—have no bearing on the calculation of the buyer's AADA.

Two commenters (including one trade group) support the nominalvalue principle; two oppose it. The opposing commenters point out that the FDIC discounts the transferred deposits when it serves as conservator or receiver for a seller (troubled-seller cases). The FDIC provides the discount on the ground that the buyer can expect to sustain a substantial run-off of deposits after the transaction. The opposing commenters contend that buyers sustain run-off even when the seller is a healthy institution. The commenters therefore urge the FDIC to provide for a discount in healthy-seller cases as well as in troubled-seller ones.[12]

The FDIC does not believe the commenters' point is well taken. As discussed in more detail at II.E.2. below, the FDIC has established the discount for troubled-seller cases because, as a historical matter, the cases have arisen in the context of unusual economic conditions, and presented special supervisory issues. These special circumstances do not apply to healthy-seller transactions in the current economic environment. Buyers and sellers negotiate the terms of their transactions at arms' length, and take the effects of deposit run-off into account in arriving at a price. The FDIC does not believe it necessary or appropriate to contribute the resources of the seller's insurance fund, in the form of foregone assessments, to assist such transactions.

The FDIC is retaining the nominal-value principle for two chief reasons. Most importantly, the principle reflects the manifest intent of the statute, which specifies that the volume of the acquired deposits are to be ''determined at the time'' of the transaction. Second, the principle has the virtues of clarity and precision. Both the buyer and a seller will know precisely the value of an AADA that is generated in an Oakar

[11] The effect has occurred whenever an Oakar institution transfers deposits, without regard for whether the transferred deposits have been primary-fund or secondary-fund deposits. Any deposit-transfer has shrunk the seller's overall deposit-base, and has therefore reduced its AADA.

[12] These two commenters further note that they, along with nine other institutions, have petitioned the FDIC to amend its regulations to provide for such a discount. The 11 petitioners have provided data indicating that they have experienced run-off in healthy-seller cases, although the methods used to identify and measure run-off varied from institution to institution.

The FDIC has determined that it is appropriate to address the subject matter of the petition in this rulemaking proceeding together with other issues related to the computation of the AADA. For the reasons given herein, the FDIC declines to adopt the position that the petitioners have proposed.

transaction. The buyer's expected secondary-fund assessments can be an important cost for the parties to consider when deciding on an acceptable price. The FDIC considers that the nominal-value principle reduces uncertainty on this point.

The final rule updates the regulation in two minor ways. The regulation has presumed that the buyer will assume all the seller's deposits, and that all such deposits will be insured by the buyer's secondary fund. The reason for these presumptions is purely historical. At the time the regulation was adopted, the Oakar Amendment only spoke of cases in which the seller merged into or consolidated with the buyer, or in which the buyer acquired all the seller's assets and liabilities. *See* 12 U.S.C. 1815(d)(3)(A) (Supp. I 1989). The Amendment did not allow for less comprehensive Oakar transactions (*e.g.*, branch sales). Nor did it contemplate a transaction in which the seller was an Oakar institution in its own right.

The final rule makes it clear that the nominal-amount principle applies to all deposit-transfer transactions in which the buyer acquires secondary-fund deposits. The final rule also specifies that the AADA is only equal to the nominal amount of the secondary-fund deposits, not necessarily all the transferred deposits. Each point represents the current view of the FDIC.

2. Deposits Acquired in Troubled-Seller Cases

As noted above, the FDIC has discounted the nominal amount of the transferred deposits in troubled-seller cases. The discount is two-fold:

—*Brokered deposits:* All brokered deposits have been subtracted from the nominal volume of the transferred deposits.

—*The ''80/80'' principle:* Each remaining deposit has been capped at $80,000. The buyer's AADA has been equal to 80 percent of the aggregate of the deposits as so capped.

See 12 CFR 327.32(a)(3)(4). The FDIC is ending these discounts for future transactions, on the ground that they are no longer needed. The FDIC is making the change effective as of July 1, 1997, in order to avoid disrupting any negotiations that may currently be under way.

The FDIC adopted the discounts because the funding decisions for troubled-seller cases—and particularly for troubled-thrift cases—were subject to constraints and considerations that fell outside the normal range of factors influencing such decisions in the market place for healthy institutions. The sellers had often been held in conservatorship for some time. In order to maintain the assets in such institutions, the conservator had often found it necessary to obtain large and other high-yielding deposits. The FDIC determined that, while any bidder had to evaluate and price all aspects of a transaction, it would be counterproductive to require bidders to price the contingencies related to volatile deposits in assisted transactions, given that these deposits were primarily artifacts of government conservatorships. Considering the objective of attracting private capital in order to avoid additional costs to the taxpayer, the FDIC sought to avoid the potential deterrent effect of including these artificial elements in the pricing equation.

The FDIC recognized that healthy sellers sometimes relied upon volatile deposits for funding as well. But the FDIC regarded their funding decisions as a normal part of a strategy to maximize the profits of a going concern. The comparable decisions for troubled sellers were made by managers of government conservatorships that were subject to funding constraints, relatively inflexible operating rules (necessary to control a massive government effort to sell failed thrifts), and other considerations outside the scope of the typical private transaction.

The FDIC adopted this interpretive rule at a time when troubled and failed thrifts were prevalent, and the stress on the safety net for such institutions was relatively severe. The stress has been considerably relieved, however. The FDIC considers that, under current conditions, there is no longer any need to maintain a special set of rules for troubled-seller cases.

Moreover, the FDIC ordinarily must contribute its own resources to induce buyers to acquire such institutions. Any reduction in future assessments that the FDIC offers as an incentive merely reduces the amount of money the FDIC must contribute at the time of the transaction. The simpler and more straightforward approach is to reflect all such considerations in the net price that buyers pay for such institutions at the time of the transaction.

Two commenters, both trade groups, oppose the FDIC's position. One commenter agrees with the FDIC's reasons for ending the discount, but suggests that the FDIC should retain it for the purpose of ''giving prospective bidders the choice of accepting the predetermined deposit haircut or pricing deposit volatility contingencies''. The other commenter strongly urges the FDIC to retain the discount, giving the following reasons: ''deposit runoff remains a factor''; and ''pricing variations that depend on runoff calculation are uncertain''. The FDIC does not believe these reasons are persuasive, however. The discount is not an alternative to estimating the volatility of deposits and determining an appropriate price for them. The discount is simply a reduction in the base amount on which future assessments will be computed. Whatever uncertainties are present will persist, without regard for whether the base amount retains its full nominal value or is discounted by a fixed amount.

3. Conduit Deposits

The FDIC staff has taken the position that, when an Oakar institution assumes secondary-fund deposits from one institution (original transferor) but promptly re-transfers them to another institution (re-transferee) under certain conditions, the retransferred deposits are not counted as ''acquired'' deposits for the purpose of computing the Oakar institution's AADA. The Oakar institution is regarded as a mere conduit for the deposits. The deposits themselves retain their original insurance status after the re-transfer: whatever their status in the hands of the original transferor, whether BIF-insured or SAIF-insured, the deposits have that status in the hands of the ultimate retransferee. The FDIC described this interpretation, which is the settled view of the FDIC, in the preamble to the proposed rule, but the proposed rule itself did not set forth a provision making this point explicit. The final rule contains such a provision.

The FDIC has invoked the conduit principle only in very narrow circumstances. The FDIC has agreed to exclude the re-transferred deposits when determining an Oakar institution's AADA only when all of the following conditions have been met: the Oakar institution has committed to re-transfer specified branches as a condition of approval of the transaction; the commitment has been enforceable; and the re-transfer has been required to occur within six months after consummation of the initial Oakar transaction. *See, e.g.*, FDIC Advisory Op. 94–48, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4901–02 (1994).

The FDIC is codifying and refining the ''conduit'' principle. Under the final rule, secondary-fund deposits have the status of ''conduit'' deposits in the hands of an Oakar institution only if the Oakar institution has acquired them in an Oakar transaction, if a federal

banking supervisory agency or the United States Department of Justice has explicitly ordered the institution to re-transfer the deposits within six months after the date of that transaction, if the institution's obligation to make the re-transfer is enforceable, and if the re-transfer must be completed in the six-month grace period. If the conditions are not satisfied, the conduit principle does not come into play, and the deposits are regarded as having been assumed by the Oakar institution at the time of the original Oakar transaction. Any subsequent re-transfer of the deposits would be treated as a separate transaction, and analyzed independently of the Oakar transaction.

The final rule also clarifies the point that conduit deposits are used to compute the Oakar institution's AADA on a temporary basis. The deposits are counted in the ''amount of deposits acquired'' by the Oakar institution—and therefore in its AADA—during the semiannual period in which the transaction occurs. The AADA so computed is used to determine the assessment due for the next semiannual period. If the institution retains the deposits during part of that following period, the deposits are again included in the ''amount of deposits acquired''—and are again part of the institution's AADA—for the purpose of computing the assessment for the semiannual period after that. But thereafter the deposits are excluded from the ''amount of deposits acquired'' by the Oakar institution. In this regard, one commenter (a trade group) says the deposits should ''be assessed on a pro rata basis for the time they remain on the institution's books''. The FDIC declines to adopt this suggestion. The suggestion is a departure from the FDIC's general method of determining assessments, which derives an institution's assessment base from the deposits that the institution holds at the end of each calendar quarter, and which does not take into account the length of time the institution holds the deposits.

Two commenters support the conduit rule as proposed by the FDIC. Three others urge the FDIC to broaden the conduit rule to reach cases in which the buyer re-transfers the deposits voluntarily. The FDIC declines to do so, however. One of the primary purposes for the conduit rule—absent which the FDIC would not have adopted the rule—is to accommodate the directives of the Department of Justice and the federal banking agencies. That purpose is not served when the seller does not act under government compulsion.

One commenter urged the FDIC to extend the conduit rule to cases in which the buyer does not re-transfer the deposits, but merely divests itself of them by paying them off. The commenter suggests that deposits should qualify as conduit deposits if the buyer knows it will re-transfer the deposits within a very short time after acquiring them, and if the buyer can identify the deposits with great specificity. The FDIC declines to adopt this position, however. The FDIC wishes to confine the conduit rule to circumstances where the actions of the parties, and the relationships among them, are reasonably well defined. When the Department of Justice or a federal banking supervisor orders a buyer to re-transfer deposits to another institution, the FDIC may safely expect that the link between the buyer and the deposits will be severed. Moreover, the buyer remains subject to continuing federal oversight, the focus of which is on the structural and economic changes that the divestiture has been designed to produce. The result is that the oversight ensures that the link between the buyer and the deposits will remain severed. The case is otherwise when a buyer merely pays off the deposits. When no other institution is involved, the buyer may easily re-establish its connection with the depositors—and, as a practical matter, recover the deposits—either directly or indirectly. Moreover, any continuing federal oversight of the buyer is more likely to focus on general regulatory objectives, such as the maintenance of an appropriate capital level, that do not prevent the buyer from re-establishing its link to the deposits.

F. Transitional Matters

1. Freezing prior AADAs

In theory, an Oakar institution's AADA is computed anew for each semiannual period. An institution's AADA for a current semiannual period is equal to the sum of three elements:

- *Element 1*: The volume of secondary-fund deposits that the institution originally acquired in the Oakar transaction;
- *Element 2*: The aggregate of the growth increments computed with respect to the semiannual periods prior to the one with respect to which Element 3 is being determined; and
- *Element 3*: The growth increment with respect to the period just prior to the current period (*i.e.*, just prior to the period for which the assessment is due, and for which the AADA is being computed). Element 3 is computed on a base that equals the sum of elements 1 and 2.

The FDIC has consistently interpreted its existing rules to mean that, when a growth increment has already been determined with respect to a semiannual period, the growth increment continues to have the same value thereafter. *See, e.g.*, FDIC Advisory Op. 9219, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4619, 4620–21 (1992). The net effect has been to ''freeze'' AADAs—and their elements—for prior semiannual periods. The final rule codifies this principle.

In keeping with this principle, the interpretations set forth in the final rule apply on a purely prospective basis. They come into play only for the purpose of computing future AADAs. The final rule's interpretations do not affect AADAs already computed for prior semiannual periods, or the assessments that Oakar institutions have already paid on them. Nor do they affect the prior-period elements of AADAs that are to be determined for future semiannual periods (except insofar as the interpretations affect the increment computed with respect to the second semiannual period of 1996). In short, the final rule ''leaves prior AADAs alone''.

2. 1st-Half 1997 Assessments: Excluding Deposit Sales From the Growth Calculation

The FDIC will follow its existing procedures in computing AADAs for the first semiannual period of 1997, with one exception. An institution's AADA for the first semiannual period of 1997 will be based on the growth of the institution's deposits as measured over the entire calendar year 1996. The AADA so determined will be used to compute both quarterly payments for the first semiannual period of 1997.

The exception is that, when computing an AADA's increment of growth with respect to the second semiannual period of 1996, the FDIC will apply its new limitation on ''negative'' growth: that is, the FDIC will decline to consider shrinkage attributable to deposit-transfer transactions that have occurred on and after July 3, 1996 (the date on which the Federal Register published the proposed rule).

The FDIC acknowledges that this limitation makes a significant break with the past. The FDIC further recognizes that the limitation can affect the business considerations that affect deposit-transfer transactions. The FDIC considers that the industry has had ample notice of the limitation, however, and that the parties to any such transaction have been able to factor in any new costs that the limitation may have produced.

At the same time, the FDIC agrees that it would be inappropriate to apply the limitation retroactively to transactions that have been completed earlier in 1996. The parties to these transactions did not have notice of the FDIC's proposal. The FDIC will therefore include shrinkage attributable to a deposit sale that occurred during the first semiannual period of 1996 when determining the annual growth rate for an Oakar institution with respect to that semiannual period. The annual growth rate as so computed will be used in computing the institution's AADA for the first semiannual period of 1997 and for future periods.

3. 2nd-Half 1997 Assessments: Use of Quarterly AADAs

The FDIC will begin measuring AADAs on a quarterly basis during the first semiannual period of 1997. The first quarterly AADA component that the FDIC will identify and measure will be the quarterly component as of March 31, 1997. That component will reflect the rate of growth of the institution's deposits during the first calendar quarter of 1997 (January–March). The component so measured will be used to determine the institution's first quarterly payment for the second semiannual period in 1997—that is, the June payment.

The second quarterly AADA component that the FDIC will identify and measure will reflect the rate of growth of the institution's deposits during the second calendar quarter of 1997 (April–June). The second component will be used to determine the institution's second quarterly payment for the second semiannual period in 1997 (the September payment).

G. Simplification and Clarification of the Regulation

The final rule makes certain changes to the current regulation that clarify and simplify it without changing its meaning. The FDIC is making these changes in response to two initiatives. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), requires federal agencies to streamline and modify their regulations. In addition, the FDIC has voluntarily committed itself to review its regulations on a 5-year cycle. *See* Development and Review of FDIC Rules and Regulations, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 5057 (1984). The FDIC considers that subpart B of part 327 is a fit candidate for review under each of these initiatives.

The final rule clarifies subpart B by defining and using the terms ''primary fund'' and ''secondary fund''. An Oakar institution's primary fund is the fund to which the institution belongs; its secondary fund is the other insurance fund. Using these terms, the FDIC is simplifying paragraphs (1) and (2) of § 327.32(a) by eliminating redundant language; the changes do not alter the meaning of these provisions.

In addition, the FDIC is clarifying § 327.6(a) by changing the nomenclature used therein. ''Deposit-transfer transaction'' is replaced by ''terminating transaction''; ''acquiring institution'' is replaced by ''surviving institution''; and ''transferring institution'' is replaced by ''terminating institution''. The terms previously used in § 327.6(a) are also used in other provisions of part 327, where they have different and less specialized meanings. The change in nomenclature in § 327.6(a) is intended to avoid any confusion that the previous terminology might have caused.

III. Effective Date

The final rule is effective on January 1, 1997. Notwithstanding the fact that the FDIC has asked for comment on the changes made by the final rule, the final rule is an interpretive rule, and may be made effective without having been published 30 days prior to its effective date. 5 U.S.C. 553(d)(2).

Moreover, the FDIC has determined that there is good cause for the rule to be made effective on January 1, 1997, and not after a 30-day delay. The 30-day delay is not necessary in the case of provisions that codify the FDIC's existing interpretations: *e.g.*, those pertaining to the *Rankin* doctrine, to the principle of negative growth in general, the conduit principle, to the nominal-value rule for initial AADAs in healthy-seller cases, and to the principle that the value of AADAs for prior semiannual periods will be ''frozen''. The 30-day delay is likewise not necessary in the case of provisions that, by their terms, do not affect the assessment for the first semiannual period of 1997: *e.g.*, those that shift the burden of computing AADAs to the FDIC, those that interpret the AADA—and the growth thereof—on a quarterly basis, and those that apply the nominal-value rule to initial AADAs in troubled-seller cases.

The FDIC has refrained from adopting the final rule earlier, inasmuch as the rule is predicated in part on certain prior actions of the Board, notably the reduction of assessment rates for SAIF members. Nevertheless, the FDIC considers it necessary for certain of the changes made by the rule to apply with respect to the assessment for the first semiannual period of 1997, which begins on January 1, 1997—notably, the exclusion of deposit-sales from the computation of growth in the AADA. The FDIC has therefore determined that it has good cause to adopt the final rule with respect to these provisions without the full 30-day delay.

IV. Request for Public Comment

The FDIC has solicited comment on all aspects of the rule. In particular, the FDIC has solicited comment on the following points: attributing deposits that an Oakar institution transfers to another institution according to principles articulated in the *Rankin* letter, or treating the transferred deposits as a blend of deposits insured by both insurance funds; having the FDIC, rather than individual institutions, compute AADAs using information provided by the institutions; interpreting AADAs as consisting of quarterly components, and computing the growth of AADAs on a quarterly cycle rather than an annual one; retaining the concept of negative growth for the purpose of computing AADAs; excluding deposit sales from the computation of growth; applying the nominal-amount principle for determining initial AADAs in all cases, including troubled-seller cases; and preserving the conduit-deposit concept.

In addition, in accordance with section 3506(c)(2)(B) of the Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(B), the FDIC has solicited comment for the following purposes on the collection of information described herein:

- To evaluate whether the collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;
- To evaluate the accuracy of the FDIC's estimate of the burden of the collection of information;
- To enhance the quality, utility, and clarity of the information to be collected; and
- To minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The FDIC has also solicited comment on all other points raised or options described herein, and on their merits relative to the rule.

V. Paperwork Reduction Act

Under the FDIC's prior procedures, each Oakar institution was required to

compute its AADA at the end of each year, using a worksheet provided by the FDIC (annual growth worksheet). The annual growth worksheet showed the computation of the institution's AADA for the first semiannual period of the current year—that is, the AADA that was used to compute the assessment due for the first semiannual period of the current year—which was based on the institution's growth during the prior year. The institution was required to provide the annual growth worksheet to the FDIC as a part of the institution's certified statement.

In addition, whenever an institution was the buyer in an Oakar transaction, it was required to submit a transaction worksheet showing the total deposits acquired on the transaction date. If the seller were an Oakar institution, and if the buyer had acquired the entire institution, the buyer was also required to report the seller's last AADA (as shown in the seller's last call report). The buyer was then required to subtract this number from the total deposits acquired in order to determine its new AADA.

The final rule changes this procedure for the annual growth worksheets for the first semiannual period of 1997 (*i.e.*, for the worksheets that show the growth of deposits during 1996). The change only affects Oakar institutions that transferred deposits to other institutions during 1996. Such an institution must report the total amount of deposits that it transferred in transactions from July 1–December 31, 1996.

Thereafter the FDIC will compute the AADAs for all Oakar institutions, using information taken from their quarterly call reports. Institutions will not have to report additional information in most cases. An Oakar institution that has neither acquired nor transferred deposits in the prior quarter will not have to provide any additional information at all. An Oakar institution that has acquired deposits will have to provide the same information at the end of the quarter that it now provides at the end of the year; there will be a change in the timing, but no change in burden.

Only an Oakar institution that transferred deposits will have to provide additional information. Sellers will have to report the volume of deposits transferred and the date of the transaction. This information is readily available: the extra reporting burden is small.

More to the point, the net effect is to reduce the overall reporting burden on Oakar institutions. The burden of submitting extra information in deposit-sale cases is more than offset by the elimination of the growth worksheet and by the FDIC's assumption of the burden of computing AADAs.

Accordingly, the FDIC is revising an existing collection of information. The revision has been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The impact of the final rule on paperwork burden is to require a one-time *de minimis* report from approximately 100 institutions for the first semiannual period in 1997, and thereafter to eliminate the annual growth worksheet for all 900 Oakar institutions, which takes an estimated two hours to prepare. The effect of this procedure on the estimated annual reporting burden for this collection of information is a reduction of 1,800 hours:

Approximate Number of Respondents: 900.

Number of Responses per Respondent: −1.

Total Annual Responses: 900.

Average Time per Response: 2 hours.

Total Average Annual Burden Hours: −1800 hours.

The FDIC expects the Federal Financial Institutions Examination Council and the Office of Thrift Supervision to require (as needed) the information in the quarterly reports of condition, starting with the report for March 31, 1997.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the final rule. Although the FDIC has chosen to publish general notice of the rule, and to ask for public comment on it, the FDIC was not obliged to do so, as the rule is interpretive in nature. *See id.* 553(b) and 603(a).

Moreover, the FDIC considers that the rule amounts to a net reduction in burden for all Oakar institutions, as they no longer have to prepare or file regular annual growth worksheets after the worksheet with respect to 1996. Instead, a limited number of Oakar institutions must submit one new piece of information, and only for quarters in which they have transferred deposits.

In addition, although the Regulatory Flexibility Act requires a regulatory flexibility analysis when an agency publishes a rule, the term ''rule'' (as defined in the Regulatory Flexibility Act) excludes ''a rule of particular applicability relating to rates''. *Id.* 601(2). The final rule relates to the rates that Oakar institutions must pay, because it addresses various aspects of the method for determining the base on which assessments are computed. The Regulatory Flexibility Act is therefore inapplicable to this aspect of the final rule.

Finally, the legislative history of the Regulatory Flexibility Act indicates that its requirements are inappropriate to this aspect of the final rule. The Regulatory Flexibility Act is intended to assure that agencies' rules do not impose disproportionate burdens on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

126 *Cong. Rec.* 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The final rule does not impose a uniform cost or requirement on all Oakar institutions regardless of size: to the extent that it imposes any costs at all, the costs have to do with the effects that the rule has on Oakar institutions' assessments. An institution's assessment is proportional to its size. Moreover, while the FDIC has authority to establish a separate risk-based assessment system for large and small members of each insurance fund, *see* 12 U.S.C. 1817(b)(1)(D), the FDIC has not done so. Within the current assessment scheme, the FDIC cannot ''tailor'' assessment rates to reflect the ''size and nature'' of institutions.

VII. Congressional Review

The FDIC is submitting a report to each House of the Congress and to the Comptroller General with respect to the final rule in conformity with the procedures specified in 5 U.S.C. 801. The FDIC is submitting the report voluntarily and not under compulsion of the statute, however. The term ''rule''—as that term is used in section 801—excludes ''any rule of particular applicability, including a rule that approves or prescribes * * * rates''. *Id.* 804(3). The FDIC considers that the final rule is governed by this exclusion, because the final rule pertains to the computations associated with assessment rates. Accordingly, the requirements of *id.* 801–808 do not apply.

In any case, because the final rule is interpretive in character, notice and comment are not required under the Administrative Procedure Act. *See* 5 U.S.C. 553(b). Accordingly, the FDIC has for good cause found that notice and public procedure thereon are

''unnecessary'' within the meaning of 5 U.S.C. 808(2). The final rule will therefore take effect on the date specified herein.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Deposit Insurance Funds Act of 1996, Pub. L. 104–208, 110 Stat. 3009 *et seq.*

2. In § 327.6 the section heading and paragraph (a) are revised to read as follows:

§ 327.6 Terminating transfers; other terminations of insurance.

(a) *Terminating transfer*—(1) *Assessment base computation.* If a terminating transfer occurs at any time in the second half of a semiannual period, each surviving institution's assessment base (as computed pursuant to § 327.5) for the first half of that semiannual period shall be increased by an amount equal to such institution's pro rata share of the terminating institution's assessment base for such first half.

(2) *Pro rata share.* For purposes of paragraph (a)(1) of this section, the phrase *pro rata share* means a fraction the numerator of which is the deposits assumed by the surviving institution from the terminating institution during the second half of the semiannual period during which the terminating transfer occurs, and the denominator of which is the total deposits of the terminating institution as required to be reported in the quarterly report of condition for the first half of that semiannual period.

(3) *Other assessment-base adjustments.* The Corporation may in its discretion make such adjustments to the assessment base of an institution participating in a terminating transfer, or in a related transaction, as may be necessary properly to reflect the likely amount of the loss presented by the institution to its insurance fund.

(4) *Limitation on aggregate adjustments.* The total amount by which the Corporation may increase the assessment bases of surviving or other institutions under this paragraph (a) shall not exceed, in the aggregate, the terminating institution's assessment base as reported in its quarterly report of condition for the first half of the semiannual period during which the terminating transfer occurs.

* * * * *

3. Section 327.8 is amended by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 327.8 Definitions.

* * * * *

(h) As used in § 327.6(a), the following terms are given the following meanings:

(1) *Surviving institution.* The term *surviving institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(2) *Terminating institution.* The term *terminating institution* means an insured depository institution some or all of the deposits of which are assumed by another insured depository institution in a terminating transfer.

(3) *Terminating transfer.* The term *terminating transfer* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the terminating institution goes out of business or transfers all or substantially all its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments by or at the end of the semiannual period during which such assumption of liability for deposits occurs. The term *terminating transfer* does not refer to the assumption of liability for deposits from the estate of a failed institution, or to a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution.

* * * * *

(j) *Primary fund.* The *primary fund* of an insured depository institution is the insurance fund of which the institution is a member.

(k) *Secondary fund.* The *secondary fund* of an insured depository institution is the insurance fund that is not the primary fund of the institution.

4. Section 327.32 is amended by revising paragraph (a)(1), (a)(2), and (a)(4) introductory text, and removing paragraph (a)(5), to read as follows:

§ 327.32 Computation and payment of assessment.

(a) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraph (a)(2) of this section, and consistent with the provisions of § 327.4, the assessment to be paid by an institution that is subject to this subpart B shall be computed at the rate applicable to institutions that are members of the primary fund of such institution. (ii) Such applicable rate shall be applied to the institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* Notwithstanding paragraph (a)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution which is equal to the adjusted attributable deposit amount of such institution shall:

(i) Be subject to assessment at the assessment rate applicable to members of the secondary fund of such institution pursuant to subpart A of this part; and

(ii) Not be taken into account in computing the amount of any assessment to be allocated to the primary fund of such institution.

* * * * *

(4) *Deposits acquired by the institution.* As used in paragraph (a)(3)(i) of this section, the term ''deposits acquired by the institution'' means all deposits that are held in the institution acquired by such institution on the date of such transaction; provided, that if on or before June 30, 1997, the Corporation has been appointed or serves as conservator or receiver for the acquired institution, such term:

* * * * *

5. New §§ 327.33 through 327.37 are added to subpart B to read as follows:

§ 327.33 ''Acquired'' deposits.

This section interprets the phrase ''deposits acquired by the institution'' as used in § 327.32(a)(3)(i).

(a) *In general.*—(1) *Secondary-fund deposits.* The phrase ''deposits acquired by the institution'' refers to deposits that are insured by the secondary fund of the acquiring institution, and does not include deposits that are insured by the acquiring institution's primary fund.

(2) *Nominal dollar amount.* Except as provided in paragraph (b) of this section, an acquiring institution is deemed to acquire the entire nominal dollar amount of any deposits that the transferring institution holds on the date

of the transaction and transfers to the acquiring institution.

(b) *Conduit deposits.*—(1) *Defined.* As used in this paragraph (b), the term ''conduit deposits'' refers to deposits that an acquiring institution has assumed from another institution (original transferor) in the course of a transaction described in § 327.31(a), and that are treated as insured by the secondary fund of the acquiring institution, but which the acquiring institution has been explicitly and specifically ordered by the Corporation, or by the appropriate federal banking agency for the institution, or by the Department of Justice to commit to re-transfer to another insured depository institution (re-transferee institution) as a condition of approval of the transaction. The commitment must be enforceable, and the divestiture must be required to occur and must occur within 6 months after the date of the initial transaction.

(2) *Treatment with respect to acquiring institution.* Conduit deposits are not considered to be acquired by the acquiring institution within the meaning of § 327.32(a)(3)(i) for the purpose of computing the acquiring institution's adjusted attributable deposit amount for a current semiannual period that begins after the end of the semiannual period following the semiannual period in which the acquiring institution re-transfers the deposits.

(3) *Treatment with respect to re-transferee institution.* Conduit deposits are treated as insured by the same insurance fund after having been acquired by the re-transferee institution as when held by the original transferor.

§ 327.34 Application of AADAs.

This section interprets the meaning of the phrase ''an insured depository institution's 'adjusted attributable deposit amount' for any semiannual period'' as used in the introductory text of § 327.32(a)(3).

(a) *In general.* The phrase ''for any semiannual period'' refers to the current semiannual period: that is, the period for which the assessment is due, and for which an institution's adjusted attributable deposit amount (AADA) is computed.

(b) *Quarterly components of AADAs.* An AADA for a current semiannual period consists of 2 quarterly AADA components. The first quarterly AADA component for the current period is determined with respect to the first quarter of the prior semiannual period, and the second quarterly AADA component for the current period is determined with respect to the second quarter of the prior period.

(c) *Application of AADAs.* The value of an AADA that is to be applied to a quarterly assessment base in accordance with § 327.32(a)(2) is the value of the quarterly AADA component for the corresponding quarter.

(d) *Initial AADAs.* If an AADA for a current semiannual period has been generated in a transaction that has occurred in the second calendar quarter of the prior semiannual period, the first quarterly AADA component for the current period is deemed to have a value of zero.

(e) *Transition rule.* Paragraphs (b), (c) and (d) of this section shall apply to any AADA for any semiannual period beginning on or after July 1, 1997.

§ 327.35 Grandfathered AADA elements.

This section explains the meaning of the phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' in § 327.32(a)(3)(ii). The phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' refers to the aggregate of the increments of growth determined in accordance with § 327.32(a)(3)(iii). Each such increment is deemed to be computed in accordance with the contemporaneous provisions and interpretations of such section. Accordingly, any increment of growth that is computed with respect to a semiannual period has the value appropriate to the proper calculation of the institution's assessment for the semiannual period immediately following such semiannual period.

§ 327.36 Growth computation.

This section interprets various phrases used in the computation of growth as prescribed in § 327.32(a)(3)(iii).

(a) *Annual rate.* The annual rate of growth of deposits refers to the rate, which may be expressed as an annual percentage rate, of growth of an institution's deposits over any relevant interval. A relevant interval may be less than a year.

(b) *Growth; increase; increases.* Except as provided in paragraph (c) of this section, references to ''growth'', ''increase'', and ''increases'' may generally include negative values as well as positive ones.

(c) *Growth of deposits.* ''Growth of deposits'' does not include any decrease in an institution's deposits representing deposits transferred to another insured depository institution, if the transfer occurs on or after July 1, 1996.

(d) *Quarterly determination of growth.* For the purpose of computing assessments for semiannual periods beginning on July 1, 1997, and thereafter, the rate of growth of deposits for a semiannual period, and the amount by which the sum of the amounts specified in § 327.32(a)(3)(i) and (ii) would have grown during a semiannual period, is to be determined by computing such rate of growth and such sum of amounts for each calendar quarter within the semiannual period.

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) acquires deposits from another insured depository institution (transferring institution). For the purpose of determining whether the assumption of deposits (assumption transaction) constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)), and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Transferring institution.*—(1) *Transfer of primary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by a transferring institution in a transaction, or in a related series of transactions, does not exceed the volume of deposits that is insured by its primary fund (primary-fund deposits) immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the transferred deposits shall be deemed to be insured by the institution's primary fund. The primary institution's volume of primary-fund deposits shall be reduced by the aggregate amount so transferred.

(2) *Transfer of secondary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by the transferring institution in a transaction, or in a related series of transactions, exceeds the volume of deposits that is insured by its primary fund immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the following volume of the deposits so transferred shall be deemed to be insured by the institution's secondary fund (secondary-fund deposits): the aggregate amount of the transferred deposits minus that portion thereof that is equal to the institution's primary-fund deposits. The transferring institution's volume of secondary-fund deposits shall be reduced by the volume of the secondary-fund deposits so transferred.

(b) *Acquiring institution.* The deposits shall be deemed, upon assumption by the acquiring institution, to be insured by the same fund or funds in the same amount or amounts as the deposits were so insured immediately prior to the transaction.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of November 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–31207 Filed 12–9–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–103–AD; Amendment 39–9808; AD 96–23–18]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N24A, and N22S Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to an airworthiness directive (AD) that was published in the Federal Register on November 12, 1996 (61 FR 57993), and concerns Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N24A, and N22S airplanes. The AD number for that action should be AD 96–23–18, but was referenced as AD 96–23–03. The AD currently requires replacing the existing fuselage stub fin plate with one of improved design. This action corrects the AD to reflect the correct AD number.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Lakewood, California 90712; telephone (310) 627–5224; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION: On October 28, 1996, the FAA issued an airworthiness directive (AD), Amendment 39–9808 (61 FR 57993, November 12, 1996), to require replacing the existing fuselage stub fin plate with one of improved design on ASTA Models N22B, N24A, and N22S airplanes.

Need for the Correction

The AD number for that action should be AD 96–23–18, but was referenced as AD 96–23–03. As written, operators of the ASTA Models N22B, N24A, and N22S airplanes would be referencing the wrong AD in their logbook, thus creating confusion as to whether the operator had complied with the AD.

Action is taken herein to correct this reference in Amendment 39–9808 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains December 23, 1996.

Correction of Publication

Accordingly, the publication of November 12, 1996 (61 FR 57993), of Amendment 39–9808; AD 96–23–03, which was the subject of FR Doc. 96–28164, is corrected as follows:

On page 57993, in the first column, in the fifth line of the heading of the document, replace AD 96–23–03 with AD 96–23–18.

§ 39.13 [Corrected]

On page 57994, in the first column, § 39.13, the first line of the AD, replace 96–23–03 with 96–23–18.

Issued in Kansas City, Missouri on December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31264 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC''), subject to the conditions specified below, is granting to designated Dealers of the New Zealand Futures and Options Exchange (''Exchange'' or ''NZFOE'') the following relief: Exemption under Commission rule 30.10, 17 CFR 30.10 (1996), from application of certain of the Commission's foreign futures and options rules to solicit and accept orders from United States customers for otherwise permitted transactions on the NZFOE and on any non-U.S. exchange [1] where such Dealers are permitted under New Zealand law to conduct futures business for customers; and confirmation of the applicability of the Limited Marketing Orders.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Marianne A. Bueno, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade.[2] These rules, which are codified in Part 30 of the Commission's regulations,[3] generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products [4] sold to U.S. customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and options products to U.S. customers, the Commission, among other things, considers the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged

[1] The term ''non-U.S. exchange'' refers to a foreign board of trade which is defined in Commission rule 1.3 (ss), 17 CFR 1.3(ss) (1996) as:

Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the Commodity Exchange Act (''CEA'' or ''Act'') are not within the scope of this Order.

[2] 52 FR 28980 (Aug. 5, 1987).

[3] 17 CFR Part 30 (1996).

[4] Commission rule 30.1(a), 17 CFR 30.1(a) (1996), defines the term ''foreign futures'' as ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.''

Commission rule 30.1(b), 17 CFR 30.1(b) (1996), defines the term ''foreign option'' as ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made on or subject to the rules of any foreign board of trade.''

in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules so as to solicit or accept orders directly from U.S. customers for foreign futures or option transactions.[5] Provided such exemption would not otherwise be contrary to the public interest, persons located and doing business outside of the United States were granted relief based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.[6]

In issuing orders under rule 30.10, the Commission evaluates whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission rule 30.10. The specific elements examined are set forth in Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules'' (''Appendix A'').[7] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons (both individuals and firms) through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) minimum sales practice standards, including the disclosure of the risks of futures transactions; (5) recordkeeping and reporting requirements; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) the existence of appropriate information-sharing arrangements. The Commission may apply additional conditions to ensure that brokers licensed under other regulatory regimes are not permitted to solicit U.S. customers while effectively evading U.S. requirements, such as those relative to statutory disqualification.

Moreover, the Commission specifically stated in adopting rule 30.10 that no exemption based on substituted compliance of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consent to jurisdiction in the United States and designate an agent for service of process in the United States with respect to transactions subject to Part 30 by filing a copy of the relevant agency agreement with the National Futures Association (''NFA''); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify NFA of the commencement or termination of business in the United States.[8]

By letters dated June 8 and June 12, 1993, as supplemented, counsel for the Exchange requested that the Commission exercise its authority under Commission rule 30.10 to exempt certain Dealers[9] from compliance with the registration and other requirements of Part 30 relative to brokerage activities undertaken on or subject to the rules of the NZFOE for or on behalf of customers in the United States[10] and which are otherwise permissible as to U.S. customers.[11] By letter dated February 22, 1996, counsel for the Exchange requested expanded rule 30.10 relief to permit Dealers to also solicit or accept orders from U.S. customers for otherwise permitted transactions on any non-U.S. exchange where the Dealers are entitled to carry such accounts. The Exchange construes its customer protection rules broadly to also apply to regulated activities on exchanges other than the NZFOE and as authorizing disciplinary action against its Dealers in connection with such activities.[12]

By letter dated June 5, 1996, counsel for the Exchange requested confirmation from the Commission that the Limited Marketing Orders will apply to Dealers which have confirmed rule 30.10 relief.[13]

Order: The Commission is hereby issuing the following order:

Order under CFTC Rule 30.10 exempting designated dealers of the NZFOE from the application of certain of the foreign futures and options rules the later of thirty days after publication of the order herein in the Federal Register or after the filing of relevant consents by dealers of the exchange and the exchange under the terms and conditions of this order.

The Commission has reviewed the information and representations contained in, among other things, the following submissions:

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[5] In general, foreign exchanges have filed rule 30.10 applications on behalf of their members in connection with transactions on those exchanges. In certain cases, where a regulatory/self-regulatory authority has requested that firms subject to its jurisdiction be granted broader relief to engage in transactions on exchanges other than in its home jurisdiction, the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions.

To date, such expanded relief has been granted:

(a) on May 15, 1989, to firms designated by the U.K. Securities and Investments Board and certain U.K. SROs to conduct brokerage activities for U.S. customers on any non-U.S. exchange designated under U.K. law. 54 FR 21599, 21600 (May 19, 1989); 54 FR 21604, 21605 (May 19, 1989) (Association of Futures Brokers and Dealers (''AFBD'')); 54 FR 21609, 21610 (May 19, 1989) (The Securities Association (''TSA'')); 54 FR 21614, 21615 (May 19, 1989) (Investment Management Regulatory Organisation). The AFBD and TSA subsequently merged to form the Securities and Futures Association, which became the successor organization for rule 30.10 purposes. 55 FR 14017 (Apr. 5, 1991); and

(b) on April 7, 1993, to firms designated by the Sydney Futures Exchange (''SFE''). 58 FR 19209 (Apr. 13, 1993).

[6] The Commission has authorized, subject to certain conditions, firms which have received rule 30.10 relief to engage in limited marketing conduct with respect to foreign futures or option contracts from locations within the United States through their employees or other representatives. 57 FR 49644 (Nov. 3, 1992); 59 FR 42156 (Aug. 17, 1994) (hereinafter ''Limited Marketing Orders'').

Prior to the issuance of the Limited Marketing Orders, rule 30.10 relief was available only to qualified firms subject to a comparable regulatory system which solicited U.S. customers from a foreign location. The Limited Marketing Orders interpret rule 30.10 relief more expansively to allow rule 30.10 exempted firms and their employees or other representatives to market foreign futures and option products to qualified customers from U.S. locations under certain conditions. Among other conditions, the Limited Marketing Orders require that the regulatory or self-regulatory organization to which the Commission has issued 30.10 relief or its equivalent obtain written confirmation from the Commission that the Limited Marketing Orders apply to such rule 30.10 order.

[7] 17 CFR Part 30, Appendix A (1996).

[8] 52 FR 28980, 28981 and 29002 (Aug. 5, 1987).

[9] Subsequent to the acquisition of the NZFOE by the SFE, member firms of the NZFOE are called ''Dealers'' and shall be referred to as such in this Order.

[10] See letters dated June 8 and June 12, 1993, from Philip McBride Johnson, counsel for the Exchange, to Jean A. Webb, Commission, Re: Petition for Authorization of the Offer and Sale in the United States of Futures and Option Contracts Traded on the NZFOE.

By letter dated July 12, 1993, counsel for the Exchange also requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons resident in the United States. See letter dated July 12, 1993 from Mr. Johnson to Ms. Webb, Re: Petition Pursuant to Commission Regulation § 30.3(a) for Exemption of Certain Commodity Options on the NZFOE.

On March 12, 1996, the Commission amended Commission rule 30.3(a) to no longer require an authorization order before a particular foreign option product could be offered or sold to U.S. customers. However, the amendment does not affect existing restrictions on transactions involving stock index futures and foreign government debt. 61 FR 10891 (Mar. 18, 1996). Based on the foregoing, by letter dated March 22, 1996 from Jane C. Kang, Commission, to Mr. Johnson, the Exchange was notified that its application under rule 30.3 was deemed withdrawn.

[11] The Part 30 rules apply solely with respect to foreign futures and foreign options, which are defined by reference to the term ''foreign board of trade.'' See note 1 above.

[12] Letter dated February 22, 1996 from Philip McBride Johnson, counsel for the Exchange, to Jane C. Kang, Commission.

[13] Letter dated June 5, 1996 from Philip McBride Johnson, counsel for the Exchange, to Jane C. Kang, Commission.

—The Securities Act 1978, as amended, 1988, No. 234 (21 December 1988)(''SAA'');
—The Futures Industry (Client Funds) Regulations 1990, No. 227 (3 September 1990)(''Client Funds Regulations'');
—The Companies Act 1955, Articles of Association of New Zealand Futures and Options Exchange Limited;
—New Zealand Securities Commission Annual Report (30 June 1992);
—The Annual Audited Financial Statements of the New Zealand Futures and Options Exchange (31 March 1992);
—New Zealand Futures & Options Exchange, A Specialist, Screen-Trading Marketplace;
—Aklaw Number Thirty-Nine Limited (Aklaw) Petition to the Australian Ministerial Council; and
—Letters dated June 8, 1993; June 12, 1993; June 9, 1994; February 22, 1996; June 6, 1996; and November 12, 1996 from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, counsel for the Exchange.

Based upon its review of the above supporting materials and the Memorandum from the Division of Trading and Markets dated November 21, 1996, and subject to the conditions set forth below, the Commission has determined to issue this Order which will become effective the later of thirty days after publication of this Order in the Federal Register or the filing of consents by Dealers of the Exchange and the Exchange to the terms and conditions of the Order herein.

Furthermore, subject to the conditions set forth below, the Commission concludes that the standards for relief set forth in Commission rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with the SAA, the Client Funds Regulations and NZFOE rules may be substituted for compliance with certain sections of the Act as more particularly set forth herein. By this Order, the Commission hereby exempts, subject to specified conditions, those Dealers identified to the Commission as eligible for the rule 30.10 relief granted herein from registration with the Commission based upon substituted compliance by such Dealers with the applicable statutes and relevant Exchange and other rules in effect in New Zealand.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the firms trading on the Exchange who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees;

(3) A system for the segregation of customer funds that applies to all customers and which requires the separate accounting for such funds, augmented by funds designed to compensate customers who have suffered a loss as a result of fraud or insolvency or other failure of a Dealer;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, customer account statements, customers' deposit records and accounting records for customer and proprietary trades;

(5) Sales practice standards for licensees which include, for example, required disclosures to customers and prohibitions on misrepresentations and other deceptive practices;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, a surveillance program and the existence of broad powers to conduct investigations and to impose sanctions; and

(7) Mechanisms for sharing information between the Exchange and the New Zealand Securities Commission (''NZSC'') and the Commission on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.[14]

Further, the Commission has determined in this Order to permit Dealers designated for rule 30.10 relief to solicit and accept orders from U.S. customers for otherwise permitted transactions in commodity futures and commodity options (including options on futures)[15] on or subject to the rules of any non-U.S. exchange permitted under New Zealand law, other than a contract market designated as such pursuant to section 5 of the CEA, undertaken by such Dealers from a location in New Zealand.

The Commission also hereby confirms that the Limited Marketing Orders will apply to Dealers designated by the Exchange for rule 30.10 relief pursuant to this Order. Any such Dealer acting pursuant to the Limited Marketing Orders will be required to comply with the terms and conditions of the Limited Marketing Orders in addition to those specified herein.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission rule 30.9, 17 CFR 30.9 (1996), or the disclosure provisions of Commission rules 1.55, 30.6 and 33.7, 17 CFR 1.55, 30.6 and 33.7 (1996), including the requirements of rule 1.55(f), 30.6(e) and 33.7(f).[16]

The relief does not extend to rules or regulations relating to trading, directly or indirectly, on U.S. exchanges. For example, a Dealer trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[17] Similarly, if such a Dealer were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[18] The relief herein does not apply to Dealers that solicit U.S. customers for transactions on U.S. markets. In that case, the Dealer must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any Dealer to seek rule 30.10 relief under this exemptive Order is subject to the following conditions:

I. The regulatory or self-regulatory organization responsible for monitoring the compliance of such Dealer with the regulatory requirements described in the rule 30.10 petition must represent in writing to the CFTC that:

A. Each Dealer for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in New Zealand; such Dealer is engaged in business with customers located in New Zealand as well as in the United States; and such Dealer would not be statutorily disqualified from

[14] On September 16, 1996, the Commission and the NZSC signed a Memorandum of Understanding concerning consultation and mutual assistance for the exchange of information. In addition, the Exchange has provided assurances to the Commission regarding the availability of information relevant to Part 30 on an ''as needed'' basis. See letter dated June 9, 1994 from Philip McBride Johnson, counsel for the Exchange, to Jane C. Kang, Commission.

[15] Relief under this Order extends only to those products falling within the jurisdiction of the CEA and remains subject to existing product restrictions under the CEA and Commission regulations and procedures thereunder related to stock indices and foreign government debt (see CEA section 2(a)(1)(B)(v) and Securities and Exchange Commission rule 3a12–8, 17 CFR 240.3a12–8 (1996)).

[16] These rules essentially provide that delivery of a mandated risk disclosure statement does not eliminate any obligation under the Act to disclose all material information to existing or prospective customers even if the information is not specifically required by the applicable risk disclosure rule.

[17] See, *e.g.*, 17 C.F.R. Part 18 (1996).

[18] See, *e.g.*, 17 C.F.R. Parts 17 and 21 (1996).

registration under section 8a(2) of the CEA, 7 U.S.C. 12(a)(2) (1994);

B. It will monitor Dealers to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a Dealer which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

C. All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and be otherwise permissible as to U.S. customers, and the Commission will receive prompt notice of all material changes to NZSC and Exchange rules, the SAA and Client Fund Regulations;

D. It will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated Dealers of U.S. customers for otherwise permissible transactions involving options and futures business on non-U.S. exchanges to the same extent that the Exchange conducts such activities in regard to Exchange business;

E. Customers resident in the United States will be provided no less stringent regulatory protection than New Zealand customers under all relevant provisions of New Zealand law;

F. It consents to maintain all Exchange records for a minimum of five years; and

G. It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an ''as needed'' basis in accordance with the agreed information sharing arrangement and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of a New Zealand-domiciled Dealer doing business in the United States under the exemption granted by this Order.

II. Each Dealer seeking rule 30.10 relief hereunder must apply in writing whereby it:

A. Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission rule 30.5, 17 CFR 30.5 (1996);

B. Acknowledges that it can be required by the Exchange to provide the Exchange immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable laws and Exchange rules in effect in New Zealand and that the Exchange will cooperate in providing access to such books and records to the Commission in accordance with the agreed upon information sharing arrangement;

C. Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of the Exchange or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, and will be undertaken consistent with the rules of the NZSC and Exchange and applicable provisions of the SAA and Client Funds Regulations;

D. Represents that no principal, and no employee who solicits or accepts orders from U.S. customers, would be disqualified from directly applying to do business in the United States under section 8a(2) of the CEA, 7 U.S.C. 12a(2) (1994), and consents to notify the Commission promptly of any change in that representation based on a change in control as generally defined in Commission rule 3.32, 17 CFR 3.32 (1996);

E. Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

F. Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers resident in the United States of the availability of such a program; and if the U.S. customer elects NFA arbitration, that the Dealer consents to participate in NFA arbitration even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices;

G. Consents to maintain all firm records for a minimum of five years;

H. Undertakes to comply with the applicable provisions of New Zealand law and Exchange and NZSC rules which form the basis upon which this exemption from certain provisions of the Act is granted;

I. Agrees to provide to any U.S. customer either the generic risk disclosure statement approved by the Commission under rule 1.55(c), or the risk disclosure statements mandated by Commission rules 30.6(a) [*i.e.*, 1.55(a)] and 33.7, and applicable Commission orders, as appropriate;[19]

J. With respect to transactions effected on behalf of U.S. customers on the NZFOE, complies with the regulations relating to segregation of client funds under NZFOE rules and New Zealand laws;

K. With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE and the SFE [20], whether by the Dealer directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, complies with paragraphs 1, 2 or 3 below:

1. a. Must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

b. May not commingle such money, securities and property with the money, securities or property of the Dealer, with any proprietary account of such Dealer, and may not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the Dealer or any proprietary account of the Dealer;

c. May deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph 1. a. above money, securities or property held for or on behalf of non-U.S. customers of the Dealer for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph 1. a. above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph 1. a. above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule or regulation or order, or any rule of any self-regulatory organization;

d. The separate account or accounts referred to in paragraph 1. a. above must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(1) Another person registered with the Commission as a futures commission merchant (''FCM''), or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(2) The clearing organization of any foreign board of trade;

(3) Any member and/or clearing member of such foreign board of trade; or

(4) A bank or trust company which any of the depositories identified in (1)–(3) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

e. The separate account or accounts referred to in paragraph 1. a. may be deemed a good secured amount depository only if the Dealer obtains and retains in its files for the period required by applicable law and Exchange rules, a written acknowledgement from such separate account depository that:

(1) It was informed that such money, securities or property are held for or on behalf of customers of the Dealer; and

(2) It will ensure that such money, securities or property will be held and treated at all times effectively in accordance with the provisions of this paragraph; and, *provided further,* that the Dealer assures itself that such separate account depository will not pass on such money, securities or

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[19] See, *e.g.*, CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,597 (Feb. 21, 1990) (disclosure statement related to the deferred payment of options premiums).

[20] NZFOE is a wholly-owned subsidiary of SFE, which received rule 30.10 relief from the Commission on November 1, 1988. 53 FR 44856 (Nov. 7, 1988). The SFE and its members are required to segregate customer funds from money and property belonging to the firm and cannot use customer funds to satisfy the firm's obligations, both at the firm level and at the SFE clearing house in connection with all transactions effected on the SFE. See Section 1209 of the Australian Corporations Law; SFE Article 43; and SFE Clearing House By-Law 41. Consequently, with respect to transactions on the SFE on behalf of U.S. foreign futures and options customers, NZFOE Dealers may comply with existing NZFOE and SFE rules in connection with paragraph K relating to the foreign futures and options secured amount.

property to any other depository unless the Dealer has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in this paragraph 1 herein; [21] or

2. Must set aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 CFR § 30.7 (1996), and treat those funds in the manner described by that rule; or

3. Must comply with the terms and procedures of paragraph 1 or 2, with the amount required to be segregated under NZFOE rules and New Zealand laws to be substituted for the secured amount requirement as set forth in such paragraphs.[22]

Upon filing of the notice required under paragraph I. B. as to any such Dealer, the rule 30.10 relief granted by this Order may be suspended immediately as to that Dealer. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the Dealer and the Exchange and/or any applicable regulatory or self-regulatory organization.

Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for issuance of an order under Commission rule 30.10, including Appendix A of rule 30.10, have generally been satisfied.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular Dealer, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific Dealer, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures and options.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to part 30 is amended by adding at the end of the appendix the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the New Zealand Futures and Options Exchange (''NZFOE'')

FR date and citation, _____, 1996, _____ FR _____.

Issued in Washington, D.C., on December 3, 1996.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 96–31326 Filed 12–9–96; 8:45 am]

BILLING CODE 6351–01–U

[21] This proviso is intended to ensure that the originating Dealer makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at all subsequent depositories, so that it may determine whether it may count a particular intermediary or clearing house as a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph 2. The Dealer initially would discuss with its immediate intermediary broker whether funds will be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this condition would be satisfied by the Dealer obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or regulatory references.

This requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described in paragraph K would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not intended to create a duty on a rule 30.10 firm that it audit any intermediaries for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms must engage in a due diligence inquiry before customer funds are sent to another intermediary and take appropriate action (*i.e.*, set aside funds) in the event that it becomes aware of facts leading it to conclude that customer funds are not being handled consistent with the requirements of Commission rules or relevant rule 30.10 order by any subsequent intermediary or clearing house.

[22] The Client Funds Regulations permit a Dealer to send client funds to a depository outside New Zealand which cannot or will not provide the acknowledgement required by the Client Funds Regulations, provided that the Dealer has first:

—advised the client that the money may not receive the protection afforded by section 20 of the Client Funds Regulations (*i.e.*, segregation); and

—obtained the written agreement of the client that notwithstanding such notice, the money may be credited to the client funds account. See section 10 of the Client Funds Regulations.

The Commission notes, however, that such waiver is inconsistent with the terms of this Order requiring that the secured amount funds of U.S. foreign futures and options customers (or the segregated amount under New Zealand law) be in appropriate separate account locations and protected for the benefit of such customers.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0251]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione as a colorant in polyethylene phthalate polymers intended for use in food-contact articles. This action is in response to a petition filed by Registration and Consulting Co. AG.

DATES: Effective December 10, 1996; written objections and requests for a hearing January 9, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 2, 1994 (59 FR 39366), FDA announced that a food additive petition (FAP 4B4423) had been filed by Registration and Consulting Co. AG, c/o Bruce A. Schwemmer, Bruce EnviroExcel Group, Inc., 94 Buttermilk Bridge Rd., Washington, NJ 07882 (formerly, c/o Reynaldo A. Gustilo, 125A 18th St., suite 142, Newport Plaza, Jersey City, NJ 07310). The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione (C.I. Solvent Blue 104) as a colorant in polyethylene phthalate

polymers complying with 21 CFR 177.1630, intended for use in food-contact articles.

Upon review of information provided by the petitioner, FDA concluded that the use of C.I. Solvent Blue 104 as a synonym for the colorant may cause confusion because it is identified by a different CAS Reg. No. (71872–84–9) than the CAS Reg. No. for the colorant itself (116–75–6). Therefore, this final rule identifies the colorant only by its CAS Reg. name (1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione) and the corresponding CAS Reg. No. (116–75–6).

In FDA's evaluation of the safety of this food additive, the agency has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of 2,4,6-trimethylaniline, which is a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 2,4,6-trimethylaniline, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additive anticancer or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 1,4-bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione, will result in exposure to no greater than 0.2 part per billion of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 0.6 microgram per person per day (/person/day) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure to this additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 2,4,6-trimethylaniline, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of 2,4,6-trimethylaniline has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. 2,4,6-Trimethylaniline

FDA has estimated the hypothetical worst-case exposure to 2,4,6-trimethylaniline from the petitioned use of the additive as a colorant in polyethylene phthalate polymers to be 1.3 parts per trillion in the daily diet (3 kg), or 3.9 nanograms (ng)/person/day (Ref. 1). The agency used data from a long-term rodent bioassay on 2,4,6-trimethylaniline conducted by Weisburger et al. (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The authors reported that the test material caused significantly increased incidence of liver tumors in male and female mice and female rats and lung tumors in male rats.

Based on the estimated worst-case exposure to 2,4,6-trimethylaniline of 3.9 ng/person/day, FDA's Center for Food Safety and Applied Nutrition estimates that a worst-case upper-bound limit of lifetime human risk from the use of the subject additive is 4.2×10^{-9}, or 4.2 in a billion (Refs. 4, 5, and 6). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 2,4,6-trimethylaniline is likely to be substantially less than the worst-case exposure, and therefore, the upper-bound lifetime human risk would be less. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 2,4,6-trimethylaniline would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 2,4,6-trimethylaniline present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 2,4,6-trimethylaniline may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to the impurity, even under worst-case assumptions, is very low, less than 1.1 in a billion.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive as a colorant for polyethylene phthalate polymers in contact with food is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, the agency concludes that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not

required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 9, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. 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. Memorandum from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216) concerning FAP 4B4423: Dietary Concentrations of the Additive and the Impurity (2,4,6-trimethylaniline), August 15, 1994.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Weisburger, E. K., A. B. Russfield, F. Homburger, J. H. Weisburger, E. Boger, C. G. Van Dongen, and K. C. Chu, ''Testing of Twenty-One Environmental Aromatic Amines or Derivatives for Long-Term Toxicity or Carcinogenicity,'' *Journal of Environmental Pathology and Toxicology*, vol. 2, pp. 325–356, 1978.

4. Memorandum from Executive Secretary, Cancer Assessment Committee (HFS–227) to Chairman, Cancer Assessment Committee, and Chairman, Quantitative Risk Assessment Committee: Worst-case Risk Assessment for 2,4,6-trimethylaniline, December 18, 1995.

5. Memorandum from Executive Secretary, Cancer Assessment Committee (HFS–227) to Chairman, Cancer Assessment Committee, and Chairman, Quantitative Risk Assessment Committee: Correction to December 18, 1995, memorandum: Worst-case Risk Assessment for 2,4,6-trimethylaniline, August 15, 1996.

6. Memorandum from Executive Secretary, Cancer Assessment Committee (HFS–227) to Chairman, Cancer Assessment Committee, and Chairman, Quantitative Risk Assessment Committee: Risk Assessment for 2,4,6-trimethylaniline, August 16, 1996.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * * *
1,4-Bis[(2,4,6-trimethylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 116–75–6).	For use at levels not to exceed 0.0004 percent by weight of polyethylene phthalate polymers complying with § 177.1630 of this chapter.
* * *	* * * *

Dated: November 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31361 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–068]

RIN 2115–AE46

Special Local Regulations; Rada Fajardo, East of Villa Marina, Fajardo, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the AC Delco Offshore Invitational. This event will be held from 1 p.m. AST (Atlantic Standard Time) to 2:30 p.m. AST on December 15, 1996, on the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico. During this event, race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard on the navigable waterways. Therefore, these regulations are necessary to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 12:30 p.m. AST to 3 p.m. AST, December 15, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG D. L. Garrison, Project Officer, Coast Guard Greater Antilles Section, Puerto Rico, at (787) 729–6800, extension 227.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable, because the permit application was received by the unit less than six weeks before the scheduled date for the event.

Discussion of Regulations

The event requiring these regulations is the AC Delco Offshore Invitational. This event will be held from 1 p.m. AST to 2:30 p.m. AST on December 15, 1996, in the waters of Rada Fajardo due east of Villa Marine, Fajardo, Puerto Rico. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. These regulations are required to provide for the safety of life on the navigable waters during the running of the AC Delco Offshore Invitational.

These regulations will establish a regulated area in the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico, starting at 18–20. 0N, 065–37.2W, then North to 18–22.4N, 065–37.2W, then North East to 18–23.2N, 065–36.1W, then South East to 18–22.0N, 065–34.8W, then South to 18–20.0N, 065–34.8W and back to origin. All coordinates referenced use Datum: NAD 1983.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses a limited area off the coast of Puerto Rico and entry into this area will be prohibited for only 2½ hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. The regulated area encompasses a limited area and will be in effect for only 2½ hours on the day of the event.

Collection of Information

These regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the prepartion of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that instruction section 2.B.4.g., this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying from LTJG D. L. Garrison, Coast Guard Section, Greater Antilles, San Juan, Puerto Rico, (787) 729–6800, extension 227. As a condition to the permit, the applicant is required to conduct a survey of the race course one hour prior to the event to ensure no manatees or sea turtles are in the vicinity, to educate the operators of participant and spectator craft regarding the possible presence of manatees and sea turtles, and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

For reasons set out in the preamble, the Coast Guard amends part 100 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T96–068 is added as follows:

§ 100.35–T96–068 AC Delco Offshore Invitational; Fajardo, PR.

(a) *Definitions*—(1) *Regulated Area.* A regulated area is established for the navigable waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico, starting at 18–20.0N, 065–37.2W, then North to 18–22.4N, 065–37.2W, then North East to 18–23.2N, 065–36.1W, then South East to 18–22.0N, 065–34.8W, then South to 18–20.0N, 065–34.8W and back to origin. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Section, Greater Antilles.

(b) *Special Local Regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Spectator craft are required to remain in a spectator area to be established by the event sponsor west of Isle Palominos.

(3) At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations. After termination of the AC Delco Offshore Invitational on December 15, 1996, all vessels may resume normal operation.

(4) Temporary buoys will be used delineate the course.

(c) *Effective Date.* This section becomes effective from 12:30 p.m. AST to 3 p.m. AST, on December 15, 1996.

Dated: November 15, 1996.

J.D. Hull,

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

[FR Doc. 96–31090 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD07–96–049]

RIN 2115–AE46

Special Local Regulations; Key West Super Boat Race; Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Key West Super Boat Race sponsored by Super Boat Racing, Inc. The Key West Super Boat Race will be held annually on the second Wednesday and Saturday in November, between 10 a.m. and 4 p.m. EST (Eastern Standard Time). These regulations are intended to promote safe navigation on the waters in the Atlantic Ocean in the vicinity of Key West, Florida, by controlling the traffic entering, exiting, and traveling within these waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: QMC Kent, Project Officer, USCG Group Key West, (305) 292–8727.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 11, 1996, the Coast Guard published a notice of proposed rulemaking entitled Key West Super Boat Race; Key West, FL [CGD07–96–049] in the Federal Register (61 FR 53344). The comment period ended on November 12, 1996. The Coast guard received no comments during the notice of proposed rulemaking comment period. A public hearing was not requested and no hearing was held.

Background and Purpose

These special local regulations are needed to provide for the safety of life during the Key West Super Boat Race. The regulations are intended to promote safe navigation on the waters in the Atlantic Ocean in the vicinity of Key West, Florida, by controlling the traffic entering, exiting, and traveling within these waters. Historically during these races, there have been approximately 80 power boats and 100 spectator craft. The anticipated concentration of event participating vessels and spectator craft associated with the Key West Super Boat Race poses a safety concern, which is addressed in these special local regulations. The Key West Super Boat Race will be held annually from 10 a.m. to 4 p.m. EST, on the second Wednesday and Saturday in November.

These regulations will establish a regulated area for all navigable waters within a line drawn through the following points.

24–33.65N, 081–48.47W; thence to,
24–33.95N, 081–48.30W; thence to,
24–34.05N, 081–48.45W; thence to,
24–33.58N, 081–48.70W; thence to,
24–31.18N, 081–51.10W; thence to,
24–31.18N, 081–48.88W; thence to,
24–32.94N, 081–48.82W.

All coordinates reference use datum: NAD 1983. Entry into this proposed regulated area will be prohibited to all vessels except event participants, unless otherwise authorized by the patrol commander. A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-event participating vessel to take immediate steps to avoid collision. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. it has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, because entry into the regulated area will be prohibited for only 6 hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities, because entry into this regulated area will be prohibited for only 6 hours on each day of the event.

Collection of Information

These regulations contain no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule consistent with Section 2.B.2. of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction, specifically section 2.B.2.b.(2), this rule has been environmentally assessed (EA completed), and the Coast Guard has determined that it would not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for copying and inspection. Furthermore, as a condition to the permit, the applicant will be required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterays.

Final Regulations

For reasons set out in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.722 is added to read as follows:

§ 100.722 Annual Key West Super Boat Race; Key West, FL.

(a) *Definitions.*

(1) *Regulated area.* All navigable waters within a line drawn through the following points:

24–33.65, 081–48.47W; thence to,
24–33.95N, 081–48.30W; thence to,
24–34.05N, 081–48.45W; thence to,
24–33.58N, 081–48.70W; thence to,

24–31.18N, 081–51.10W; thence to, 24–31.18N, 081–48.88W; thence to, 24–32.94N, 081–48.82W.

All coordinates reference use datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the United States Coast Guard who has been designated by Coast Guard Group Key West, Florida.

(b) *Special Local Regulations.* (1) Entry into the regulated area, by other than event participants, is prohibited unless otherwise authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-event participating vessel to take immediate steps to avoid collision. The display of a red distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

(c) *Effective Dates.* This section is effective at 10 a.m. and terminates at 4 p.m. annually on the second Wednesday and Saturday in November.

Dated: November 15, 1996.

J.D. Hull

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

[FR Doc. 96–31091 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–053]

RIN 2115–AE46

Special Local Regulations; Holiday Boat Parade of the Palm Beaches; Palm Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for the Holiday Boat Parade of the Palm Beaches. This event will be held annually during the second Saturday of December, from 6:30 p.m. until 9 p.m. EST (Eastern Standard Time). Historically, there have been approximately 60 parade event participant vessels and 200 spectator craft during the boat parade. The resulting congestion of navigable channels creates an extra or unusual hazard on the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: QM2 S. E. Fowler, Project Officer, U.S. Coast Guard Group Miami at (305) 535–4448.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, the final rule will be made effective in less than 30 days from the date of publication in the Federal Register. Following normal rulemaking procedures would be impracticable, unnecessary, and contrary to the public interest. A notice of proposed rulemaking for this rule was published in the Federal Register (61 FR 53342) with a thirty day comment period. The final rule will be made effective in less than thirty days from the date of publication in order to hold the event. During this comment period, no comments were received on this rulemaking.

Regulatory History

On October 11, 1996, the Coast Guard published a notice of proposed rulemaking entitled Holiday Boat Parade of the Palm Beaches; Palm Beach, FL [CGD07–96–053] in the Federal Register (61 FR 53342). The comment period ended on November 12, 1996. The Coast Guard received no comments during the notice of proposed rulemaking comment period. A public hearing was not requested and no hearing was held.

Background and Purpose

These regulations are needed to provide for the safety of life on the navigable waterways during the Holiday Boat Parade of the Palm Beaches. These regulations are intended to promote safe navigation on the waters off the Palm Beaches during the parade by controlling the traffic entering, exiting, and traveling within these waters. The Holiday Boat Parade of the Palm Beaches is an annual night time boat parade consisting of approximately sixty (60) power and sail boats ranging in length from 18 feet to 85 feet decorated with holiday lights. Historically, there have been approximately 60 parade event participant vessels and 200 spectator craft during the boat parade. The anticipated concentration of these spectator and parade participant vessels associated with the boat parade poses a safety concern which is addressed in these special local regulations.

The boat parade will take place annually during the second Saturday of December, from 6:30 p.m. until 9 p.m. EST (Eastern Standard Time). The parade will form in the staging area in the Port of Palm Beach turning basin and then proceed south down the Intracoastal Waterway (ICW) to Lake Worth South Daybeacon 23 (LLNR 42300) where the parade will disband. The regulated area will include the Port of Palm Beach Turning Basin and the Intracoastal Waterway extending south from Lake Worth South LT 1 (LLNR 42170) to Lake Worth South Daybeacon 23 (LLNR 42300).

While the parade is transiting, these regulations will prohibit nonparticipating vessels from approaching within 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade or within 50 feet on either side of the parade unless authorized by the patrol commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, because entry into the regulated area is prohibited for only 2½ hours during the boat parade.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on the small entities of a for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities, because the regulated area encompasses a limited area and will restrict vessel traffic for only 2½ hours on the day of the event.

Collection of Information

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

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction specifically sections 2.B.4.g. and 2.B.5., this rule has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. The Coast Guard has consulted with the U.S. Fish and Wildlife Service and the Florida Department of Environmental Protection regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected, threatened, or endangered species. The Coast Guard will consult U.S. Fish and Wildlife Service and the Florida Department of Environmental Protection on a yearly basis regarding the possible effects of this event on the environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

For reasons set out in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

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

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.723 is added to read as follows:

§ 100.723 Annual Holiday Boat Parade of the Palm Beaches; Palm Beach, FL.

(a) *Regulated Area.* A regulated area is established to include the Port of Palm Beach Turning Basin and the Intracoastal Waterway extending south from Lake Worth South LT 1 (LLNR 42170) to Lake Worth South Daybeacon 23 (LLNR 42300).

(b) *Special Local Regulations.*

(1) While the parade is transiting, nonparticipating vessels will be prohibited from approaching within 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade or within 50 feet on either side of the parade unless authorized by the patrol commander. After the passage of the parade participants all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations are effective annually on the second Saturday of December, from 6:30 p.m. until 9 p.m. est.

Dated: November 15, 1996.

J.D. Hull,

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

[FR Doc. 96–31092 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR PART 117

[CGD08–96–054]

RIN 2115–AE47

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 in New Orleans, Orleans Parish, Louisiana. This deviation requires that the draw open on signal, except that between the hours of 6 a.m. and 4 p.m. daily from December 8, 1996 through December 21, 1996, the draw need not open for the passage of vessels for a maximum period of up to six hours. The draw need not open for the passage of vessels for a continuous closure from 12:01 a.m. on December 22, 1996 through 12 noon on December 26, 1996, a total of 108 hours. Additionally, between the hours of 6 a.m. and 4 p.m. daily from December 26, 1996 through December 29, 1996, the draw need not open for the passage of vessels for a maximum period of up to six hours. Presently, the draw is required to open on signal. This temporary deviation is issued to allow for the replacement of the main trunions of the bascule span, an extensive but necessary maintenance operation.

EFFECTIVE DATES: The deviation is effective from 12:01 a.m. December 8, 1996 through 4 p.m. on December 29, 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 3.4 in New Orleans, has a vertical clearance of one foot above high tide in the closed to navigation position and unlimited clearance in the open to navigation position. Navigation on the waterway consists of tugs with tows, including crane barges, jack-up boats, oil industry crew vessels, fishing vessels, sailing vessels, and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the bridge so that the main bascule span trunion pins could be removed and replaced. The procedure requires that the draw span remain in the closed position for up to six consecutive hours per day between the hours of 6 a.m. and 4 p.m. for 14 consecutive days while jacks are constructed which support the span when the trunion pins are removed. The span must remain continuously closed to navigation for 4.5 consecutive days while the trunion pins are removed and replaced.

Following the trunion pin replacements, the draw span must remain in the closed to navigation position for up to six consecutive hours per day between the hours of 6 a.m. and 4 p.m. for 3 consecutive days while jacks are removed. The old trunion pins are badly worn and must be replaced. Therefore, this maintenance operation is essential for continued operation of the draw span. This deviation to 33 CFR 117.5 is effective from 12:01 a.m. December 8, 1996 through 4 p.m. on December 29, 1996.

Dated: November 27, 1996.

T.W. Josiah,

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

[FR Doc. 96–31093 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

33 CFR Part 334

Cooper River and Tributaries, Charleston, SC, Danger Zones and Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations which establish several danger zones and restricted areas in the waters of the Cooper River and its tributaries in the vicinity of Charleston, South Carolina by establishing a new danger zone for a small arms range at the Naval Weapons Station. The small arms firing range is to be used for training by the U.S. Border Patrol Training Academy. The Corps is also correcting a coordinate that defines the boundaries of an existing danger zone and making minor editorial amendments to the regulations to clarify that persons, as well as vessels, are not allowed within the danger zones and restricted areas. This clarification does not affect the size, location or further restrict the public's use of the areas. The danger zones and restricted areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at the Government facilities.

DATES: Effective on January 9, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or Ms. Tina Hadden of the Charleston District at (803) 727–4607.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.460.

The Commanding Officer, Naval Weapons Station Charleston, South Carolina, has requested an amendment to the regulations in 33 CFR 334.460(a)(12), to correct a coordinate which establishes a boundary of a danger zone in Foster Creek. The coordinate which presently reads ''Latitude 31°59′16″ N'' is corrected to read ''32°59′16″ N''. The Navy also requested that a new danger zone be established in an unnamed tributary and associated marsh of Back River and Foster Creek to prohibit public entry into the new area ((a)(13)), and to also prohibit entry into the existing danger zone (a)(12). The purpose of the danger zone is to protect the public from the dangers associated with a small arms firing range nearby and the potential for an errant round to impact into the water. It is not the intent of the Navy to use the waters of the danger zone as an impact area for the range. The Navy will erect post-mounted signs at intervals across the marsh to identify the area as a danger zone. It is believed that closure of the water area for the new danger zone will have minimal impact or no impact on the public's use of the area which is described as a marsh area not navigable by conventional watercraft nor frequented by fishermen. We are also making an editorial change to clarify that these restricted area and danger zone regulations apply to personnel as well as vessels. Other minor changes to the regulations are editorial in nature and since the revisions do not change the boundaries or increase the restrictions on the public's use or entry into the designated areas, the changes will have practically no effect on the public. The Corps published the amendments contained herein in the Notice of Proposed Rulemaking section of the Federal Register on September 12, 1996 with the comment period ending on October 15, 1996 (61 FR 48112–48113). The Corps Charleston District Engineer concurrently solicited public comment on the proposed changes to the danger zone rules by distribution of a public notice to all known interested parties. We received no comments in response to the notice of proposed rulemaking or the District public notice.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the danger zones would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the additional danger zone and other editorial changes that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives and the Comptroller General of the General Accounting Office prior to the effective date of this rule in the Federal Register. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine Safety, Waterways.

For the reasons set out in the preamble, we are amending 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.460 is amended by revising paragraphs (a)(12), (b)(1), (2), (3), (4), (5), (6), (7), (9) and (11), and adding a new paragraph (a)(13), to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC

(a) * * *

(12) Danger zone. That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 32°59′16″N, longitude 79°57′23″W; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″N, longitude 79°57′29″W; thence back down the western shoreline of the unnamed tributary to latitude 32°59′15″N, longitude 79°57′26″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(13) Danger zone. Those portions of unnamed tributaries and associated marshes of Back River and Foster Creek that are generally described as lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation). Specifically, the area beginning at a point on the main shoreline which is the northern shore of an unnamed tributary of Back River at latitude 32°59′19″N, longitude 79°56′52″W, southwesterly to a point on or near the northern shoreline of Big Island at latitude 32°59′11″N, longitude 79°56′59″W; thence northwesterly to a point on the main shoreline, which is the northern shore of an unnamed tributary of Foster Creek, at latitude 32°59′16″N, longitude 79°57′11″W; thence easterly along the main shoreline, which is the northern shore of the unnamed tributaries of Foster Creek and Back River, back to the point of beginning at latitude 32°59′19″N longitude 79°56′52″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(b) * * *

(1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(1), (a)(2), and (a)(4) of this section at any time.

(2) Personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(5) of this section, shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Personnel, vessels and other watercraft may be restricted from using any or all of the area described in paragraphs (a)(3) and (a)(6) of this section without first obtaining an escort or other approval from Commander, Naval Base, Charleston, when deemed necessary and appropriately noticed by him/her for security purposes or other military operations.

(4) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the restricted area described in paragraph (a)(8) of this section shall proceed at normal speed, and under no circumstances anchor, fish, loiter, or photograph in any way until clear of the restricted area.

(5) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the areas described in paragraphs (a)(9) and (a)(10) of this section are prohibited from entering within one-hundred (100) yards of the west bank of the Cooper River, in those portions devoid of any vessels or manmade structures. In those areas where vessels or man-made structures are present, the restricted area will be 100 yards from the shoreline or 50 yards beyond those vessels or other man-made structures, whichever is the greater. This includes the area in paragraph (a)(10) of this section.

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

(7) All restricted areas and all danger zones and the approaches leading to the danger zones will be marked with suitable warning signs.

* * * * *

(9) The regulations in this section for the danger zones described in paragraphs (a)(12) and (a)(13) of this section and the regulations described in paragraphs (b) (4), (5) and (6) of this section, shall be enforced by the Commanding Officer, Naval Weapons Station Charleston, SC, and such agencies as he/she may designate.

* * * * *

(11) The unauthorized entering or crossing of the danger zones described in paragraphs (a)(12) and (a)(13) of this section by all persons, watercraft and vessels is prohibited at all times unless specifically authorized by the Commanding Officer of the U.S. Naval Weapons Station Charleston, SC.

Dated: December 2, 1996.

Russell L. Fuhrman,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 96–31142 Filed 12–9–96; 8:45 am]

BILLING CODE 3710–92–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–1, 301–7, 301–8, 301–11, and 301–17

[FTR Amdt. 53]
RIN 3090–AG24

Federal Travel Regulation; Repeal of the ''Approved Accommodations'' Data Collection and Employee Reporting Requirement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to eliminate the ''approved accommodations'' data collection and reporting requirement. This rule implements section 1614 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. No. 104–201, September 23, 1996). The rule is intended to reduce travel management costs by removing an unnecessary employee reporting requirement.

DATES: This final rule is effective September 23, 1996, and applies for travel (including travel incident to a change of official station) performed on or after September 23, 1996.

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

SUPPLEMENTARY INFORMATION: Section 1614 of the National Defense Authorization Act for Fiscal Year 1997 (''the Act'') (Pub. L. 104–201, September 23, 1996) repealed the ''approved accommodations'' data collection and employee reporting requirement imposed by the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391,

September 25, 1990). The Act did not, however, repeal the Hotel and Motel Fire Safety Act provisions that encourage agencies to promote the use of ''approved accommodations'' or require, with limited exception, the use of ''approved accommodations'' for conferences. Agencies, therefore, should continue to effectuate policies encouraging employees to use ''approved accommodations.''

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

List of Subjects in 41 CFR Parts 301–1, 301–7, 301–8, 301–11, and 301–17

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

For the reasons set out in the preamble, 41 CFR parts 301–1, 301–7, 301–8, 301–11, and 301–17 are amended to read as follows:

PART 301–1—APPLICABILITY AND GENERAL RULES

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

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353; and 40 U.S.C. 486(c).

Subpart B—Official Government Business Travel

§ 301–1.101 [Amended]

2. Section 301–1.101 is amended by removing the third and fourth sentences of paragraph (b)(4).

Subpart C—Pre-Employment Interview Travel

§ 301–1.202 [Amended]

3. Section 301–1.202 is amended by removing the second and third sentences of paragraph (a)(5), and by removing the fourth and fifth sentences of paragraph (b)(6).

§ 301–1.205 [Amended]

4. Section 301–1.205 is amended by removing paragraph (e).

PART 301–7—PER DIEM ALLOWANCES

5. The authority citation for part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5707.

6. Section 301–7.2 is amended by removing the second sentence of paragraph (a)(4), and by revising paragraph (b)(2) to read as follows:

§ 301–7.2 Employee and agency responsibilities.

* * * * *

(b) * * *

(2) *Fire safety responsibilities.* Each agency, as defined in § 301–17.2(a) of this chapter, is responsible for influencing its employees who require commercial lodging when performing official travel to stay at an approved accommodation as defined in § 301–17.2(c) of this chapter.

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

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

Authority: 5 U.S.C. 5707.

§ 301–8.5 [Amended]

8. Section 301–8.5 is amended by removing the second sentence of paragraph (a)(4).

PART 301–11—CLAIMS FOR REIMBURSEMENT

9. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.2 [Amended]

10. Section 301–11.2 is amended by removing and reserving paragraph (b).

PART 301–17—AGENCY TRAVEL DATA REQUIREMENTS

11. The authority citation for part 301–17 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–17.2 [Amended]

12. Section 301–17.2 is amended by removing paragraph (d), and by redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively.

§ 301–17.3 and 301–17.4 [Removed]

13. Sections 301–17.3 and 301–17.4 are removed.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–31313 Filed 12–9–96; 8:45 am]

BILLING CODE 6820–34–P

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

RIN 3206–AH69

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: Pursuant to a request from the Attorney General, received by the Office of Personnel Management (OPM) on December 5, 1996, OPM is establishing two new offices for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the voting guarantees of the Fourteenth and Fifteenth amendments to the Constitution. This amendment establishes Jefferson County and Galveston County, Texas, as new offices for filing applications or complaints of complaints.

DATES: This rule is effective December 9, 1996. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 9, 1997.

ADDRESSES: Send or deliver comments to Barbara Matthews-Beck, Attorney, Office of Personnel Management, Room 7F10, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Matthews-Beck, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Jefferson County and Galveston County as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. She determined on December 5, 1996, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts

of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject counties, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds two new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting Rights.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Appendix A to Part 801 is amended by adding alphabetically Galveston and Jefferson Counties of Texas to read as follows:

Appendix A to Part 801

* * * * *

Dates, Times, and Places for Filing

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Texas

County; Place for filing; Beginning date

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Galveston; 5914 Seawall Boulevard, Galveston, Texas 77551, (409) 740–1261; December 9, 1996.

* * * * *

Jefferson; 1610 I–10 South, Beaumont, Texas 77707, (409) 842–0037; December 9, 1996.

* * * * *

[FR Doc. 96–31492 Filed 12–9–96; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–135; RM–8825]

Radio Broadcasting Services; Mena, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C3 to Mena, Arkansas, as that community's third local FM transmission service, in response to a petition filed by Wendell Harlan. *See* 61 FR 34406, July 2, 1996. Coordinates used for Channel 287C3 at Mena, Arkansas, are North Latitude 34–38–46 and West Longitude 94–16–53. With this action, the proceeding is terminated.

DATES: Effective January 21, 1997. The window period for filing applications for Channel 287C3 at Mena, Arkansas, will open on January 21, 1997, and close on February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 287C3 at Mena, Arkansas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–135, adopted November 1, 1996, and released November 8, 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 contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

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 Arkansas, is amended by adding Channel 287C3 at Mena.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–31328 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951116270–5308–02; I.D. 100296I]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Adjustments to the 1996 North Carolina State Quota

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

ACTION: Commercial quota adjustment.

SUMMARY: NMFS announces an adjustment to the commercial quota for the North Carolina 1996 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP), which require that annual quota overages landed in any state be deducted from that state's quota for the following year. The public is advised that a quota adjustment has been made and is informed of the revised quota for the State of North Carolina.

EFFECTIVE DATE: December 5, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Lucy Helvenston, 508–281–9347.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 648 subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state are described in § 648.100. The commercial summer flounder quota for the 1996 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.41 for 1996, was set to equal 11,111,298 lb (5.0 million kg) (January 4, 1996, 61 FR 291). The notification of a commercial quota

transfer from North Carolina to Virginia was published on March 13, 1996 (61 FR 10286). This quota transfer is reflected in Table 1.

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, NMFS published final landings for 1995 and associated quota adjustments on April 5, 1996 (61 FR 15199). At that time, available data indicated that North Carolina had landings for 1995 that were actually 6,727 lb (3,051 kg) less than its 1995 quota. Since that notification was published, additional landings of 599,475 lb (271,917 kg) have been reported for 1995 for North Carolina, meaning that North Carolina now has an overage for 1995 of 592,748 lb (268,866 kg) (equals 599.475 lb less 6,727 lb). These landings data for North Carolina which were just recently obtained by NMFS, necessitate publication of an adjustment. This adjustment reduces the 1996 North Carolina quota allocation from 3,043,816 lb (1,380,652 kg) to 2,451,068 lb (1,111,786 kg). Therefore, any overage in North Carolina's 1996 commercial fishery will be calculated by deducting the total landings in 1996 from the adjusted quota of 2,451,068 lb (1,111,786 kg). This action does not affect a notification concerning the commercial quota harvest that prohibited further landing of summer flounder by federally permitted vessels in North Carolina made effective March 15, 1996 (61 FR 11344).

TABLE 1.—ADJUSTED 1996 COMMERCIAL QUOTA FOR THE SUMMER FLOUNDER FISHERY

	1995 Quota (lb)	1995 Landings (lb)	1995 Overage (lb)	Initial 1996 quota (lb)	Adjusted 1996 quota	
					(lb)	(kg)
ME	6,987	5,318	0	5,284	5,284	2,397
NH	67	0	0	51	51	23
MA	1,122,246	1,127,995	5,749	757,841	752,092	341,143
RI	2,243,224	2,365,465	122,241	1,742,583	1,620,342	734,975
CT	331,574	306,404	0	250,791	250,791	113,757
NY	1,243,374	1,248,078	4,704	849,680	844,976	383,275
NJ	2,306,198	2,298,303	0	1,858,363	1,858,363	842,939
DE	2,614	3,072	458	1,977	1,519	689
MD	199,551	136,167	0	226,570	226,570	102,770
VA	3,182,177	3,355,838	173,661	2,374,342	2,200,681	998,212
NC	3,974,018	4,566,766	592,748	3,043,816	2,451,068	1,111,786

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 5, 1996.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–31352 Filed 12–5–96; 3:05 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 61, No. 238
Tuesday, December 10, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–95–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft-und Raumfahrt, GmbH. Model G102 Astir CS Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to the Burkhart Grob, Luft-und Raumfahrt, GmbH. (Grob) Model G102 Astir CS sailplanes. The proposed action would require replacing the elevator control lever. This proposed action is prompted by the discovery of cracks in the elevator control lever during a routine inspection of a Grob Model G102 Astir CS sailplane. The action specified by the proposed AD is intended to prevent failure of the elevator control lever, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before February 12, 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–95–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 Grob Luft-und Raumfahrt, GmbH, Postfach 1257, D–87712, Mindelheim, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–95–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–95–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Model Astir CS sailplanes. The LBA reports that cracks have been found in the elevator control lever, which if not corrected, could cause loss of control of the sailplane.

Grob has issued Service Bulletin (SB) TM 306–33, dated September 15, 1994, and Grob Installation Instructions No. 306–30/1, dated October 11, 1994, which specifies inspecting for cracks in the elevator control lever and replacing any cracked elevator control lever, prior to further flight, or replacing the elevator control lever prior to a certain date.

The LBA classified these service bulletins as mandatory and issued AD 94–317/2 Grob, date of issue: April 21, 1995, in order to assure the continued airworthiness of these airplanes in Germany.

Proposed Compliance Time

The FAA has reviewed the compliance times recommended by the manufacturer in the Grob SB 306–33, and by the LBA AD and has determined that one compliance time for all operators is more equitable and would not present any undue burden on any of the owner/operators of any U.S. registered sailplanes. Therefore, the compliance time stated in the body of the proposed AD would take precedence over the compliance time recommended by the manufacturer and the foreign airworthiness authority for Germany.

Explanation of the Provisions of This AD

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. The FAA has also determined that it is more beneficial and less cumbersome to the owners/operators to require a replacement of the elevator control lever within the next 20 hours time-in-service, instead of requiring an initial inspection for cracks and if cracks are found, replacing the part prior to further flight, and then if no cracks are found, replacing the part prior to a certain date, as required by the

LBA and the manufacturer. The one time replacement is more time and labor efficient.

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G102 Astir CS sailplanes of the same type design, the proposed AD would require replacing the elevator control lever, part number (P/N) 102–3542 with an improved elevator control lever, P/N 102–3543.

Related Service Information

Accomplishment of the proposed action would be in accordance with Grob SB TM 306–33, dated September 15, 1994 and Grob Installation Instructions No. 306–30/1, dated October 11, 1994.

Cost Impact

The FAA estimates that 53 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $180 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $47,700.

Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated the proposed actions on their sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, 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 AD to read as follows:

Burkhart Grob Luft-Und Raumfahrt, GMBH: Docket No. 95–CE–95–AD.

Applicability: Model G102 Astir CS sailplanes (serial numbers 1001 through 1536), certificated in any category.

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

Compliance: Required within the next 20 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the elevator control lever, which could result in loss of control of the sailplane, accomplish the following:

(a) Replace the elevator control lever, Grob part number (P/N) 102–3542, with an elevator control lever of improved design (Grob P/N 102–3543) in accordance with the ''Procedure'' section of the Grob Installation Instructions No. 306–30/1, dated October 11, 1994, which are referenced in the ''Actions: 2'' section of Grob service bulletin (SB) TM 306–33, dated September 15, 1994.

Note 2: The instructions in this AD do not reflect the instructions given in the Grob service bulletin or the LBA AD discussed in the preamble of this AD; therefore, the instructions in the body of this AD take precedence over the Grob service bulletin and the LBA AD.

(b) 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 sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request Grob Luft-und Raumfahrt, GmbH, Postfach 1257, D–87712, Mindelheim, Germany 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 December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31265 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–98–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. The proposed action would require repetitively inspecting the stub wing upper front spar cap flanges for cracks, and repairing any cracked part. The proposed AD results from fatigue tests that show that the stub wing upper front spar cap flanges could fail over time because of fatigue. The actions specified by the proposed AD are intended to prevent structural failure of

the front spar caused by cracks in the stub wing upper front spar cap flanges, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 21, 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–98–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 Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Lakewood, California 90712; telephone (310) 627–5224; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–98–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–98–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may exist on certain ASTA Models N22B, N22S, and N24A airplanes. The CASA reports that fatigue tests show that the stub wing upper front spar cap flanges could fail over time because of fatigue. These conditions, if not detected and corrected, could lead to structural failure of the front spar and subsequent loss of control of the airplane.

Applicable Service Information

Nomad Service Bulletin (SB) NMD–53–6, dated October 21, 1986, includes procedures for inspecting (using both visual and eddy current methods) the stub wing front spar cap flanges in the area of Buttock Line (BL) 47.6 for fatigue cracks.

The CASA of Australia classified this service bulletin as mandatory and issued FCAA AD/GAF–N22/52, dated January 1987, in order to assure the continued airworthiness of these airplanes in Australia.

The FAA's Determination

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

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Models N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, the proposed AD would require repetitively inspecting the stub wing upper front spar cap flanges for cracks, and repairing any cracked part. Accomplishment of the proposed inspections would be in accordance with Nomad SB NMD–53–6, dated October 21, 1986. Accomplishment of any proposed repair, if necessary, would be in accordance with a scheme obtained from the FAA, Los Angeles Aircraft Certification Office.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,400 or $360 per airplane. This figure does not take into account the cost of repetitive inspections or the cost to repair any cracked stub wing upper front spar cap flanges. The FAA has no way of determining the number of repetitive inspections each operator would incur over the life of each affected airplane or the number of stub wing upper front spar cap flanges that may be found cracked and need to be repaired.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospace Technologies of Australia Pty Ltd.: Docket No. 95–CE–98–AD.

Applicability: Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

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

Compliance: Required prior to accumulating 1,700 hours time-in-service (TIS) or within the next 300 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,650 hours TIS.

To prevent structural failure of the front spar caused by cracks in the stub wing upper front spar cap flanges, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect, using both visual and eddy current methods, the stub wing front spar cap flanges in the area of Buttock Line (BL) 47.6 for fatigue cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Service Bulletin NMD–53–6, dated October 21, 1986.

(b) If any crack is found during any inspection required by this AD, prior to further flight, obtain a repair scheme from the manufacturer through the Los Angeles Aircraft Certification Office (ACO) at the address specified in paragraph (d) of this AD, and incorporate this repair scheme.

(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, FAA, Los Angeles ACO, 3960 Paramount Boulevard., Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; 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 December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31267 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. The proposed action would require repetitively inspecting the horizontal stabilizer upper and lower skin, intercostal angles, and the horizontal stabilizer trailing edge channel for cracks; and repairing any cracks or replacing any cracked parts, as applicable. The proposed AD results from numerous reports of cracking in these horizontal stabilizer areas on the affected airplanes. The actions specified by the proposed AD are intended to prevent structural failure of the horizontal stabilizer caused by fatigue cracks, which could result in loss of control of the airplane.

DATES: Comments must be received on or before February 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–57–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 Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Lakewood, California 90712; telephone (310) 627–5224; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–57–AD.'' The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may exist on certain ASTA Models N22B, N22S, and N24A airplanes. The CASA reports a number of incidents of fatigue cracking in the areas of the horizontal stabilizer upper and lower skin, intercostal angles, and the horizontal stabilizer trailing edge channel. These conditions, if not detected and corrected, could lead to structural failure of the horizontal stabilizer, which could result in loss of control of the airplane.

Applicable Service Information

ASTA has issued Nomad Service Bulletin (SB) NMD–55–34, dated April 22, 1996, which includes procedures for inspecting the horizontal stabilizer upper and lower skin, intercostal angles, and the horizontal stabilizer trailing edge channel.

The CASA of Australia classified this service bulletin as mandatory and issued FCAA AD/GAF–N22/72, dated August 1996, in order to assure the continued airworthiness of these airplanes in Australia.

The FAA's Determination

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

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Models N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, the proposed AD would require repetitively inspecting the horizontal stabilizer upper and lower skin, intercostal angles, and the horizontal stabilizer trailing edge channel for cracks; and repairing any cracks or replacing any cracked parts, as applicable.

Accomplishment of the proposed inspections would be in accordance with Nomad SB NMD–55–34, dated April 22, 1996. Accomplishment of any proposed repair or replacement, as necessary and as applicable, would be in accordance with the Nomad Structural Repair Manual, Chapter 55–10–11.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed initial inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,800 or $120 per airplane. This figure does not take into account the cost of repetitive inspections or the cost to repair or replace any horizontal stabilizer upper and lower skin, intercostal angles, or horizontal stabilizer trailing edge channel. The FAA has no way of determining the number of repetitive inspections each operator would incur over the life of each affected airplane or the number of horizontal stabilizer upper and lower skins, intercostal angles, or horizontal stabilizer trailing edge channels that may be found cracked during the inspections proposed by this action.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospace Technologies of Australia Pty Ltd: Docket No. 96–CE–57–AD.

Applicability: Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent structural failure of the horizontal stabilizer caused by fatigue cracks, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer upper and lower skin, intercostal angles, and the horizontal stabilizer trailing edge channel for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Service Bulletin (SB) NMD–55–34, dated April 22, 1996.

(b) If any crack is found during any inspection required by this AD, prior to further flight, repair or replace the cracked part or area, as applicable, in accordance with the Nomad Structural Repair Manual, Chapter 55–10–11. Those cracked areas that can be repaired and those cracked areas that must be replaced are defined in Nomad SB NMD–55–34, dated April 22, 1996, and the Nomad Structural Repair Manual, Chapter 55–10–11.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles ACO, 3960 Paramount Boulevard., Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; 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 December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31268 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models Standard Libelle and Standard Libelle 201 B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Glasflugel Models Standard Libelle and Standard Libelle 201 B sailplanes. The proposed action would require inspecting the aileron operating lever actuating shaft welded seams for cracks and modifying or replacing the actuating shaft if cracked. Cracks found in the welded seams of the actuating shaft prompted the proposed action. The actions specified by the proposed AD are intended to prevent cracks in the aileron operating lever's actuating shaft welded seams, which, if not detected and corrected, could cause loss of control of the sailplane.

DATES: Comments must be received on or before February 12, 1997.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–35–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 is available from Glasflugel, c/o H. Streifeneder, Glasfaser-Flugzeug Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–35–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Glasflugel Models Standard Libelle and Standard Libelle 201 B sailplanes. The LBA has received reports of cracks developing in the aileron operating lever's welded seams. These are fatigue cracks that are occurring because of the adverse loading that takes place during the rigging and derigging operation, if the aileron control has not first been disconnected. This condition, if not detected and corrected, could result in the aileron operating lever breaking, causing total loss of aileron control.

Glasflugel has issued Glasfaser-Flugzeug-Service GmbH Technical Note (TN) 201–33, dated March 4, 1996, which specifies procedures for inspecting for cracks, and repairing and modifying the aileron operating lever's welded seams, or replacing the lever with a new reinforced part.

The LBA classified this technical note as mandatory and issued AD LTA-Nr.: 96–116, dated March 18, 1996, in order to ensure the continued airworthiness of these sailplanes in Germany.

Explanation of the Provisions of this AD

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

this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Glasflugel Models Standard Libelle and Standard Libelle 201 B sailplanes of the same type design registered in the United States, the proposed AD would require inspecting the aileron operating lever's actuating shaft welded seams for cracks. If cracks are found, the proposal specifies repairing and modifying, or replacing the actuating shaft. If no cracks are found, the actuating shaft would have to be modified or replaced within the next 8 calendar months from the date of the proposed initial inspection.

Related Service Information

Accomplishment of the proposed installation would be in accordance with Glasfaser-Flugzeug-Service GmbH Technical Note (TN) 201–33, dated March 4, 1996.

Proposed Compliance Time

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes do not have cracked shafts, and do have the improved aileron operating lever's welded seams incorporated within a reasonable amount of time, the FAA is proposing a compliance time of within the next 30 calendar days after the effective date of the AD, for the initial action (inspection, and possible repair, modification or replacement), and if no cracks are found on the initial inspection, accomplishing the modification or replacement within the next 8 calendar months after the effective date of the proposed AD.

Cost Impact

The FAA estimates that 108 sailplanes in the U.S. registry would be affected by the proposed AD; that it would take approximately 4 workhours per sailplane to accomplish the inspection, repair and modification; or that it would take 3 workhours per sailplane to inspect and replace the lever; and that the average labor rate is estimated to be approximately $60 an hour. Material cost for the modification is approximately $10 per sailplane, and a replacement shaft part costs $140 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,000 ($250 per sailplane) if all shafts are modified, or $34,560 ($320 per sailplane) if all shafts are replaced. The FAA has no way to determine how many owners/operators have accomplished this action.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Glasflugel: Docket No. 96–CE–35–AD.

Applicability: Models Standard Libelle and Standard Libelle 201 B Sailplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracks in the aileron operating lever's actuating shaft welded seams, which if not detected and corrected, could cause loss of control of the sailplane, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, inspect for cracks in the aileron operating lever's actuating shaft welded seams in accordance with Method 1 of the Accomplishment section in Glasfaser-Flugzeug-Service GmbH (Glasfaser) Technical Note (TN) 201–33, dated March 4, 1996.

(1) If cracks are found, prior to further flight, either:

(i) Remove the shaft, repair the cracked welded seams and modify the shaft in accordance with Method 2 of the Accomplishment section in Glasfaser TN 201–33, dated March 4, 1996; or,

(ii) Remove and replace the shaft with a new Glasflugel reinforced shaft in accordance with drawing 201–47–3–1 from Glasfaser TN 201–33, dated March 4, 1996.

(2) If no cracks are found, within the next 8 calendar months after the inspection required by paragraph (a) of this AD, either:

(i) Modify the aileron operating lever in accordance with Method 2 of the Accomplishment section of Glasfaser TN 201–33, dated March 4, 1996; or,

(ii) Remove and replace the shaft with a new Glasflugel reinforced shaft in accordance with drawing 201–47–3–1 from Glasfaser TN 201–33, dated March 4, 1996.

(b) After completing any action described in paragraph (a) or any sub-paragraph of (a) in this AD, check and adjust (if applicable) the aileron deflection range in accordance with the ''Remarks'' paragraph in Glasfaser TN 201–33, dated March 4, 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 sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Glasflugel, c/o H. Streifeneder, Glasfaser-Flugzeug Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany; 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 December 2, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31269 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–232, RM–8868]

Radio Broadcasting Services; Pueblo and Pueblo West, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pueblo Broadcasters, Inc., licensee of Station KYZX(FM), Channel 283C2, Pueblo, Colorado, requesting the reallotment of Channel 283C2 from Pueblo to Pueblo West, Colorado, and modification of its authorization for Station KYZX(FM) to specify Pueblo West as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates utilized for Channel 283C2 to serve Pueblo West are 38–33–24 and 104–35–56.

DATES: Comments must be filed on or before January 6, 1997, and reply comments on or before January 21, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M. Pelkey and Rafael G. Prohias, Esqs., Haley, Bader and Potts, P.L.C., Suite 900, 4350 North Fairfax Drive, Arlington, VA 22203–1633.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–232, 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 contractors, 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. 96–31256 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 238
Tuesday, December 10, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 6, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- Agricultural Marketing Service.

Title: Avocados Grown in South Florida, Marketing Order No. 915.

OMB Control Number: 0581–0078.

Summary: Information is needed to nominate committee members, issue exemptions certificates, determine handler compliance, levy assessments, and to prepare periodic reports.

Need and Use of the Information: The information is needed to regulate the provisions of Marketing Order No. 915.

Description of Respondents: Business; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 208.

Frequency of Responses: Reporting: On occasion; Weekly; Annually; Daily.

Total Burden Hours: 101.

- Foreign Agricultural Service.

Title: Declaration of Sale.

OMB Control Number: 0551–0009.

Summary: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides for U.S. Government financing of sales of agricultural commodities to friendly foreign countries. Information must be supplied to inform USDA of the pending agreement.

Need and Use of the Information: USDA reviews this information to insure that the price falls within the prevailing range of export market prices and that the sale complies with all regulations.

Description of Respondents: Business or other for-profit.

Number of Respondents: 17.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 29.

- National Agricultural Statistics Service.

Title: Milk and Milk Products.

OMB Control Number: 0535–0020.

Summary: This information collection provides data to estimate total milk production, number of cows, amounts and value of feed fed to milk cows, and production of manufactured dairy products.

Need and Use of the Information: This information collection produces statistics that are used to establish monthly estimates of stocks, shipments, and selling prices. The information is used in price support programs for milk and to appraise supplies, prices, and trends in the dairy industry.

Description of Respondents: Farms, Business or other for-profit.

Number of Respondents: 44,618.

Frequency of Responses: Reporting: Monthly; Quarterly; Annually.

Total Burden Hours: 20,086.

Emergency processing of this submission has been requested by December 31, 1996.

- Rural Development.

Title: 7 CFR 1951–E ''Service of Community and Insured Business Programs Loans and Grants.''

OMB Control Number: 0575–0066.

Summary: The regulation prescribes policies and responsibilities for servicing actions necessary in connection with community facilities loans and grants, water and waste loans and grants, and insured business and industry loans.

Need and Use of the Information: The information is used to provide servicing actions necessary in connection with loans and grants under 7 CFR 1951–E.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–31347 Filed 12–9–96; 8:45 am]

BILLING CODE 3410–01–M

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension and revision to a currently approved information collection relating to the Upland Cotton User Marketing Certificate Program regulations issued under authority of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). Other administrative decisions make obsolete several forms and result in a decrease in the number of burden hours for information collection under the

Upland Cotton User Marketing Certificate Program.

DATES: Comments on this notice must be received on or before February 10, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION:

Title: Cotton, 7 CFR Part 1427.

OMB Control Number: 0560–0136.

Expiration Date: April 30, 1997.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0136, as identified above, is needed to enable the Farm Service Agency (FSA) to effectively administer the Upland Cotton User Marketing Certificate Program.

In order to participate in the Upland Cotton User Marketing Certificate Program, U.S. exporters and domestic mills must sign an Upland Cotton Domestic User/Exporter Agreement (CCC–1045). CCC–1045 contains the terms and conditions for receiving payments and outlines the responsibilities of the participant. Two changes to form CCC–1045 were made in response to the passage of the 1996 Act. First, the 1996 Act extended the authority to conduct the Upland Cotton User Marketing Certificate Program through July 31, 2003. Previous legislation had authorized the program only through July 31, 1998. Second, the 1996 Act limits the total amount of payments that can be made under the program to no more than $701 million during fiscal years 1996 through 2002. CCC–1045 has been revised to reflect the new date and the restriction on payments. Neither change results in a change in the annual reporting and recordkeeping burden.

CCC determined that exporters will no longer be required to report their shipments each week. Instead, only for weeks in which a payment rate is in effect will exporters be required to report to CCC the amount of cotton that has been exported. This reporting will be done on CCC 1045–2 or a report generated by the exporters containing the same information. This results in a 1,950-hour reduction in the annual reporting burden for exporters. Domestic users must continue to report to CCC on a weekly basis in a somewhat revised format. Instead of two reports (Domestic User Application for Payment and Weekly Inventory Summary Report), the information collection has been combined into one report called ''Weekly Consumption Report/ Application For Payment.'' The annual reporting burden increase of 25 hours connected with this report is due not to a change in the burden, but to rounding the Average Time to Respond associated with the Weekly Consumption Report/ Application for Payment report to 13 minutes. The net reduction in the burden is 1,925 hours.

Respondents: U.S. cotton exporters and domestic mills.

Estimated Number of Respondents: 300.

Estimated Average Time to Respond: 14 minutes.

Estimated Total Annual Responses: 11,700.

Estimated Number of Reports Filed per Person: 39.

Estimated Total Burden Hours: 2,750.

Topics for comments include but are not limited to the following: (a) whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected: or (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 should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415; telephone (202) 720–8841. Copies of the information collection may be obtained from Janise Zygmont at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., on November 20, 1996.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–31346 Filed 12–9–96; 8:45 am]

BILLING CODE 3410–05–P

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Comments on Approved Information Collection Packages

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, UDSA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the intention of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), the Rural Utilities Service (RUS), and the Farm Service Agency (FSA) to request a revision to and extension for information collection currently approved in support of the Direct Farm Ownership Loan Program Regulations under Office of Management and Budget (OMB) control number 0560–0157; the Farm Credit Account Servicing Regulations under OMB control number 0560–0161; the Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property Regulations under OMB control number 0575–0109; the Management of Property Regulations under OMB control number 0575–0110; the Debt Settlement, Farmer Programs and Housing Regulation under OMB control number 0575–0118; and a reinstatement with change, for information collection in support of the Application for Direct Loan Assistance under OMB control number 0560–0167. These regulations are published under the authority of the Consolidated Farm and Rural Development Act, as amended.

Revisions are necessary as a result of program changes mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The provisions of the 1996 Act became effective either upon enactment of the legislation on April 4, 1996, or 90 days thereafter. Therefore, emergency clearance for the information collection was requested and approved under OMB control numbers 0560–0172 and 0560–0173.

DATES: Comments on this notice must be received on or before February 10, 1997 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: William D. Cobb, Senior Loan Officer,

Loan Servicing and Property Management Division, Farm Service Agency, USDA/FSA/LSPMD/ Stop 0523, P.O. Box 2415, Washington, DC 20013–2415; Telephone (202)720–1059.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1943–A, Direct Farm Ownership Loan Policies, Procedures, and Authorizations.

OMB Number: 0560–0157.

Expiration Date of Approval: May 31, 1998.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Number 0560–0157, as identified above, is needed to enable FSA to effectively administer the regulation relating to making initial and subsequent direct Farm Ownership (FO) loans. The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owner-operators of family-sized farms, or to continue such operations when credit is not available elsewhere.

FSA County Offices must collect information from applicants requesting direct FO assistance in order to assure that the program is carried out in accordance with the applicable laws and authorities. The information collected will be used to determine program eligibility and feasibility of the loan request. Program eligibility requirements require that the applicant be a United States citizen; possess the legal capacity to incur the obligations of the loan; have sufficient training or experience to assure a reasonable prospect of success; have the character, industry and ability to carry out the proposed operation; is or will become the owner-operator of a family sized farm; and is unable to obtain sufficient credit elsewhere. Loan feasibility addresses FSA's determination that both loan repayment and adequate security are available.

The 1996 Act modified the authorized loan purposes for direct FO loans by eliminating the refinancing of existing indebtedness and as a result, creditors of the applicant will no longer be requested to provide evidence of the need to refinance debts. Additionally, the acquisition, installation, and modification of any qualified non-fossil energy system located on the farm is no longer an authorized loan purpose. Therefore, applicants will no longer need to provide written evidence that an operating permit for the production of alcohol fuel has been obtained from the Bureau of Alcohol, Tobacco and Firearms. The public reporting burden under the requirements of the regulation are shown in the following estimates:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .38 hours per response.

Respondents: Individuals or households, farms.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 61 hours.

Title: 7 CFR 1951–S, Farmer Credit Programs Account Servicing Policies

OMB Number: 0560–0161.

Expiration Date of Approval: June 30, 1997.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Number 0560–0161, as identified above, is needed to enable FSA to effectively administer the regulation relating to the policies and procedures used in servicing most Farm Credit program loans. It is a primary objective of the Agency to provide supervised credit to borrowers in financial difficulty in a manner that will assure the maximum opportunity for the borrower's recovery and at the same time, ensure the maximum recovery to the Government.

FSA County Offices must collect information from financially distressed and delinquent borrowers requesting primary or preservation loan servicing in order to determine program eligibility and the feasibility of the request. Primary loan servicing includes loan consolidation, rescheduling, reamortization, deferral, writedown and interest rate reductions. Preservation loan servicing is limited to the homestead protection program.

Provisions of the 1996 Act included the elimination of the leaseback/ buyback program and requires buyout at the current market value rather than the net recovery value of security property when debt restructuring will not resolve a delinquent account. The regulatory revisions made as a result of these provisions will eliminate information collection currently approved for several exhibits and attachments which are no longer required. Other provisions of the 1996 Act, which include a limitation of one debt forgiveness on direct loans and the authority to enter into contracts for conservation, recreation, and wildlife purposes rather than the establishment of an easement result in a change in the number of respondents for other exhibits, attachments or forms. The regulation results in public reporting burden as shown in the following estimates:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .22 hours per response.

Respondents: Individuals or households, state or local governments, farms, businesses or other for profit, small businesses or organizations.

Estimated Number of Respondents: 10,400.

Estimated Number of Responses per Respondent: 2.53.

Estimated Total Annual Burden on Respondents: 5,878 hours.

Title: Liquidation of Loans Secured by Real Estate and Acquisition or Real and Chattel Property.

OMB Number: 0575–0109.

Expiration Date of Approval: May 31, 1997.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Number 0575–0109, as identified above, is needed to enable RBS, RUS and FSA to effectively administer the regulation relating to liquidation and acquisition of real estate and chattel security when it is determined that all loan servicing efforts have failed to produce a successful outcome. The primary means of liquidating loans and acquiring security is through either conveyance by the borrower or foreclosure. The information collected under this regulation is in response to a borrower's offer to convey security property to the Agency in lieu of foreclosure, or to cure a default after the acceleration of the loan account to forestall foreclosure action. The information is essential for the Agency to evaluate the terms of the offer and determine if acceptance is in the Government's best interest.

Provisions of the 1996 Act require FSA to provide Native American borrower-owners who do not voluntarily convey their real property security to the Agency the option of (1) requiring FSA to assign the loan and security instruments to the Secretary of Interior, or (2) requiring FSA to assign the loan and the security instruments to the tribe having jurisdiction over the reservation where the property is located not less than 30 days prior to the foreclosure of the property.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .57 hours per response.

Respondents: Individuals or households, state or local governments, farms, businesses or other for profit,

non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 5410.

Estimated Number of Responses per Respondent: 1.92.

Estimated Total Annual Burden on Respondents: 5,917 hours.

Title: Management of Property.

OMB Number: 0575–0110.

Expiration Date of Approval: July 31, 1998.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Number 0575–0110, as identified above, is needed to enable RHS, RBS, RUS and FSA to effectively administer the regulation relating to the management of custodial and inventory. RHS, RBS, RUS and FSA will consider real estate and chattel security which has been abandoned by the borrower as custodial property. Inventory property is acquired through either foreclosure or the voluntary conveyance of the deed or title in lieu of foreclosure. The agencies may take actions such as securing, maintaining, or repairing the property as necessary to protect the Government's interest. In addition, properties may be leased under certain limited conditions.

The 1996 Act eliminated FSA's ability to lease inventory farm property except to those beginning farmers or ranchers who are selected to purchase an inventory property, but are unable to do so due to a lack of Agency credit funds. Such leases may not exceed 18 months or the date that FSA credit assistance becomes available.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .34 hours per response.

Respondents: Individuals or households, businesses or other for-profit, state and local governments, farms.

Estimated Number of Respondents: 2,810.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 960 hours.

Title: Debt Settlement

OMB Number: 0575–0118.

Expiration Date of Approval: September 30, 1997.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Number 0575–0118, as identified above, is needed to enable RHS, RBS, RUS and FSA to effectively administer the regulation relating to settlement of debts owed under the agencies loan programs. The regulation establishes the requirements for debt settlement and the factors the agency will consider in approving or rejecting the offer. The information is essential for the Agency to evaluate the terms of the offer and determined if acceptance is in the Government's best interest.

The 1996 Act established a limitation of one debt forgiveness on direct loans for FSA borrowers. This limitation will reduce the number of FSA borrowers for which a debt settlement can be approved under the regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

Respondents: Individuals or households, state or local governments, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 14,950.

Estimated Number of Responses per Respondent: 1.11.

Estimated Total Annual Burden on Respondents: 14,825 hours.

Title: Form FmHA 410– 1, Application for Direct Loan Assistance.

OMB Number: 0560–0167.

Expiration Date: June 30, 1996.

Type of Request: Revision and Extension of Information Collection.

Abstract: The information collected under OMB Number 0560–0167, as identified above, is needed to enable FSA to effectively administer the regulations relating to the policies and procedures used in making and servicing direct Farm Credit program loans. The direct loan program is designed to assist family farmers and ranchers who are temporarily unable to obtain private, commercial credit. FSA has the responsibility of providing credit counseling and supervision to direct borrowers. A thorough assessment is completed to evaluate the adequacy of the real estate and facilities, machinery and equipment, financial and production management, and goals. The agency works with the farmer or rancher to develop a plan of supervision that will ultimately result in the borrower's graduation to commercial credit. FSA can provide certain loan servicing benefits to assist the borrower in meeting the goals established in the plan. Form FmHA 410–1, Request for Direct Loan Assistance is used by the FSA County Offices to collect information needed to determine both eligibility and feasibility of a request for a loan or loan servicing.

The aforementioned form results in public reporting burden as shown in the following estimates:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.035 hours per response.

Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 44,200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 45,760 hours.

Copies of the information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumption 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 should be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 26, 1996.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

Dated: November 26, 1996.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: December 3, 1996.

Wally Beyer,

Administrator, Rural Utilities Service.

Dated: December 3, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–31305 Filed 12–9–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Extension of a currently approved collection.

Burden: 2,000 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Quarterly Survey of Residential Alterations and Repairs to collect information on real–property improvements and repairs from a sample of owners or designated representatives of rental or vacant residential housing units. We mail this survey quarterly to respondents over a one–year period. We use data gathered in this survey as a component to our published estimates of expenditures for residential upkeep and improvement. Data on improvements and repairs to owner occupied housing units are gathered in the Consumer Expenditures Survey and are also incorporated into published estimates. Estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

Affected Public: Individuals or households, Businesses or other for–profit, State, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–31260 Filed 12–09–96; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 21–95]

Foreign-Trade Zone 168—Dallas-Fort Worth, Texas Withdrawal of Application for Expanded Manufacturing Authority Nokia Mobile Phones Manufacturing (USA), Inc.

Notice is hereby given of the withdrawal of the application submitted by the Foreign-Trade Zone Operating Company of Texas, operator of FTZ 168, requesting authority on behalf of Nokia Mobile Phones Manufacturing (USA), Inc., to expand Nokia's authority to manufacture telecommunications products under zone procedures within FTZ 168. The application was filed on May 8, 1995 (60 FR 26716, 5/18/95).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: November 26, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–31248 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–840]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Howard Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320 or (202) 482–5193.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (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).

Preliminary Determination

We preliminarily determine that engineered process gas turbo-compressor systems (''EPGTS''), whether assembled or unassembled, and whether complete or incomplete, from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on May 28, 1996 (*Notice of Initiation of Antidumping Duty Investigation: Engineered Process Gas Turbo-Compressors, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan*, 61 FR 28164, June 4, 1996), the following events have occurred.

On July 1, 1996, the United States International Trade Commission (''ITC'') notified the Department of Commerce (''the Department'') of its affirmative preliminary determination (*see* ITC Investigation No. 731–TA–748). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of EPGTS.

Also, on July 1, 1996, we presented Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire to Mitsubishi Heavy Industries, Ltd. (''MHI'') and its U.S. affiliate Mitsubishi Heavy Industries America Inc. (''MHIA'')(collectively ''MHI''), the sole respondent in this investigation. *See* the ''Respondent Selection'' section of this

notice. MHI's response to Section A was received on July 29, 1996.

On August 6, 1996, Dresser-Rand Company, the petitioner in this investigation, alleged that there are reasonable grounds to believe or suspect that MHI's third country sales during the period of investigation (''POI'') were made at prices below the cost of production. MHI objected to the petitioner's allegation on August 9, 1996. The petitioner supplemented its allegation with additional information on August 27, 1996. The Department initiated a sales-below-cost investigation with respect to third country sales on August 30, 1996. This issue, however, became moot when MHI reported on October 18, 1996, that it had a viable home market based on the memorandum issued by the Department on October 8, 1996, which clarified the scope of the investigation.

Based on the information received in MHI's Section A response, on August 9, 1996, we issued Sections A–1 (Supplier Affiliations), B (Third Country Sales), C (U.S. Sales) and D (Constructed Value (''CV'')) of the Department's questionnaire to MHI. Section D–1 (Cost of Production) of the questionnaire was issued on August 30, 1996. Responses to these sections were received on August 27, September 20, and September 30, 1996. A supplemental questionnaire relevant to Sections A–D was issued on October 15, 1996. MHI's response to Sections A and C of the Department's supplemental questionnaire were received on November 5, 1996.

On September 12, 1996, at the request of the petitioner, we postponed the preliminary determination to December 4, 1996. (*See Notice of Postponement of Preliminary Determination: Antidumping Investigation of Engineered Process Gas Turbo-Compressors, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan*, 61 FR 50272, September 25, 1996.)

During the period June 19, 1995, through July 15, 1996, the petitioner and the respondent filed comments requesting clarification of the scope of this investigation with respect to: (1) the end uses of the subject merchandise; (2) the treatment of revamped and repair EPGTS parts and components; and (3) the definition of complete and incomplete EPGTS covered by the scope. On October 8, 1996, the Department clarified the scope of the investigation with respect to end uses and revamped and repair parts and components. *See* October 8, 1996, Memorandum to Jeffrey Bialos from The Team Re: Scope Issues. *See also* ''Scope of Investigation'' section of this notice. With respect to the definition of complete and incomplete EPGTS, *see* ''Scope Issues'' section of this notice.

Based on the Department's scope clarification made with respect to the end uses of the subject merchandise, on October 18, 1996, MHI informed the Department that its home market was viable, but that none of MHI's home market sales made during the POI was sufficiently similar to its U.S. sale to serve as the basis for price-to-price comparisons. Based on MHI's representations, subject to verification, the Department notified MHI on October 23, 1996, that it need no longer respond to the questions concerning third country sales contained in Sections B and D of the Department's October 15, 1996 supplemental questionnaire. Subsequently, on October 23, 1996, the Department issued a revised Section D supplemental questionnaire and requested that MHI provide complete home market sales data following the same format as that outlined in the Department's August 9, 1996 Section B questionnaire so that the Department could evaluate adequately its selling practices. MHI's response to the revised supplemental Section D questionnaire was received by the Department on November 12, 1996. Home market sales data was provided to the Department on November 8 and 22, 1996.

MHI sold subject merchandise in the United States during the POI through a Japanese trading company and its U.S. subsidiary. In order to fully investigate the issue of whether MHI and the trading company (and its U.S. subsidiary) are affiliated parties, on October 23 and 28, 1996, the Department issued questionnaires to MHI and the trading company, respectively. Responses to these questionnaires were received on November 8 and 19, 1996, respectively. MHI submitted supplemental responses on November 20 and 22, 1996.

On November 18, 1996, the petitioner filed comments on issues to be resolved and methodologies to be employed in the preliminary determination. MHI filed rebuttal comments on November 25, 1996.

On November 21, 1996, the petitioner filed a home market sales-below-cost allegation, stating that during the POI, MHI sold subject merchandise in the home market below the cost of production and, therefore, should be excluded from the Department's calculation of profit for CV purposes. On November 22, 1996, MHI filed comments in rebuttal to the petitioner's allegation. The Department initiated a home market sales-below-cost investigation on December 4, 1996. *See* Memorandum to Louis Apple from The Team Regarding Initiation of Home Market Sales-Below-Cost Investigation dated December 4, 1996.

Respondent Selection

The petitioner named five Japanese producers of subject merchandise in the petition, and stated that, of these five producers, only MHI sold subject merchandise in the United States during the POI. On June 12, 1996, we sent a letter to the Japanese Embassy in Washington, D.C. requesting whether there were any shipments of the subject merchandise to the United States by any of the companies listed in the petition during the period May 1, 1991 through May 31, 1996. We received no response. On June 17, 1996, we contacted the U.S. Embassy in Tokyo, requesting the identification of Japanese producers or exporters (other than MHI) of EPGTS to the United States, and the quantity and value of subject merchandise they sold to the United States during 1994 and 1995, or the latest available comparable periods in 1993 and 1994. On June 26, 1996, we received a reply cable from the U.S. Embassy which identified several Japanese producers of subject merchandise, only one of which, Ebara Corporation, may have exported to the United States. Based on the petition and the information received from the U.S. Embassy, we issued a Section A questionnaire to MHI on July 1, 1996. We also requested U.S. sales/shipment information during the period April 1, 1995 through May 31, 1996 from Ebara Corporation on July 10, 1996. On July 22, 1996, Ebara Corporation sent a letter stating that it made no sales or shipments of the subject merchandise to the United States during the period specified by the Department. We did not send any additional questionnaires to any other producers (besides MHI), as no evidence on the record suggested that any other Japanese manufacturer sold EPGTS in the United States during the specified period.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on December 4, 1996, MHI requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of an affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b)(1995), inasmuch as our preliminary determination is affirmative, MHI accounts for a significant proportion of exports of the

subject merchandise, and we are not aware of the existence of any compelling reasons for denying this request, we are granting MHI's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan* (61 FR 8029, March 1, 1996).

Scope of Investigation

We have clarified the scope of investigation since our notice of initiation to include EPGTS used in the production of refinery products. Furthermore, we have clarified the scope to exclude repair or revamp parts and components that are not included in the original contract of sale for an EPGTS. *See* October 8, 1996, Decision Memorandum to Jeffrey P. Bialos from The Team Re: Scope Issues. We have also clarified the definition of ''incomplete'' EPGTS which are covered by the scope. *See* ''Scope Issues'' section of this notice.

The products covered by this investigation are turbo-compressor systems (*i.e.*, one or more ''assemblies'' or ''trains'') which are comprised of various configurations of process gas compressors, drivers (*i.e.*, steam turbines or motor-gear systems designed to drive such compressors), and auxiliary control systems and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled. One or more of these turbo-compressor assemblies or trains, may be combined. The systems covered are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, refinery and other petrochemical products. This investigation does not encompass turbo-compressor systems incorporating gas turbine drivers, which are typically used in pipeline transmission, injection, gas processing, and liquid natural gas service.

The scope of this investigation excludes spare parts that are sold separately from a contract for an EPGTS. Parts or components imported for the revamp or repair of an existing EPGTS, or otherwise not included in the original contract of sale for the EPGTS of which they are intended to be a part, are expressly excluded from the scope.

Compressors are machines used to increase the pressure of a gas or vapor, or mixture of gases and vapors. Compressors are commonly classified as reciprocating, rotary, jet, centrifugal, or axial (classified by the mechanical means of compressing the fluid), or as positive-displacement or dynamic-type (classified by the manner in which the mechanical elements act on the fluid to be compressed). Subject compressors include only centrifugal compressors engineered for process gas compression, *e.g.*, ammonia, urea, methanol, propylene, or ethylene service.

Turbines are classified (1) as steam or gas; (2) by mechanical arrangement as single-casing, multiple shaft, or tandem-compound (more than one casing with a single shaft); (3) by flow direction (axial or radial); (4) by steam cycle, whether condensing, non-condensing, automatic extraction, or reheat; and (5) by number of exhaust flows of a condensing unit. Steam and gas turbines are used in various applications. Only steam turbines dedicated for a turbo-compressor system are subject to this investigation.

A motor and gear box is used as a compressor driver in lieu of a steam turbine. A control system is used to monitor and control the operation of a turbo-compressor system. A lubrication system is engineered to support a subject compressor and steam turbine (or motor/gear box).

A typical EPGTS consists of one or more compressors driven by a turbine (or in some cases a motor drive). A compressor is usually installed on a base plate and the drive is installed on a separate base plate. The turbine (or motor drive) base plate will typically also include any governing or safety systems, couplings, and a gearbox, if any. The lube and oil seal systems for the turbine and compressor(s) are usually mounted on a separate skid.

The scope of this investigation covers both ''assembled and unassembled'' EPGTS from Japan. Because of their large size, EPGTS and their constituent parts are typically shipped partially assembled (or unassembled) to their destination where they are assembled and/or completed prior to their commissioning.

The scope of this investigation also covers ''complete and incomplete'' EPGTS from Japan. A ''complete'' EPGTS covered by the scope consists of all of the components of an EPGTS (*i.e.*, process gas compressor(s), driver(s), auxiliary control system(s) and lubrication system(s)) and their constituent parts, which are imported from Japan in assembled or unassembled form, individually or in combination, pursuant to a contract for a complete EPGTS in the United States. An ''incomplete'' EPGTS covered by the scope of this investigation consists of parts of an EPGTS imported from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

EPGTS imported from Japan as an assembly or train (*i.e.*, including turbines, compressors, motor and gear boxes, control systems and lubrication systems, and auxiliary equipment) may be classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 8414.80.2015, which provides for centrifugal and axial compressors. The U.S. Customs Service may view the combination of turbine driver and compressor as ''more than'' a compressor and, as a result, classify the combination under HTSUS subheading 8419.60.5000.

Compressors for use in EPGTS, if imported separately, may also be classified under HTSUS subheading 8414.80.2015. Parts for such compressors, including rotors or impellers and housing, are classified under HTSUS subheading 8414.90.4045 and 8414.90.4055.

Steam turbines for use in EPGTS, if imported separately, may be classified under the following HTSUS subheadings: 8406.81.1020: steam turbines, other than marine turbines, stationary, condensing type, of an output exceeding 40 MW; 8406.82.1010: steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw; 8406.82.1020: steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw, but not exceeding 40 MW; 8406.82.1050: steam turbines, other than marine turbines, stationary, other than condensing type, not exceeding 7,460 Kw; 8406.82.1070: steam turbines, other than marine turbines, stationary, other than condensing type, exceeding 7,460 Kw, but not exceeding 40 MW. Parts for such turbines are classified under HTSUS subheading 8406.90.2000 through 8406.90.4580.

Control and other auxiliary systems may be classified under HTSUS 9032.89.6030, ''automatic regulating or controlling instruments and apparatus: complete process control systems.''

Motor and gear box entries may be classified under HTSUS subheading 8501.53.4080, 8501.53.6000, 8501.53.8040, or 8501.53.8060. Gear speed changers used to match the speed of an electric motor to the shaft speed of a driven compressor, would be classified under HTSUS subheading 8483.40.5010.

Lubrication systems may be classified under HTSUS subheading 8414.90.4075.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Subsequent to initiation, MHI requested that the Department clarify the definition of an ''incomplete'' EPGTS covered by the scope of the investigation. As stated above, we have preliminarily determined that an ''incomplete'' EPGTS covered by the scope of this investigation consists of parts of an EPGTS from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

Because of their large physical size, EPGTS are typically imported into the United States in either partially assembled or disassembled form, perhaps in multiple shipments over an extended period of time, and may require the addition and integration of non-subject parts prior to, or during, the installation process in the United States. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of this investigation on the basis of a lack of completion at the time of importation. The Department's concern in this case has also been expressed in past cases with similar fact patterns (*e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, from Germany and Japan*, 61 FR 38166, 38139, July 23, 1996) (''*LNPPs from Germany and Japan*'').

Therefore, for suspension of liquidation purposes, the Department must decide on a reasonable and administrable approach in determining what constitutes a subject incomplete EPGTS.

For purposes of this preliminary determination, we have defined a ''complete'' and an ''incomplete'' EPGTS covered by the scope of our investigation. *See* ''Scope of Investigation'' section of this notice. We have utilized this approach in the past where the nature of the merchandise and its importation lent itself to circumvention. (*See LNPPs from Germany and Japan*).

In order to determine whether the imported merchandise constitutes a subject incomplete EPGTS through performance of this cost-based test, we will have to wait until all of the parts comprising the EPGTS are imported and the complete EPGTS is produced. Thus, we will suspend liquidation on all importations of EPGTS parts from Japan at the preliminary duty rate calculated by the Department unless a certification is provided by both the foreign manufacturer/exporter and U.S. importer that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. For entries which are accompanied by the appropriate certification, we will direct the U.S. Customs Service to suspend liquidation at a zero duty rate, subject to verification by the Department at a later date, if necessary. We will also require the interested parties to provide the following information on the documentation accompanying each entry from Japan of EPGTS parts: (1) the number of the sales contract pursuant to which the parts are imported, (2) a description of the parts included in the entry, (3) the actual cost of the imported parts, (4) the actual or estimated cost (depending on what is available at the time of importation) of the complete EPGTS, and historical cost variance (if the estimated cost is provided), (5) a schedule of parts shipments to be made pursuant to the particular EPGTS contract, if more than one shipment is relevant, and (6) a schedule of EPGTS production completion in the United States. *See* ''Suspension of Liquidation'' section of this notice.

We are presently soliciting comments from interested parties as to the merits of this approach and/or any other approach that may be relevant for suspension of liquidation purposes in the final determination. Interested party comments on this topic are due no later than February 28, 1997.

Period of Investigation (POI)

The POI is April 1, 1995 through May 31, 1996.

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value (''NV'') on CV because we determined that the merchandise sold in the home market during the POI was not sufficiently similar to that sold in the United States to permit proper price-to-price comparisons.

Fair Value Comparisons

To determine whether MHI's sales of EPGTS to the United States were made at less than fair value, we compared Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Constructed Export Price

Pursuant to section 772 of the Act, the basis for the fair value comparison is the price at which the merchandise is first sold to an unaffiliated purchaser in the United States or for export to the United States. MHI reported its sale to a Japanese trading company on the grounds that the trading company is an unaffiliated purchaser and, at the time of sale, MHI knew that merchandise was intended for export to the United States. However, based on our examination of the sales documentation provided by MHI, which shows that MHI played an integral role in the sale to the U.S. customer, we have preliminarily determined that the Japanese trading company and its U.S. subsidiary were acting as MHI's U.S. selling agents, not as resellers, in the transaction under investigation. Therefore, the proper basis for the fair value comparison is the sale by MHI, through the Japanese trading company and its U.S. subsidiary, to the U.S. customer. Because MHI made this transaction through a U.S. agent acting on behalf of the producer, we preliminarily determine that the use of CEP is appropriate in this case.

We have preliminarily made this determination (*see* December 4, 1996 Concurrence Memorandum) based on the role of the parties in the sales transaction and not on the basis of the corporate relationship between the parties. However, we are also continuing to examine the nature of the relationship between MHI and the Japanese trading company within the context of section 771(33) (F) and (G) of the Act.

To determine whether sufficient control of one party over another exists pursuant to section 771(33) of the Act, the Department made inquiries on this issue in this case through the issuance of separate questionnaires to both MHI and the Japanese trading company and through a review of public source data. We collected information relevant to the various control indicia set forth in the Statement of Administrative Action (''SAA''), and plan to gather additional information as necessary to complete our analysis and to verify the data submitted. *See* December 4, 1996, Memorandum to Jeffrey Bialos from The Team Regarding Whether the Evidence on the Record of {this} Investigation Supports a Finding that {MHI} and {the Japanese Trading Company} Are Affiliated for Antidumping Purposes, and the Consequences of this Finding in Determining the Appropriate Basis for

U.S. Price. In this case, the Department faces complex issues involving the interpretation of the affiliation definition and the application of that definition to the facts at issue. The central issue is whether MHI and the Japanese trading company are legally or operationally in a position to exercise restraint or direction over the other or are under common control by third parties. The question of control is a particularly complex one where, as in the instant case, it may not involve direct control of one party over another, but may involve control exercised through financial entities which each have debt relationships with the two firms. Issues relevant to this determination include: how to evaluate the relative significance of debt relationships as indicia of control in the country under investigation (and whether any benchmarks are appropriate); when a close supplier relationship exists and its implication; and how to weigh the control indicia set forth in the SAA, especially if the Department finds that no single criterion is a sufficient indication of control.

Given the Department's desire to develop an appropriate analytical framework to take into account all factors which, by themselves, or in combination, may indicate affiliation in this case, we are continuing to investigate the issue for purposes of the final determination. Additionally, we solicit comments from interested parties on the issues enumerated above. Interested party comments on this topic are due no later than February 17, 1997.

In accordance with sections 772 (b) and (c) of the Act, we calculated CEP based on a packed, FOB Japanese port, duty paid price, inclusive of spare parts, to an unaffiliated customer in the United States through an unaffiliated trading company. We excluded from this price any post-POI price amendments, in accordance with our standard practice. *See LNPPs from Germany* (61 FR 38166, 38181–2, July 23, 1996). We made a deduction from the starting price for the value of the non-subject parts which were included in the U.S. sale. We also made deductions for foreign inland freight expense, foreign inland insurance, foreign brokerage and handling, and export insurance.

Pursuant to section 772(d) of the Act, we also made deductions for direct selling expenses, including imputed credit and installation-related expenses, and indirect selling expenses that related to economic activity in the United States. We imputed credit expenses for the U.S. sale using the U.S. short-term interest rate reported for the POI because the sale was denominated in U.S. dollars. *See LNPPs from Japan and Germany and Oil Country Tubular Goods from Austria* (60 FR 33551, 33555 (1995)).

Furthermore, we also deducted an amount for the selling expenses incurred by the Japanese trading company and its U.S. subsidiary based on facts available, as actual expense data was not available. As facts available, we calculated an amount equal to the difference between the price MHI charged the Japanese trading company, and the price the Japanese trading company's U.S. subsidiary charged the U.S. customer (net of the value of the non-subject parts and post-POI price changes) as a surrogate for these expenses. Finally, we made an adjustment for CEP profit in accordance with section 722(d)(3) of the Act.

Normal Value/Constructed Value

For the reasons outlined in the ''Product Comparisons'' section of this notice, we based NV on CV.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of MHI's cost of materials, fabrication, selling, general, and administrative expenses (''SG&A''), and profit, plus U.S. packing costs as reported in the U.S. sales database.

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we allocated the reported home market selling expenses over the cost of manufacture (''COM''), and applied the resulting percentage to the COM.

We relied on the respondent's CV data, except in the following specific instances wherein the reported costs were improperly valued:

1. We included the costs associated with performance tests in the COM because based on the respondent's description of the nature of these tests, they did not appear to be ''special tests'' specifically required by the customer that would go beyond routine quality control tests or which would not otherwise be performed on the subject merchandise during the production process.

2. We adjusted the price of production inputs purchased by MHI from affiliated parties at non-arm's-length prices.

Level of Trade (LOT)

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829–831, to the extent practicable, the Department will calculate NV based on sales (or in this case CV) at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In its questionnaire responses, MHI did not state that there were differences in its selling activities by customer categories within each market. Therefore, in the absence of information in MHI's questionnaire responses which might lead us to reach a different conclusion, we have determined for purposes of this preliminary determination that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all fair value comparisons are at the same level of trade and no adjustment pursuant to section 773(a)(7)(A) of the Act is warranted.

Price to CV Comparisons

In comparing CEP to CV, we deducted from CV the home market direct selling expenses pursuant to section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the date of the U.S. sale as certified by the Federal Reserve Bank. The date of sale in this case is the earliest date on which the essential terms of sale were set by the U.S. customer and MHI's sales agent, the U.S. subsidiary of the Japanese trading company. *See* ''Constructed Export Price'' section of this notice.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. It is the

Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation existed, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Japanese yen did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of EPGTS from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. We are also directing the Customs Service to suspend liquidation of all entries of parts of EPGTS imported pursuant to a contract for a complete EPGTS in the United States that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the constructed export price as shown below.

The suspension of liquidation with respect to EPGTS parts will remain in effect provided that the sum of such entries represents at least 50 percent of the cost of manufacture of the complete EPGTS of which they are part. This determination will be made only after all entries of parts imported pursuant to an EPGTS contract are made and the complete EPGTS pursuant to that contract is produced, unless a certification is provided by both the foreign manufacturer/exporter and U.S. importer that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. For those entries which are accompanied by this certification, we will direct the U.S. Customs Service to suspend liquidation at a zero duty rate, subject to verification by the Department at a later date if necessary. We will also require the interested parties to provide clearly the following information on the documentation accompanying each entry from Japan of EPGTS parts: (1) the EPGTS contract pursuant to which the parts are imported, (2) a description of the parts included in the entry, (3) the actual cost of the imported parts, (4) the actual or estimated cost (depending on what is available at the time of importation) of the complete EPGTS, and historical cost variance (if the estimated cost is provided), (5) a schedule of parts shipments to be made pursuant to a particular EPGTS contract, if more than one shipment is relevant; and (6) a schedule of EPGTS production completion in the United States.

With respect to entries of EPGTS spare and replacement/repair parts from Japan, we will instruct the Customs Service not to suspend liquidation of these entries if they are not included in the original contract of sale for the EPGTS of which they are intended to be a part.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers shall be required to provide certification that the imported merchandise would not be used to fulfill an EPGTS contract. We will also request that these parties register with the Customs Service the EPGTS contract numbers pursuant to which subject merchandise is imported. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd. (MHI)	34.37
All others	34.37

The All Others rate applies to all entries of subject merchandise except for entries of merchandise produced by MHI.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 12, 1997, and rebuttal briefs, no later than March 17, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 20, 1997, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: December 4, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31356 Filed 12–09–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–557–805]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia

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 petitioner and four producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. The review covers four manufacturers/exporters. The period of review (the POR) is October 1, 1994, through September 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV) by all of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Laurel LaCivita or Robert Blankenbaker at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4740 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (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).

Background

On October 7, 1992, the Department published in the Federal Register (57 FR 46150) the antidumping duty order on extruded rubber thread from Malaysia. On October 30, 1995, the petitioner, North American Rubber Thread, requested that the Department conduct an antidumping administrative review for the following producers and exporters of extruded rubber thread: Heveafil Sdn. Bhd. (''Heveafil''), Rubberflex Sdn. Bhd. (''Rubberflex''), Filati Lastex Elastfibre (Malaysia) (''Filati''), and Rubfil Sdn. Bhd (''Rubfil''). On October 31, 1995, these same producers and exporters requested to be reviewed. On November 16, 1995, we published a notice of initiation of an administrative review of this order for the period October 1, 1994, through September 30, 1995, (60 FR 57573) for the following producers and exporters of extruded rubber thread: Heveafil, Rubberflex, Filati, and Rubfil. The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and Customs purposes. Our written description of the scope of this review is dispositive.

Verification

We conducted a verification of information provided by Rubberflex using standard verification procedures, including on-site inspection of Rubberflex's sales and production facility, the examination of relevant sales and financial records, and original documentation containing relevant information.

Fair Value Comparisons

To determine whether sales of extruded rubber thread to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price'', ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for normal value and compared these to individual U.S. transactions.

Export Price

The Department used the EP, as defined in section 772(a) of the Act, where the subject merchandise was sold by the manufacturer or exporter to unaffiliated purchasers in the United States prior to importation and the CEP was not otherwise warranted based on the facts of record. For each of the companies, we calculated EP based on packed C&F, CIF, or FOB prices. We made deductions, where appropriate, for forwarding charges, insurance expenses, and ocean freight in accordance with section 772(c)(2) of the Act.

Constructed Export Price

We calculated CEP, as defined in section 772(b) of the Act, based on packed, F.O.B. or delivered prices to unaffiliated purchasers in the United States (the starting price). We made deductions for movement expenses as appropriate in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Uruguay Round Agreements Act Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 823–824 (1996)), we made additional adjustments to the starting price by deducting selling expenses associated with economic activities in the United States, including movement expenses, commissions, direct selling expenses, and U.S. indirect selling expenses. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like product for each company was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we found that the home market was viable for all companies. Therefore, we have based NV on home market sales.

B. Model Match

In accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the ''Scope of Review'' section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We first searched for the home market model which is identical in characteristics to each U.S. model. When there were no contemporaneous sales of identical merchandise, we searched for the home market model which is most like or most similar in characteristics to each U.S. model. In determining similar merchandise comparisons, in accordance with section 771(16) of the Act, we considered the following physical characteristics, which appear in order of importance: (1) Quality (*i.e.*, first vs. second); (2) size; (3) finish; (4) color; (5) special qualities; (6) uniformity; (7) elongation; (8) tensile strength; and (9) modulus. With the exception of quality, these characteristics are in accordance with matching criteria set forth in the January 26, 1994, memorandum to the file, on the record for this review. Regarding quality, we have added this characteristic in order to address respondents' concerns regarding differences in value related to significant differences in quality.

Regarding color, respondents assigned separate codes to each shade of color. We reassigned color codes to sales of subject merchandise, in accordance with the instructions contained in the questionnaire. This resulted in our treating all shades of a given color as equally similar to each other instead of treating a specific shade as most similar to another specific shade.

C. Cost of Production and Constructed Value

Because the Department disregarded third country sales below the cost of production (COP) for both Heveafil and Rubberflex in the original investigation (*see Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465 (August 25, 1992)), in accordance with section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that both Heveafil and Rubberflex had made home market sales at prices below their COP in this review. Thus, the Department initiated a COP investigation with respect to Heveafil and Rubberflex in accordance with section 773(b)(1) of the Act. Additionally, upon petitioner's allegation of sales made below the COP by Filati and Rubfil, the Department determined that it had reasonable grounds to believe or suspect that sales by Filati and Rubfil of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(i) of the Act.

Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Filati and Rubfil in the home market. *See* COP Initiation Memorandum, dated August 8, 1996.

After calculating COP, we tested whether home market sales of the foreign like product were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1). We compared model-specific COPs to the reported home market prices less any applicable adjustments.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given model were at prices less than the COP, we disregarded the below-cost sales if they (1) were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to Heveafil, Filati and Rubfil.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no useable sales of comparable merchandise in the home market. In accordance with section 773(e) of the Act, we calculated CV based on respondents' cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expense (SG&A) and profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and G&A as reported in the CV portion of each respondent's questionnaire response.

We used the U.S. packing costs as reported in the U.S. sales portion of each respondent's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of the respondent's questionnaire response. *See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 1344, 1349 (January 19, 1996). For SG&A expenses and actual profit, we used the average of actual amounts incurred and realized by respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country, in accordance with section 773(e)(2)(A) of the Act.

D. Price-to-Price Comparisons

For those price-to-price comparisons where we did not resort to CV, we based NV on the prices at which the foreign like products were first sold for consumption in the home market to an unaffiliated party in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP or EP, in accordance with section 773(a)(1)(B)(i) of the Act. Respondents reported that they made all home market and CEP or EP sales of subject merchandise at the same level of trade (*i.e,* to manufacturers). For purposes of this review, we determine that the same level of trade exists for all respondents in both markets. Accordingly, pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Act. In accordance with section 773(a)(6)(C) of the Act, we increased NV by adding U.S. credit expense. We made circumstance of sale (COS) adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56(a), by deducting home market direct selling expenses. We also made adjustments, where applicable, for certain home market indirect selling expenses to offset U.S. commissions in accordance with 19 CFR 353.56(b). No other adjustments were claimed or allowed.

Facts Available

In accordance with section 776(a)(2)(D) of the Act, we preliminarily determine that the use of the facts

available is appropriate as the basis for Rubberflex's weighted-average dumping margin because, despite the Department's attempts to verify information provided by Rubberflex, the Department could not verify the information as required under section 782(i) of the Act. Where a party provides information requested by the Department but the information cannot be verified, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available. Further, in accordance with section 782(e)(2) of the Act, the Department has declined to consider information submitted by Rubberflex because the information cannot be verified. Moreover, we preliminarily determine that, pursuant to section 776(b) of the Act, Rubberflex did not cooperate to the best of its ability and that therefore we are required to use adverse facts available.

We found that responses provided by Rubberflex could not be verified. The inaccuracies which render the response unusable for purposes of margin calculations include: Rubberflex failed to reconcile its original questionnaire response with its current financial statements and current trial balance; due to inconsistencies in Rubberflex's date of sale methodology, Rubberflex failed to clarify which sales applied to this review period pursuant to the Department's methodology; Rubberflex provided revised questionnaire responses at verification for home market indirect selling expenses, direct labor and packing labor expense, variable overhead and cost of goods sold; for these same expenses Rubberflex could not demonstrate how the original response was supported by documentation, nor could it document the difference between the original and revised submission for these items; Rubberflex failed to have all the appropriate documentation required to trace the pre-selected sales to its books and records, and; Rubberflex failed to report a trade-bill financing expense incurred on U.S. sales as an adjustment to U.S. price. Furthermore, it failed to provide original source documentation for its reported managerial labor expenses. The deficiencies are outlined in detail in the public version of the memorandum on Rubberflex's Failed Verification from Holly Kuga to Jeffrey P. Bialos, dated November 26, 1996.

Rubberflex has not cooperated to the best of its ability, as demonstrated by the misreportings, inaccuracies, and omissions we found at our attempted verification which resulted from inconsistencies in data within Rubberflex's control. Therefore, as adverse facts available for Rubberflex, we have used Rubberflex's own calculated rate from a prior segment of this proceeding, (*see Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value; Extruded Rubber Thread from Malaysia*, 57 FR 46150 (October 7, 1992)), which is considered secondary information within the meaning of section 776(c) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA, H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

For Rubberflex, we examined the rates applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. Given Rubberflex's level of participation in this segment of the proceeding, we preliminarily determine that 20.38 percent, which is Rubberflex's highest rate from a prior segment of this proceeding, is sufficiently adverse to encourage full cooperation in future segments of the proceeding. Moreover, this rate has probative value because it is Rubberflex's calculated rate from the less than fair value (LTFV) investigation. Furthermore, there is no evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (*See, e.g.*, Fresh Cut Flowers.)

In summary, section 776(a)(2)(D) states that the Department ''shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title'' if an interested party or any other person provides such information but the information cannot be verified. Because we were unable to verify the information submitted by Rubberflex in this POR, we have used Rubberflex's highest rate from a prior segment of this proceeding (*i.e.*, 20.38 percent).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period October 1, 1994, through September 30, 1995 to be as follows:

Manufacturer/exporter	Margin (percent)
Filati Lastex Elastfibre (Malaysia)	13.86
Heveafil Sdn. Bhd	9.75
Rubberflex Sdn. Bhd	20.38
Rubfil Sdn. Bhd	44.44

Interested parties 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 the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of this notice at the main Commerce Department building.

In accordance with 19 CFR 353.38, case briefs from interested parties are due within 30 days of publication of this notice. Rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted no later than 37 days of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 180 days of publication of these preliminary results.

Interested parties who wish to request a hearing or to participate if one is

requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within ten days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the U.S. Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) 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; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 15.16 percent, the ''all others'' rate made effective by the final determination of sales at LTFV, as explained below.

On March 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) and *Federal-Mogul Corporation* v. *United States,* 822 F.Supp. 782 (CIT 1993) decided that once an ''all others'' rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, the Department is reinstating the ''all others'' rate made effective by the final determination of sales at LTFV (*see Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan,* 53 FR 20882 (June 7, 1988)).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: November 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31355 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review; certain hot-rolled lead and bismuth carbon steel products from the United Kingdom.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom in response to requests by respondent, British Steel Engineering Steels Limited (BSES), and petitioner, Inland Steel Bar Company. This review covers the period March 1, 1995 through February 29, 1996.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, 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).

Background

The Department published in the Federal Register the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom on March 22, 1993 (58 FR 15324). On March 4, 1996, we published in the Federal Register (61 FR 8238) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom covering the period March 1, 1995 through February 29, 1996.

In accordance with 19 CFR 353.22(a)(1), BSES and the petitioner, Inland Steel Bar Company, requested that we conduct an administrative review of BSES's sales. We published a notice of initiation of this antidumping duty administrative review on April 25, 1996 (61 FR 18378). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72,

note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers the subject merchandise manufactured by BSES, and the period March 1, 1995 through February 29, 1996.

Duty Absorption

On May 17, 1996, the petitioner requested that the Department determine whether antidumping duties had been absorbed by BSES during the period of review (POR) pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, i.e., orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom has been in effect since 1993, this is a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, BSES is itself the importer of record, *i.e.*, the exporter and the importer are the same entity. Therefore, the importer and the exporter are ''affiliated'' within the meaning of 751(a)(4). Furthermore, we have preliminarily determined that there is a dumping margin for BSES on 50 percent of its U.S. sales during the POR. In addition, we cannot conclude from the record that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Under these circumstances, therefore, we preliminarily find that antidumping duties have been absorbed by BSES on 50 percent of its U.S. sales.

United States Price

We based United States price on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold directly by the exporter to unaffiliated U.S. purchasers prior to the date of importation and constructed export price was not indicated by other facts of record. BSES reported that EP was based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, merchandising processing fees, and U.S. inland freight charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment.

BSES's sales in the United Kingdom and to the United States were made in quantities of less than 25 metric tons and 25 metric tons or more. As in all prior segments of the proceeding, where possible we matched U.S. sales to U.K. sales within the same quantity group: 25 tons or more, or less than 25 tons. (*See Final Determination of Sales at Less Than Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6207, January 27, 1993; and *Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 50 FR 10063, February 23, 1995.)

No other adjustments to EP were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared BSES's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because BSES's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for BSES.

Many of BSES's home market sales were made to affiliated original equipment manufacturers (OEMs). It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether sales to affiliated parties might be appropriate to use as the basis of NV by comparing prices of those sales to prices of sales to unaffiliated parties, on a model-by-model basis. *See Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.* 60 FR 10900, February 28, 1995. (*See* preliminary notice for discussion.) Because BSES made home market sales to affiliated OEMs during the POR, we tested these OEM sales to ensure that, on average, the affiliated-party sales were made at arm's length. To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, invoice corrections, rebates and packing. As a result of our arm's-length test, we disregarded sales to the affiliated OEM customers in the home market because the prices charged to affiliated customers were less than 99.5 percent of the prices charged to

unaffiliated customers. We did not require respondent to provide downstream sales by these customers because these customers further manufactured the subject merchandise into merchandise not comparable to the merchandise covered by the order. BSES also sold through affiliated resellers to unaffiliated customers and reported these unaffiliated-customer transactions. We used these unaffiliated transactions in our determination of NV.

BSES did not report its home market sales of leaded rod produced by Scunthorpe Rod Mill (SRM), an affiliated party, because it claimed that such merchandise was not a match to its sales of leaded bar to the United States. BSES provided a list of all SRM's potential products, including their product characteristics and product identification control numbers. In addition, BSES provided a theoretical sales file that identified every leaded rod product that SRM could possibly have produced or sold in each of the months of the POR. Upon examination of this information, we determined that the leaded rod produced by SRM was never the identical or most similar match to BSES's sales of leaded bar to the United States during the POR.

Cost of Production Analysis

Pursuant to section 773(b) of the Act, in this review we initiated a COP investigation of BSES. We did this because, in the administrative review of BSES for the most recent period (as of the time our decision to initiate a COP investigation was made), we disregarded from our calculations BSES's home market sales found to be below the cost of production (COP). *See Final Results of Antidumping Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 60 FR 44009, August 24, 1995. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period.

Before making any NV comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of BSES's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by BSES in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of lead and bismuth steel were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the model-specific COP to the reported home market prices less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2) (B) and (C) of the Act, and because, based on our comparisons of prices to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales made by BSES.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for invoice corrections, rebates, and inland freight. We also made a circumstance-of-sale adjustment for differences in credit insurance and product liability insurance expenses pursuant to section 773(a)(6)(C)(iii) of the Act. Respondent claimed home market credit insurance expenses and product liability insurance expenses as direct adjustments to NV. Since such expenses are on a sale-by-sale basis and directly related to sales of the foreign like product, we have treated these home market expenses as direct selling expenses. U.S. credit insurance and product liability insurance are U.S. direct selling expenses. Accordingly, we made the circumstance-of-sale adjustments by adding the amounts of U.S. credit insurance and product liability insurance for each U.S. sale to the NV, and subtracting the home market amounts from NV. We also added U.S. commissions for each U.S. sale to the NV. In order to adjust for differences in packing between the two markets, we increased home market price by U.S. packing costs and reduced it by home market packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of BSES's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by BSES in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and general and administrative expenses as reported in the CV portion of BSES's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of BSES's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of BSES's questionnaire response. For selling expenses, we used the average per-unit home market selling expenses of home market sales of the foreign like product, exclusive of sales disregarded under the cost test, weighted by the total quantity sold for these sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, for all above-cost home market sales of the foreign like product, exclusive of sales disregarded under the cost test, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Commission Offset

Because there are commissions on U.S. sales and not on home market sales, we made an adjustment for indirect selling expenses in the home market to offset the U.S. commissions, in accordance with 19 CFR 353.56(b)(1).

We based the commission offset amount on the amount of the home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the commissions incurred on sales to the United States.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited)	3/1/95–2/29/96	2.84

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. 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 EP and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom 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) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22.

Dated: December 2, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31250 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–538–802]

Shop Towels From Bangladesh; 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 from the petitioner, Milliken & Company (Milliken), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on shop towels from Bangladesh. The period of review (POR) is March 1, 1995, through February 29, 1996. This review covers four manufacturers/exporters. The preliminary results of this review indicate the existence of dumping margins during the period.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum, Kristie Strecker or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, 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).

Background

On March 4, 1996, the Department published a notice of ''Opportunity to Request an Administrative Review'' (61 FR 8238) of the antidumping duty order on shop towels from Bangladesh (57 FR 9688, March 20, 1992) for the period March 1, 1995, through February 29, 1996. On March 27, 1996, the petitioner, Milliken, requested an administrative review of four manufacturers/exporters: Greyfab (Bangladesh) Ltd. (Greyfab); Hashem International (Hashem); Khaled Textile Mills Ltd. (Khaled); and Shabnam Textiles (Shabnam). We published a notice of initiation of the review on May 24, 1996 (61 FR 26158). The Department is now conducting a review of these respondents pursuant to section 751 of the Act.

Scope of the Review

The products covered by this administrative review are shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Export Price

The Department used export price (EP), as defined in section 772(a) of the Act, for Greyfab, Hashem, Khaled, and Shabnam because the subject merchandise was sold by the manufacturer, prior to importation, to unaffiliated purchasers in the United States and the constructed export price was not otherwise warranted based on the facts of record. For each of the companies, we calculated EP based on packed C&F or FOB prices. We made deductions, where appropriate, for forwarding charges, insurance expenses, and ocean freight in accordance with section 772(c)(2) of the Act.

Normal Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as normal value (NV) for Hashem, Kahled, and Shabnam, because none of these companies sold the foreign like product in the home market or in any third-country market during the POR.

For Greyfab, we used sales to a third country as NV where such sales were appropriate matches to the U.S. sales under review. Where we did not have appropriate third-country matches, we used CV as NV.

We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, selling, general and administrative (SG&A) expenses, profit, and U.S. packing expenses. The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses.

For these preliminary results, the administrative record contains no information reflecting overall SG&A levels in Bangladesh that the Department could use to calculate CV. For each of the four responding companies, the only facts available for these preliminary results were the amounts for SG&A incurred and realized by the respondent as shown in the company's financial statements. Therefore, in accordance with section 773(e)(2)(B)(iii) of the Act, we determined SG&A from the financial statements of the respondents.

We calculated profit for CV under section 773(e)(2)(B)(iii) of the Act. We used this method because we had no information on actual profit amounts earned by the exporters in connection with the production and sale of the merchandise for consumption in the home market or any information that would permit us to use any of the other alternatives for calculating profit under section 773(e)(2) of the Act. Instead, we applied another reasonable method under 773(e)(2)(B)(iii). We received a submission containing factual information regarding profit from two respondents (Greyfab and Hashem) on November 6, 1996. For these preliminary results, we have used, as the profit amount for all respondents, the actual profits of textile mills that sold the same general category of products as the subject merchandise in the home market during the POR.

We have calculated amounts for scrap/wastage using the facts available (FA). In both the original and supplemental questionnaires we requested, for each company, information concerning actual wastage and scrap percentages that occur in production. None of the respondents were able to provide data indicating the actual amount of wastage incurred. Therefore, the record contains no information for a figure reflecting actual wastage which we can reasonably use for our calculations. Section 776 of the Act authorizes the Department's use of FA in certain situations, including situations in which necessary information is not on the record or an interested party fails to provide necessary information in the form and the manner requested. In this case, data which the Department needs in order to calculate scrap/wastage is not on the record and responses to the Department's requests for such data were not provided in the form and the manner requested. Furthermore, data provided by respondents was so incomplete that it could not serve as a reliable basis for calculating scrap/wastage. Thus, in accordance with Section 776 of the Act, we have decided to resort to FA in order to calculate scrap/wastage. As FA, we calculated an amount for wastage using the five-percent figure petitioner submitted in its October 16, 1996 comments on respondents' supplemental questionnaire responses. This figure assumes that five percent of yarn used for production becomes wastage.

For Greyfab's third-country sales, we based NV on C&F prices to unrelated customers in comparable channels of distribution as the U.S. customer. For third-country price-to-price comparisons, we made deductions, where appropriate, for foreign-country forwarding charges (*i.e.*, ocean freight, cost of lading, and cost of export Bill-of-Lading stamp) and inspection fees. We deducted third-country packing costs from and added U.S. packing costs to NV in accordance with section 773(a)(6) (A) and (B) of the Act.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Greyfab (Bangladesh), Ltd.	0.00
Hashem International	0.00
Khaled Textile Mills, Ltd.	0.00
Shabnam Textiles	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. Parties who submit argument in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. 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. 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, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing

this amount by the total quantity of subject merchandise sold to each of the respective importers. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of shop towels from Bangladesh 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) The cash deposit rates for reviewed companies will be the rates established in the final results of this review; (2) 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; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 4.60 percent.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 2, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31357 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

The Johns Hopkins University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–106. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* EPR Spectrometer, Model EMX 10/2.7. *Manufacturer:* Bruker Instruments, Inc., Germany. *Intended Use:* See notice at 61 FR 55972, October 30, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides measurement of electron spin resonance for characterization of paramagnetic centers in various materials, identification of photo- and redox-active sites and elucidation of reaction mechanisms. The National Institutes of Health advises in its memorandum dated October 21, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–31249 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 20, 1996, General Housewares Corporation filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Porcelain-On-Steel Cooking Ware from Mexico. This determination was published in the Federal Register on October 21, 1996 (61 FR 54616). The NAFTA Secretariat has assigned Case Number USA–96–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with The U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 20, 1996, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 20, 1996);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first

Request for Panel Review (the deadline for filing a Notice of Appearance is January 6, 1997); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 27, 1996.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 96–31263 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Alaska Region Permit Family of Forms; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKO1, NOAA/NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7228).

SUPPLEMENTARY INFORMATION

I. Abstract

Fishermen wanting to fish in regulated fisheries in the Exclusive Economic Zone off Alaska must apply for a Federal Fisheries Permit, a Federal Processor Permit, a High Seas Power Troller Permit, or an Experimental Fishing Permit. The issuance of a permit is an essential ingredient in the management of fishery resources. Identification of the participants, harvest gear types, descriptions of vessels or shoreside facilities, and expected activity levels is needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations. Experience has shown that fines for violations of specific fishery regulations are not as effective as the threat of a permit revocation that would exclude the vessel from the fishery altogether. Experimental fishing provides information not otherwise available through research or commercial fishing operations.

II. Method of Collection

Each of the four permits is mandatory for certain fishery participants. A permit is obtained through completion of an application.

III. Data

OMB Number: 0648–0206.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, Businesses and other for-profit (commercial fishermen, fish processors).

Estimated Number of Respondents: 2,456.

Estimated Time Per Response: 20 minutes for Federal Fisheries Permits or Federal Processor Permits, 30 minutes for a High Seas Power Troller Permit in the Salmon Fishery, and 30 hours for an Experimental Fishing Permit.

Estimated Total Annual Burden Hours: 966 hours.

Estimated Total Annual Cost to Public: $0—no capital, operations, or maintenance costs are expected.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 2, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–31259 Filed 12–9–96; 8:45 a.m.]

BILLING CODE 3510–22–P

[I.D. 112696A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on December 4, 1996, to Ensearch Exploration Inc., 4849 Greenville Ave., Suite 1200, Dallas, Texas, 75206–4186; the Tennessee Gas Pipeline Co., 1010 Milam Street, Houston, TX 77252; and the Stone Petroleum Corporation, P.O. Box 52807, Lafayette, LA 70505.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will

not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.

Summary of Request

NMFS received requests for letters of authorization on November 4, 1996, from Ensearch Exploration, Inc.; on November 14, 1996, from the Tennessee Gas Pipeline Co; and on December 3, 1996 from the Stone Petroleum Corporation. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: December 5, 1996.

Michael Payne,

Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–31354 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 112196C]

Mid-Atlantic Fishery Management Council; Change of Meeting Dates

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

ACTION: Notice of change of public meeting dates.

SUMMARY: The meetings of the Mid-Atlantic Fishery Management Council, which were scheduled for December 17–19, 1996, in Virginia Beach, VA, are now scheduled to begin on December 16, 1996. See **SUPPLEMENTARY INFORMATION** for specific information about the change.

DATES: The meetings will be held on December 16, 1996 at 1:00 p.m. through December 19, 1996 at approximately noon.

ADDRESSES: The 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.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The initial agenda published on December 2, 1996 (61 FR 63830). The meeting was originally scheduled to begin at 8:00 a.m. on December 17, 1996. The meeting is now scheduled to begin on December 16, 1996 at 1:00 p.m. All other information as printed in the previous publication also remains unchanged.

Dated: December 4, 1996.

Bruce Morehead,

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

[FR Doc. 96–31353 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Title: Department of Defense Khamisiyah Survey.

Type of Request: New collection; Emergency Processing requested with shortened public comment period ending December 7, 1996. An approval date of December 24, 1996 is requested.

Number of Respondents: 13,783.

Responses Per Respondent: 1.

Annual Responses: 13,783.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 1,608 hours.

Needs and uses: This collection of information is necessary to facilitate investigation of the events surrounding the demolition of munitions near Khamisiyah, Iraq from 1–15 March 1991 (immediately after the Gulf War). This survey is part of our ongoing effort to better understand the events during and after the Gulf War, and potential health consequences. Respondents are current and former members of the US military who were within 50 kilometers of the munitions storage area near Khamisiyah, Iraq.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503, or via facsimile at (202) 395–6974.

DOD Clearance Officer: Mr. William Pearce.

Requests for copies of the information collection proposal should be sent to Mr. Pearce at OSD/WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or via facsimile at (703) 604–6270, or requested telephonically at (703) 604–4582.

Dated: December 5, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–31342 Filed 12–9–96; 8:45 am]

BILLING CODE 5000–04–M

Contractor Alert List (CAL); Notice

November 26, 1996.

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notification of change in contractor alert list reason codes.

SUMMARY: This notice announces proposed policy for managing for Contractor Alert List. This policy will be included in the Defense Logistics Agency Directive 5000.4, Contract Management (One Book).

The proposed policy revises the criteria used to place Defense contractors on the CAL.

EFFECTIVE : Upon release of a Defense Contract Management Command Policy Memorandum.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Luc Degrate or Mr. Mike Williams, Contractor Capability and Proposal Analysis, Defense Logistics Agency, Department of Defense, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060–6221, (703) 767–3379 or 767–3397, respectively.

SUPPLEMENTARY INFORMATION:

Contractor Alert List

A. Reference

DLAD 5000.4, Contract Management (One Book).

B. General

1. FAR 9.103 requires that contracts be awarded to responsible contractors. Once the PCO determines a prospective contractor's bid or proposal is responsive, the PCO must further determine that the firm is responsible. The DLA Contractor Alert List (CAL) assists with making that decision.

2. The CAL notifies buying activities that information exists at Contract Administration Offices (CAOs) which indicates that certain contractors will require close examination to make a determination of responsibility. The CAL is prepared for use by the Department of Defense (DoD) and other Government procurement activities. Appendix 1 is the preface which introduces the CAL report.

3. The Contractor Capability & Proposal Analysis Team (AQOD), is designated the Office of Primary Interest (OPI) for the CAL. The Product and Manufacturing Assurance Team (AQOG), is the point of contact for issues specifically related to Quality Assurance data on the CAL.

4. The Defense Contract Management District CAL Manager:

a. Is the District focal point for CAL issues;

b. Is the team leader for uniform District-wide implementation of the CAL program;

c. Does periodic reviews to validate that CAL policy is being followed by the CAOs; and

d. Provides CAO CAL Managers with CAL training, as necessary.

5. The CAO CAL Manager:

a. Develops and promulgates CAO CAL procedures consistent with the policy herein;

b. Is responsible for the performance of the CAL program at the CAO level;

c. Is the focal point for all the internal and external communications pertaining to CAL;

d. Promptly answers queries pertaining to the CAL;

e. Review, validates, and inputs CAL data into MOCAS by the fifth workday of the month;

f. Ensures applicable reason codes set forth in Appendix 2 of this chapter are assigned; and

g. Ensures CAL contains only contractors that meet the Appendix 2 criteria.

C. Process

1. Putting contractors on the CAL. Contractors shall be placed on the CAL when the CAO functional elements become aware of any of the problems set forth in Appendix 2. The company shall be notified in writing at the time it is place on CAL. The CAL notification letter, at a minimum, will contain the following paragraph: ''Your placement on the CAL is not a determination of your responsibility nor can it be used by the Government as a basis for making a determination that you are not responsible. It merely indicates that a condition exists which may or may not have to be resolved prior to awarding your company further contracts. It is to the mutual benefit of both your company and the Government, as well as in the public interest, to correct any condition that may interfere with your company's successful performance of any proposed contract.''

2. Update/remove from the CAL. a. The CAL Manager in each CAO shall make a monthly review and query originators of CAL information to ensure that a reason still exists for the company remaining on the CAL. If the reason code for a company being on the CAL has changed, the CAL shall be appropriately update.

b. The cognizant CAO CAL manager will notify a company in writing when it is removed from the CAL.

3. Input data and disseminate reports. a. CAO CAL managers shall ensure monthly input of CAL data by the responsible elements. CAO will review, validate, and transmit CAL input data by the fifth workday of the month.

b. The Defense Information System Agency MegaCenter (DSC), Columbus, is the custodian of the CAL, and is responsible for maintenance of the system and dissemination of CAL reports to our customers (buying activities) on a monthly basis. DCMDE operates the electronic bulletin board for electronic dissemination of the CAL data.

D. Synopsis of Process

1. Inputs

a. CAO monthly CAL data.
b. DSC monthly CAL data.

2. Process Outputs

a. DLA Contractor Alert List.
b. DLA Contractor Alert List on DCMDE Electronic Bulletin Board.

Appendix 1—Preface to CAL Report

1. The enclosed DLA Contractor Alert List (CAL) contains information collected from the Defense Contract Management Command's Contract Administration Offices on contractors under their cognizance.

2. The list is to serve as a notice to contracting officers that, based upon information available at the cognizant contract administration office, a condition exists at the contractor's facility which the contracting officer should consider prior to awarding the contract. At a minimum, the contracting officer should consult with the Preaward Survey Manager (PSM) at the cognizant contract administration office to determine the necessity for a formal Preaward Survey, and to obtain the most current, accurate and complete information.

3. The list shall not be used by contracting officers as a basis for a responsibility determination. The fact that a contractor appears on the list does not indicate that the contractor is not responsible. The contracting officer must continue to make a responsibility determination on each contractor using all information available at the time of the determination.

Appendix 2—Listing of CAL Reason Codes

Code

1. The contractor has delivered complete at least 12 contracts in the prior 12 months, and the line item on-time delivery rate is less than 65 percent. This will be calculated using: (i) the initial contract delivery schedule (unless schedule revision was caused by the Government); and (ii) data on line items from contracts delivered complete during the prior 12 months (that is, percentage actually delivered late, not percentage delinquent of on-hand line items which have not been delivered yet).

2. The contractor has been issued a Level III or IV corrective action request.

3. The contractor's financial condition would result in or did result in a negative preaward survey.

Frank K. Toda,

Colonel, USAF, Chief, Performance Assessment Team.

[FR Doc. 96–31329 Filed 12–9–96; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on

the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: The Technology Innovation Challenge Grants Program.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs for LEAs.
Reporting Burden and Recordkeeping: Responses: 500; Burden Hours: 12,000.
Abstract: This application will be used by eligible consortia composed of local educational agencies, institutions of higher education, private businesses, and other educational or telecommunications entities. The information will be used to make grant awards for the Technology Innovation Challenge Grants Program and to ensure that statutory and regulatory requirements are met.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Star Schools Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs for LEAs.
Reporting Burden and Recordkeeping: Responses: 75; Burden Hours: 1,500.

Abstract: This application will be used by telecommunications partnerships composed of local school agencies, state education agencies, institutions of higher education, television stations, and other telecommunications agencies including educational radio and TV stations. The information will be used to make awards and to assure that statutory and regulatory requirements are met.

[FR Doc. 96–31300 Filed 12–9–96; 8:45 am]
BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1996. Interested persons are invited to submit comments on or before February 10, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th and D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the

following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Application for Grants Under Library Research and Demonstration Program, Title II–B of the Higher Education Act of 1965, as amended, CFDA #84–039.

Abstract: This form will be used by institutions of higher education and library organizations and agencies to apply for funds under the Title II–B of the Higher Education Act (HEA) of 1965, as amended, to carry out research, demonstration and development to improve libraries, training in librarianship, and dissemination of information. The Department will use this information to make grant awards.

Additional Information: This year, Congress passed legislation to repeal the HEA II–B, to take effect FY 1998, allowing the current program to continue for FY 1997. An emergency clearance is requested in order to allow applicants sufficient time to apply for funding.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 50; Burden Hours: 1,800.

[FR Doc. 96–31301 Filed 12–9–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 10, 1997. Interested persons are invited to submit comments on or before February 10, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Application for Grants Under the Library Research and Human Resource Development Program (Title II–B of the Higher Education Act of 1965, as Amended).

Abstract: This form will be used by institutions of higher education and library organizations or agencies to apply for funds under Title II–B of the Higher Education Act (HEA) of 1965, as amended. This descretionary grants program assists in educating and training persons in library and information science through fellowships and institutions. The Department will use the information to make grant awards.

Additional Information: This year, Congress passed legislation to repeal the HEA II–B, to take effect FY 1998,

allowing the current program to continue for FY 1997. An emergency clearance is requested in order to allow applicants ample time to submit applications for funding, be notified of the award and recruit new students for the school year beginning in Fall 1997.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 140; Burden Hours: 5,040.

[FR Doc. 96–31302 Filed 12–09–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

High Energy Physics Advisory Panel; 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 given of a meeting of the High Energy Physics Advisory Panel.

DATES: Monday, January 13, 1997; 9:00 a.m. to 6:00 p.m.; and Tuesday, January 14, 1997; 9:00 a.m. to 4:00 p.m.

ADDRESSES: Stanford Linear Accelerator Center, Central Laboratory, Bldg. 40, Orange Room, Stanford, California 94309.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Diebold, Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER–22, GTN, Germantown, Maryland 20874, Telephone: (301) 903–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, January 13, 1997 and Tuesday, January 14, 1997

Discussion of Department of Energy High Energy Physics Programs and FY 1997 Budget
Discussion of National Science Foundation Elementary Particle Physics Programs and FY 1997 Budget
Discussion of the Status of the Large Hadron Collider Project and U.S. Participation
Discussion of the Stanford Linear Accelerator Center and Lawrence Berkeley National Laboratory High Energy Physics Programs
Discussion of University-based High Energy Physics Programs
Discussion of Planning for the Future of the National High Energy Physics Program
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation: The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E- 190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on December 4, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–31317 Filed 12–09–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–165–000, etc.]

Alabama-Tennessee Natural Gas Company, et al.; Proposed Changes in FERC Gas Tariff

December 4, 1996.

In the matter of: Alabama-Tennessee Natural Gas Company, Docket No. RP97–165–000; ANR Pipeline Company, Docket No. RP97–171–000; ANR Storage Company, Docket No. RP97–172–000; Black Marlin Pipeline Company, Docket No. RP97–110–000; Blue Lake Gas Storage Company, Docket No. RP97–170–000; Caprock Pipeline Company, Docket No. RP97–139–000; Carnegie Interstate Pipeline Company, Docket No. RP97–173–000; Columbia Gas Transmission Corporation, Docket No. RP97–167–000; Columbia Gulf Transmission Company, Docket No. RP97–166–000; Cove Point LNG Limited Partnership, Docket No. RP97–162–000; Crossroads Pipeline Company, Docket No. RP97–145–000; Equitrans, Inc., Docket No. RP97–114–000; Gas Transport Inc., Docket No. RP97–157–000; Granite State Gas Transmission, Inc., Docket No. RP97–153–000; Great Lakes Gas Transmission Limited Partnership, Docket No. RP97–141–000; Gulf States Transmission Corporation, Docket No. RP97–174–000; High Island Offshore System, Docket No. RP97–147–000; Iroquois Gas Transmission System, L.P., Docket No. RP97–161–000; K N Interstate Gas Transmission Co., Docket No. RP97–142–000; K N Wattenberg Transmission Limited Liability Company, Docket No. RP97–144–000; Kentucky West Virginia Gas Company, Docket No. RP97–104–000; Kern River Gas Transmission Company, Docket No. RP97–178–000; Koch Gateway Pipeline Company, Docket No. RP97–154–000; Louisiana-Nevada Transit Company, Docket No. RP97–140–000; Michigan Gas Storage Company, Docket No. RP97–152–000; Mid Louisiana Gas Company, Docket No. RP97–151–000; MIGC, Inc., Docket No. RP97–176–000; Mobile Bay Pipeline Company, Docket No. RP97–155–000; Nora Transmission Company, Docket No. RP97–105–000; Oktex Pipeline Company, Docket No. RP97–103–000; Overthrust Pipeline Company, Docket No. RP97–131–000; Ozark Gas Transmission System, Docket No. RP97–179–000; Pacific Gas Transmission System, Docket No. RP97–134–000; Paiute Pipeline Company, Docket No. RP97–136–000; Questar Pipeline Company, Docket No. RP97–129–000; Richfield Gas Storage System, Docket No. RP97–150–000; Riverside Pipeline Company, L.P., Docket No. RP97–169–000; Sabine Pipe Line Company, Docket No. RP97–109–000; Shell Gas Pipeline Company, Docket No. RP97–138–000; Southern Natural Gas Company, Docket No. RP97–137–000; Steuben Gas Storage Company, Docket No. RP97–177–000; T C P Gathering Co., Docket No. RP97–143–000; Transcontinental Gas Pipe Line Corporation, Docket No. RP97–159–000; Tuscarora Gas Transmission Company, Docket No. RP97–168–000; U–T Offhore System, Docket No. RP97–146–000; Viking Gas Transmission Company, Docket No. RP97–156–000; Western Gas Interstate Company, Docket No. RP97–160–000 and Williston Basin Interstate Pipeline Company, Docket No. RP97–148–000 (Not Consolidated).

Take notice that the applicants referenced above tendered for filing pro forma tariff sheets by the December 2, 1996 date for compliance with the Commission's directives in Order No. 587.

Order No. 587 requires pipelines to reflect changes to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order No. 587, issued July 17, 1996 in Docket No. RM96–1–000.

Each applicant states that copies of its filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

The above-referenced dockets are being noticed together due to the large number of filings received. The filings are not being consolidated. Any party who wishes to file a motion to intervene

or protest must file a separate intervention or protest for each docket.

Any person desiring to be heard or to protest any of the above filings should file a motion to intervene or protest for each 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 Rules and Regulations. All such motions or protests must be filed on or before December 23, 1996. Protests will be considered by the Commission in determining 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 these filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31298 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–37–001]

Canyon Creek Compression Company; Notice of Compliance Filing

December 4, 1996.

Take notice that on November 27, 1996, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 132, to be effective December 1, 1996.

Canyon states that the purposes of the filing is to comply with the Commission's Letter Order issued on November 14, 1996, in Docket No. RP97–37–000.

Canyon requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective December 1, 1996.

Canyon states that copies of the filing are being mailed to all parties on the official service list in Docket No. RP97–37–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31282 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–27–001]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

December 4, 1996.

Take notice that on November 26 1996, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets identified below to be effective November 15, 1996:

Substitute Second Revised Sheet No. 97
Substitute Third Revised Sheet No. 123
Substitute First Revised Sheet No. 157

CIG states that the instant tariff sheets are filed in compliance with the Commission's Order issued November 14, 1996 in Docket No. RP97–27–000. These tariff sheets specify Shipper's Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity in CIG's Rate Schedules NNT–1, NNT–2 and FS–1 Form of Service Agreements. The tariff sheets also modify the Agreements to state that CIG will continue to state each Shipper's Available Daily Withdrawal Quantity on CIG's Xpress System.

CIG states that copies of the filing were served upon CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31281 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–3–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 4, 1996.

Take notice that on November 27, 1996, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 11A reflecting an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.62% to 0.71% effective January 1, 1997.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31291 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–128–000]

Eastern Shore Natural Gas Company; Notice of Technical Conference

Take notice that a technical conference will be convened in the above-docketed proceeding on Thursday, December 12, 1996, at 9:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), is invited to participate.

For additional information, please contact Carolyn Van Der Jagt, 202–208–

2246, or Tom Gooding, 202–208–1123, at the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31275 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on November 25, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of December 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an increase of $1.0491 per dt in the Commodity Charge, as measured against ESNG's Out-Of-Cycle Quarterly PGA filing, Docket No. TQ97–1–23–000, et. al., filed on October 30, 1996 to be effective on November 1, 1996.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the months of December 1996 through January 1997, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31295 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–13–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 4, 1996.

Take notice that on November 27, 1996, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following revised tariff sheets to become effective January 1, 1997:

Third Revised Sheet No. 256
Third Revised Sheet No. 257

El Paso states that the tendered tariff sheets update the identification of low and high load factor shippers for purposes of assessing the Gas Research Institute's (GRI) surcharges.

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 Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31276 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–149–000]

Gas Research Institute; Notice of Petition for Approval of Post-1997 Funding Mechanism

December 4, 1996.

Take notice that on December 2, 1996, Gas Research Institute (GRI) filed a petition requesting approval of a post-1997 funding mechanism for the purpose of funding its Research and Development (R&D) Program in 1998 and 1999.

GRI states that its filing is made in compliance with the Commission's directive that it must file by March 1, 1997 a proposed funding mechanism for post-1997 use.

The proposed funding mechanism involves the assessment of two separate surcharges:

- a Discountable Commodity Surcharge to Pipeline Shippers; and
- a Discountable Volumetric Interstate Delivery Charge to Local Distribution Companies and Intrastate Pipelines.

According to GRI, the Discountable Commodity Surcharge to Pipeline Shippers, which would still be subject to the ''discount GRI first'' rule, would be charged to shippers whenever associated commodity charges and one-part rates are at or above maximum stated tariff rate levels, including service provided at negotiated rates. GRI proposes that this surcharge be assessed on interstate transportation services (including storage) rendered by GRI's interstate pipeline members.

The revenue generated from the assessment of this surcharge would go to fund the ''Pipeline and Producer Subprogram'', which consists primarily of R&D on supply, transmission, and related environment and safety, plus an appropriate share of Administrative and General (A&G) expenses.

GRI states that the Discountable Volumetric Interstate Delivery Charge to Local Distribution Companies and Intrastate Pipelines would be a volumetric interstate delivery charge assessed on a monthly basis to local distribution companies (LDC's) and intrastate pipelines to fund R&D which would be of particular interest to LDC's, intrastate pipelines, and customers behind the city gate. This surcharge would be discountable only to a ''floor'' that is established for each LDC and intrastate pipeline.

The revenue generated from this surcharge would be used to fund the ''LDC Subprogram'', which consists primarily of R&D on distribution, end use, environment and safety, plus an appropriate share of A&G expenses.

GRI proposes to maintain separate collection accounts for revenue generated for each subprogram, so that any amounts in excess of a particular subprogram's current year R&D funding requirement could be applied to that subprogram's subsequent year R&D funding requirement.

Any person desiring to be heard or to protest GRI's petition 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 214 and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All protests, motions to intervene and comments should be filed on or before December 27, 1996. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this petition are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31296 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–126–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on November 29, 1996, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of January 1, 1997.

Iroquois states that the filing is the second and final general Section 4 filing contemplated in its initial certificate issued in Docket No. CP89–634. According to Iroquois the proposed changes would decrease its rates for transportation services and permit it to recover its cost of service of $150,382.130, based upon the twelve-month period ended July 31, 1996, as adjusted for changes through April 30, 1997. Iroquois also states that it is making certain minor tariff revisions of a clarifying or conforming nature.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31286 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–M

[Docket No. TM97–3–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on November 27, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of January 1, 1997:

Twenty-Second Revised Sheet No. 5
Twenty-Second Revised Sheet No. 6
Nineteenth Revised Sheet No. 7

MRT states that the purpose of this filing is to report the Miscellaneous Revenues Flowthrough Adjustment credit applicable to the period November 1, 1995 through August 31, 1996 for the cashout of onsystem and offsystem imbalances pursuant to Section 18 of the General Terms and Conditions of MRT's FERC Gas Tariff.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

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.W., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31290 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG–96–16–001]

Mojave Pipeline Operating Co.; Notice of Filing

December 4, 1996.

Take notice that on November 15, 1996, Mojave Pipeline Operating Company (Mojave) filed a report in response to the Commission's October 18, 1996 order requiring Mojave to identify the date it commenced transportation transactions with each of its marketing affiliates and explaining why it did not file standards of conduct with the first such transportation transaction began. 77 FERC ¶ 61,042 (1996).

Mojave states that copies of this filing have been mailed to all parties on the official service list, all Mojave transportation customers and affected state regulatory 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31277 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM97–4–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1996.

Take notice that on November 29, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifteenth Revised Sheet No. 5A, with a proposed effective date of December 1, 1996.

National states that pursuant to Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculation the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the

result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The October recalculation produced an IG rate of 9 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

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 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31292 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–5–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1996.

Take notice that on November 29, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixteenth Revised Sheet No. 5A and Third Revised Sheet No. 29, with a proposed effective date of January 1, 1997.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, *et al.*, National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) the changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for that same period. The recalculation produced an FG rate of $7.22 per dth.

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 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31293 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–409–007]

Northwest Pipeline Corporation; Notice of Compliance Filing

December 4, 1996.

Take notice that on November 27, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective May 23, 1996:

Second Revised Sheet No. 204
Third Revised Sheet No. 250
Second Revised Sheet No. 251
Second Revised Sheet No. 252

Northwest states that the purpose of this filing is to comply with the directives of the Commission's October 18, 1996 letter order in Docket Nos. RP95–409–000, 005, and 006, which addresses the Joint Offer of Settlement Relating to Gas Processing filed on May 24, 1996, with respect to the processing of Northwest's mainline gas at Williams Gas Processing filed on May 24, 1996, with respect to the processing of Northwest's mainline gas at Williams Gas Processing's Ignacio Plant.

Northwest states that the purpose of this filing is to include a provision in Northwest's tariff stating that it will credit to its customers all revenues it receives from liquids processing of its mainline gas at the Ignacio Plant, pursuant to the terms of the Settlement with its jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31279 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–86–000]

Pacific Gas Transmission Company; Notice of Compliance Filing

December 4, 1996.

Take notice that on November 27, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Fifteenth Revised Sheet No. 5; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Twelfth Revised Sheet No. 7. PGT requested the above-referenced tariff sheets become effective January 1, 1997.

PGT asserts that the purpose of this filing is to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively, of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These tariff changes reflect an increase in PGT's fuel and line loss surcharge percentage to become effective July 1, 1996. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's

Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31288 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–348–000]

Panhandle Eastern Pipe Line Corporation; Notice of Technical Conference

December 5, 1996.

In the Commission's order issued on September 30, 1996, in the above-captioned proceeding, the Commission held that the filing raises certain issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Thursday, December 19, 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. 96–31390 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–98–002]

PNM Gas Services, a Division of Public Service Company of New Mexico; Notice of Amendment

December 5, 1996.

Take notice that on November 25, 1996, PNM Gas Services, a Division of Public Service Company of New Mexico (PNM Gas Services), located at Alvarado Square, Albuquerque, New Mexico 87158, filed an amendment in Docket No. CP93–98–002, pursuant to Section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's Regulations under the NGA, seeking to amend the Presidential Permit issued August 6, 1993, to reflect the new name of the company holding the Presidential Permit.

Specifically, the Presidential Permit issued in Docket No. CP93–98–000 was to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Gas Company of New Mexico). The amendment sought herein would simply reflect the name change from Gas Company of New Mexico. PNM Gas Services states that the change only reflects a change in the name of the division conducting business; no change of ownership occurred.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before December 26, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31389 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–111–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

December 4, 1996.

Take notice that on November 17, 1996, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 5, to become effective October 1, 1996.

Steuben states that First Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben will be effective October 1, 1996.

Steuben states that copies of the filing were served upon the company's jurisdictional customers.

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 Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31289 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–39–001]

Stingray Pipeline Company; Notice of Compliance Filing

December 4, 1996.

Take notice that on November 27, 1996, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 140, to be effective December 1, 1996.

Stingray states that the purpose of the filing is to comply with the Commission's Letter Order issued on November 14, 1996, in Docket No. RP97–39–000.

Stingray requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective December 1, 1996.

Stingray states that copies of the filing are being mailed to all parties on the official service list in Docket No. RP97–39–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31284 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–38–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

December 4, 1996.

Take notice that on November 29, 1996, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 139, to be effective December 1, 1996.

Trailblazer states that the purpose of the filing is to comply with the Commission's Letter Order issued on November 14, 1996, in Docket No. RP97–38–000.

Trailblazer requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective December 1, 1996.

Trailblazer states that copies of the filing are being mailed to all parties on the official service list in Docket No. RP97–38–000.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31283 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–352–001]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on December 2, 1996, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1997:

14th Revised Sheet No. 48
3rd Revised Sheet No. 64A
Original Sheet No. 64A.1
Original Sheet No. 64A.2
Original Sheet No. 64A.3
12th Revised Sheet No. 80

Transwestern states that the purpose of this filing is to comply with the Commission's November 15, 1996 order accepting Transwestern's application for participation in a experimental pilot program removing the price ceilings from secondary market transactions, and ordering Transwestern to file tariff sheets to reflect participation in such program.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31280 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–106–000]

Viking Gas Transmission Company; Notice of It Revenue Crediting Report

December 4, 1996.

Take notice that on November 26, 1996, Viking Gas Transmission Company (Viking) tendered for filing a report of interruptible throughput and revenues for the period of November 1, 1995 through October 31, 1996. Viking also stated that Viking did not have sufficient net interruptible revenues during that period to trigger an obligation under Article 5, Section 4 of Viking's Rate Schedule IT, to credit net interruptible revenues to Viking's firm shippers.

Viking states that copies of its filing have been mailed to all of its jurisdictional customers and to affected state regulatory 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, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before December 11, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31285 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–1–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes In FERC Gas Tariff

December 4, 1996.

Take notice that on November 27, 1996, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. WTG submitted Twenty-First Revised Sheet No. 4 to be effective January 1, 1997. This tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the purchased gas adjustment provisions of Section 19 of the General Terms and Conditions of WTG's FERC Gas Tariff, First Revised Volume No. 1.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons 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 Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31294 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT97–2–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on November 26, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective December 26, 1996:

Third Revised Sheet No. 221

WNG states that this filing is being made to update WNG's tariff in compliance with 18 CFR Part 250.16(b)(1), which requires an interstate natural gas pipeline to report any changes which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31278 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–43–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1996.

Take notice that on November 27, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective January 1, 1997:

Second Revised Volume No. 1

Fourth Revised Sheet No. 6B
Alternate Fourth Revised Sheet No. 6B

Original Volume No. 2

Third Revised Sheet No. 362

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1996.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a 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 Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31287 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–551–000, et al.]

Southern Company Services, Inc., et al. Electric Rate and Corporate Regulation Filings

December 4, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER97–551–000]

Take notice that on November 22, 1996, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed eight (8) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Duke Power Company; (ii) Heartland Energy Services, Inc.; (iii) LG&E Power Marketing, Inc.; (iv) Santee Cooper; (v) Koch Power Services, Inc.; (vi) The Power Company of America; (vii) MidCon Power Services Corp; and (viii) IUC Power Services. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. ER97–552–000]

Take notice that on November 22, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Non-Firm Transmission Service Agreement with NorAm Energy Services, Inc. (NorAm) dated October 28, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 28, 1996, for the Agreement with NorAm, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on NorAm, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–553–000]

Take notice that on November 22, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 17 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 21, 1996, to Equitable Power Services Company and Illinova Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. British Columbia Power Exchange Corporation British Columbia Power Exchange Corporation

[Docket No. ER97–556–000; Docket No. EL95–62–000 (Not Consolidated)]

Take notice that on November 22, 1996, the British Columbia Power Exchange Corporation (Powerex), tendered for filing pursuant to Rules 205 and 207, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible date but no later than 60 days from the date of its filing.

Powerex intends to market electrical energy and capacity to wholesale customers at delivery points within the United States. In transactions where Powerex sells electric energy or capacity, it proposes to make such sales at rates and on terms and conditions agreed to with the purchasing party. Powerex will enter into both physical and financial transactions. As outlined in the petition, Powerex is an affiliate of the British Columbia Hydro and Power Authority, an integrated electric utility serving customers in British Columbia, Canada.

If the Commission grants such waivers and authorizations, then Powerex requests that the Commission terminate Docket No. EL95–62–000, without prejudice to Powerex reasserting the arguments raised in its Petition for Declaratory Order in Docket No. EL95–62–000 in other Commission proceedings.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER97–557–000]

Take notice that on November 22, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Public Service Electric & Gas Company (PSE&G). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on PSE&G and the Massachusetts Department of Public Utilities.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER97–558–000]

Take notice that on November 22, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for AIG Trading Corporation (AIG). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on AIG and the Massachusetts Department of Public Utilities.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER97–559–000]

Take notice that on November 22, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under original Volume No. 8, FERC Order 888 Tariff (Tariff) for Morgan Stanley Capital Group Inc. (Morgan). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on Morgan and the Massachusetts Department of Public Utilities.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER97–560–000]

Take notice that on November 22, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for CNG Power Services Corporation (CNG). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on CNG and the Massachusetts Department of Public Utilities.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER97–561–000]

Take notice that on November 22, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Citizens Lehman Power Sales (Citizens). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on Citizens and the Massachusetts Department of Public Utilities.

Comment date: December 18, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–31299 Filed 12–9–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5661–4]

Toxic Chemicals; PCBs; Submission to OMB; Agency Information Collection Activities; EPA ICR No 1001.06

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Polychlorinated Biphenyls (PCBs): Exclusions, Exemptions and Use Authorizations [EPA ICR #1001.06; OMB Control #2070–0008] has been forwarded to the Office of Management and Budget (OMB) for review and

approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 more years the existing approval for this ICR, which is scheduled to expire on January 31, 1997. A Federal Register notice announcing the Agency's intent to seek the renewal of this ICR and the 60 day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on June 28, 1996 (61 FR 33732). EPA received one comment on this ICR during the comment period, and has amended the ICR as appropriate and filed the comments as an attachment to the ICR submitted to OMB.

DATES: Additional comments may be submitted on or before January 9, 1997.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1001.06 and OMB Control No. 2070–0008.

ADDRESSES: Send comments, referencing EPA ICR No. 1001.06 and OMB Control No. 2070–0008, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE, Regulatory Information Division (2137), 401 M Street, S.W., Washington, DC 20460

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1001.06; OMB Control No. 2070–0008.

Current Expiration Date: Current OMB approval expires on January 31, 1997.

Title: Polychlorinated Biphenyls (PCBs): Exclusions, Exemptions and Use Authorizations.

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing, distribution in commerce and use of polychlorinated biphenyls (PCBs). However, federal regulations exclude certain manufacturing processes from these prohibitions, enabling chemical manufacturers to continue to manufacture essential chemical products, the manufacture of which is accompanied by the inadvertent generation of PCBs as trace byproducts or impurities. To be eligible for such an exclusion, chemical manufacturers must comply with certain certification, reporting and recordkeeping requirements. These requirements provide the means for EPA to verify that companies indeed generate only trace quantities of PCBs in their products and thus do not present an unreasonable risk of injury to human health or the environment. EPA also uses the data to identify sites for compliance inspections.

Responses to the collection of information are mandatory (see 40 CFR parts 761). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 25 hours per response. The annual recordkeeping burden is estimated to average approximately 5 hours per respondent. 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. No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies that manufacture chemical products, the manufacture of which is accompanied by the inadvertent generation of PCBs as trace byproducts or impurities, and companies that import chemical products that contain PCBs as trace byproducts or impurities.

Estimated No. of Respondents: 176.

Estimated Total Annual Burden on Respondents: 1,030 hours.

Frequency of Collection: One time.

Changes in Burden Estimates: There is an increase of 105 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 925 hours currently to an estimated 1,030 hours. This reflects an analysis of the submissions in the past three years, showing that the total number of submissions has been higher than had been anticipated in the most recently approved ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any additional comments related to the renewal of this ICR should be submitted within 30 days, as described above.

Dated: December 3, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–31270 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5661–2]

Pesticides; Trade Secret Clearance; Submission to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) entitled: Trade Secret Clearance Justification (EPA ICR # 0613.06; OMB Control No. 2070–0053) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its expected cost and burden, and includes a copy of the actual data collection instrument.

The Agency is requesting that OMB renew for 3 more years the existing approval for this ICR, which is scheduled to expire within 60 days. A Federal Register notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 15, 1996 (61 FR 36875). EPA did not receive any comments on this ICR during the 60 day comment period provided in that notice.

DATES: Additional comments may be submitted on or before January 9, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0613.06.

ADDRESSES: Send comments, referencing EPA ICR No. 0613.06, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE, Regulatory Information Division (2137), 401 M Street, S.W., Washington, DC 20460

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request for extension of a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 0613.06; OMB Control No. 2070–0053.

Current Expiration Date: December 31, 1996.

Title: Trade Secret Clearance Justification.

Abstract: This information collection activity will affect registrants of pesticide products subject to Freedom of Information Act (FOIA) requests. The purpose of the collection is to determine the confidentiality of information submitted to the Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The collection is usually prompted by a request under the Freedom of Information Act (FOIA) for a record which may be entitled to confidential treatment. The collection instrument consists of nine questions codified under 40 CFR Part 2, Subpart B. A final determination on the releasability of the requested record is issued by EPA upon evaluation of the business's response.

EPA may not disclose information which is described by FIFRA section 10(d)(1) (A), (B), or (C). Under 40 CFR 2.204(a), EPA may take action to determine whether business information is entitled to confidential treatment when a request for disclosure is received under FOIA, when the Agency anticipates receiving a request under FOIA, or when the Agency wishes to determine if information in its possession is confidential. When determining whether information is entitled to confidential treatment, EPA is required by 40 CFR 2.204(e) to notify the affected business and provide an opportunity for comment. The requirements are mandatory to obtain a benefit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response. This estimate includes the time needed for: reading collection request; conferring with EPA; gathering resources and coordinating actions; reviewing information to identify potential confidential portions; processing, compiling, and reviewing claims of confidentiality for accuracy and appropriateness; reporting and substantiating findings; and storing, filing, or maintaining the information. No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are registrants of pesticide products subject to Freedom of Information Act (FOIA) requests.

Estimated No. of Respondents: 90.

Estimated Total Annual Burden on Respondents: 1890 hours.

Frequency of Collection: once per event.

Changes in Burden Estimates: The administering office is fully automated and no longer utilizes contractor support for this ICR. Overall Agency and respondent costs have increased based on rates provided by the Bureau of Labor Statistics.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days, as described above.

Dated: December 3, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–31273 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5661–3]

Science Advisory Board; Emergency Notification of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, emergency notice is hereby given that the location of the December 19–20, 1996 meeting of the Integrated Human Exposure Committee (IHEC) of the Science Advisory Board (SAB) has been changed in order to accommodate the expected attendance by the public. This meeting will review the EPA's draft Exposure Factors Handbook, and was announced in the Federal Register for November 18, 1996 (Volume 61, Number 223, [Page 58683–58684).

The new location for the meeting is the Hyatt Arlington Hotel, 1325 Wilson Boulevard, Arlington, VA 22209. The hotel telephone number is 703–525–1234. Anyone desiring additional information should contact Ms. Dorothy Clark, Staff Secretary, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, fax (202) 260–7118, or Internet at: clark.dorothy@epamail.epa.gov.

Dated: December 3, 1996.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 96–31271 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

[PF–676; FRL–5575–8]

Merck Co., Inc.; Notice of Pesticide Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the renewal/reissuance of regulations establishing tolerances for residues of the pesticide chemical abamectin (avermectin B_1) in or on various agricultural commodities. This notice includes a summary of the petition that was prepared by the petitioner, Merck Co., Inc.

DATES: Comments, identified by the docket number PF–676, must be received on or before January 9, 1997.

ADDRESSES: By mail, submit written comments 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 comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. 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 PF–676. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II of this document.

Information submitted as a comment concerning this notice may be claimed

confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. No CBI should be submitted through e-mail. A copy of the comment 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.

FOR FURTHER INFORMATION CONTACT: George LaRocca (PM–13), Rm. 204, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Mail address: Registration Division (7505C), Environmental Protection Agency, Washington, DC 20460. Telephone (703) 305–6100; e-mail larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition from Merck Co., Inc., Agricultural Research and Development, Hillsborough Rd., Three Bridges, NJ 08487. The petition proposes amending 40 CFR 180.449 to renew/reissue the regulations that established tolerances for the insecticide abamectin (avermectin B_1) and its delta-8,9-isomer in or on cottonseed at 0.005 parts per million (ppm); citrus, whole fruit, at 0.02 ppm; citrus oil, at 0.1 ppm; citrus dried pulp, at 0.1 ppm; cattle, meat, at 0.02 ppm; cattle, meat byproducts, at 0.02 ppm; cattle, fat, at 0.015 ppm; milk, at 0.005 ppm; and hops, dried, at 0.5 ppm. These tolerances were originally established in response to pesticide petitions 7F3500, 8F3592, 4E04419, and food additive petition 8H5550. The petition also proposes to establish a tolerance in or on the raw agricultural commodity potatoes at 0.005 ppm. As required by section 408(d) of FFDCA, as recently amended by the Food Quality Protection Act, Merck included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Merck; EPA is in the process of evaluating the petition. As required by section 408 (d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Merck Co., Inc.'s Petition Summary

This is a petition by Merck Co., Inc. (Merck), under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), as most recently amended by the Food Quality Protection Act (FQPA), asking that the Environmental Protection Agency (EPA) issue permanent tolerances without time limits for pesticide chemical residues consisting of the insecticide abamectin (avermectin B_1) and or its delta 8,9-isomer in or on the following food items: cottonseed; citrus, whole fruit; citrus, oil; citrus, dried citrus pulp; hops, dried; milk; cattle, meat; cattle, meat byproducts; cattle, fat; and potatoes. These tolerances were originally requested in petitions 7F3500, 8F3592, 4E04419, and 5F04508, and food additive petition 8H5550.

On April 30, 1996, the time-limited tolerances for abamectin use on cottonseed, citrus food and feed items, milk, and cattle food items expired. A proposal by EPA to extend the tolerances was published in the Federal Register; no public comments were received in response. However, the Agency did not publish a final rule prior to the enactment of FQPA. On October 21, 1996, in response to procedural guidance from EPA, Merck submitted to EPA a request for reissuance of the tolerances. With one exception (potatoes), the requested tolerances would replace the time-limited abamectin tolerances that have been issued in the past by EPA and that recently expired or will soon expire. Merck requested that EPA issue permanent tolerances for these commodities, saying that the time limitations associated with these earlier tolerances were a result of aquatic exposure issues, and that it understood that the Agency no longer imposes time limitations on tolerances because of non-dietary issues.

A. Residue Data

Abamectin (also known as avermectin B_1) is an effective miticide/insecticide that is used on various crops at the maximum use rate of 0.025 pounds active ingredient per acre. Residue data covering all the uses associated with the tolerances requested by this petition have been previously submitted to EPA for review and have been found by EPA to support the requested tolerances and preharvest intervals. See 54 FR 23209, May 31, 1989 (cottonseed); 54 FR 31836, Aug. 2, 1989 (citrus food and feed items, cattle food items, and milk); and 60 FR 47529, Sept. 13, 1995 (hops). Merck has submitted practical analytical methods (high density liquid chromatography—fluorescence, with crop-specific cleanup methods) for detecting and measuring levels of abamectin and its delta 8,9-isomer in or on food with residues at or above the proposed tolerance levels. EPA has provided information on these methods to EPA, and the methods are available to anyone interested in pesticide residue enforcement at the address listed under ''FOR FURTHER INFORMATION CONTACT'' above.

B. Abamectin Safety Data

To date Merck has submitted approximately 78 toxicology studies, including the following principal studies, to support the tolerances for abamectin (studies conducted with the delta 8,9-isomer of abamectin are noted):

1. *Acute studies.* A rat acute oral study with a LD_{50} of 4.4 to 11.8 mg/kg (males) and 10.9 to 14.9 mg/kg (females).

A rabbit acute dermal study with a LD_{50} >2,000 mg/kg. A rat acute inhalation study with a LC_{50} >5.73 mg/L.

A primary eye irritation study in rabbits which showed irritation.

A primary dermal irritation study in rabbits which showed no irritation.

A primary dermal sensitization study in guinea pigs which showed no skin sensitization potential.

An acute oral toxicity study in monkeys with a no observed adverse effects level (NOAEL) of 1.0 mg/kg based upon emesis at 2.0 mg/kg.

2. *Subchronic studies.* A rat 8–week feeding study with a NOAEL of 1.4 mg/kg/day based upon tremors.

A rat 14–week oral toxicity study with a NOAEL of 0.4 mg/kg/day, the highest dose tested.

A dog 12–week feeding study with a NOAEL of 0.5 mg/kg/day based upon mydriasis.

A dog 18–week oral study with a NOAEL of 0.25 mg/kg/day based upon mortality.

A CD-1 mouse 84–day feeding study with a NOAEL of 4 mg/kg/day based upon decreased body weights.

3. *Chronic studies.* A rat 53–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 1.5 mg/kg/day based upon tremors.

A CD-1 mouse 94–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 4 mg/kg/day based upon decreased body weights.

A dog 53–week chronic feeding study, with a NOAEL of 0.25 mg/kg/day based upon mydriasis.

4. *Developmental toxicity studies.* An oral teratology study in the CF–1 mouse with a maternal NOAEL of 0.05 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 0.20 mg/kg/day based upon cleft palates.

An oral teratology study with the delta 8,9-isomer in CF–1 mice with a maternal NOAEL of 0.10 mg/kg/day based upon decreased body weights. The fetal NOAEL was 0.06 mg/kg/day based upon cleft palate.

An oral teratology study in rabbits with a maternal NOAEL of 1.0 mg/kg/

day based upon decreased body weights and tremors. The fetal NOAEL was 1.0 mg/kg/day based upon clubbed feet.

An oral teratology study in rats with a maternal and fetal NOAEL at 1.6 mg/kg/day, the highest dose tested.

An oral teratology study with the delta 8,9-isomer with a maternal NOAEL in CF–1 mice that expressed P-glycoprotein greater than 1.5 mg/kg/day, the highest and only dose tested. No cleft palates were observed in fetuses that expressed normal levels of P-glycoprotein, but fetuses with low or no levels of P-glycoprotein had increased incidence of cleft palates.

5. *Reproductive effects study.* A two-generation study in rats with a NOAEL of 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight, and mortality. The NOAELs for systemic and reproductive toxicity were 0.4 mg/kg/day.

6. *Mutagenicity studies.* The Ames assays conducted with and without metabolic activation were both negative.

The V-79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated *in vitro* at doses greater than 0.2 mM. This *in vitro* dose of 0.2 mM is biologically unobtainable *in vivo,* due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage. Merck has also conducted many studies and accumulated a great deal of clinical and follow-up experience with regard to ivermectin, a closely similar human and animal drug.

C. Toxicity Issues

1. *Acute toxicity.* Typical symptoms of classical CNS abamectin/ivermectin acute toxicity include mydriasis (dilated pupils, a marker effect occurring at relatively low exposure levels); fatigue or lethargy; and tremors. At sufficiently high exposure levels, coma and sometimes death may result. Once exposure ceases, recovery in affected living animals is rapid (typically within a few days).

Some species of animals are more sensitive generally to this classical pattern of abamectin toxicity than other species. In particular, a subpopulation of CF–1 mice and the neonatal rat have been observed to be sensitive to abamectin/ivermectin toxicity. Merck research has attributed the sensitivity of the subpopulation of CF–1 mice to the absence of P-glycoprotein, a major component of the blood-brain barrier. Neonatal rat sensitivity has been attributed in part to the lack of a fully developed blood-brain barrier. The neonatal blood-brain barrier is not complete until after 2 weeks following birth, while the blood-brain barrier in humans is completed pre-natally. The extensive human use of ivermectin has not identified a subpopulation of humans with deficient P-glycoprotein. Furthermore, the animal and human data bases do not indicate increased concerns for infants and children.

2. *Developmental effects.* Tests of abamectin and ivermectin have been conducted in a variety of species, and ivermectin is widely used as a human and animal drug. In livestock species there is no suggestion that ivermectin is a developmental toxicant. In mice and rabbits there is evidence that dosing with either abamectin or ivermectin may produce malformations, but only at doses that are clearly maternally toxic as well. However, the delta 8,9-isomer of abamectin has been shown to produce cleft palate malformations in the CF–1 mouse at dose levels that are not maternally toxic and that are much lower than the dose levels that show any indication of developmental toxicity in other species or in other mouse strains. Merck research has shown that the subpopulation of CF–1 mice with these malformations have inherited a genetic deficiency that prevents or severely limits their production of a P-glycoprotein which is a principal factor of the blood-brain barrier and which Merck hypothesizes may perform a protective function in fetal development as well, perhaps by playing a role in the blood-placenta barrier. Based upon extensive use of ivermectin in humans without observed adverse effects, this deficiency is not expected to occur in humans.

3. *Other toxicity issues.* There are no nonthreshold effects and no other toxic endpoints of concern. The oncogenicity assays and chronic feeding studies revealed no indication of carcinogenic potential. Abamectin was found to be non-mutagenic.

D. Exposure Analysis for Threshold Effects

1. *Chronic exposure assessments.* EPA's chronic dietary exposure assessments for abamectin currently use a reference dose (RfD) of 0.0004 mg/kg/day based upon a NOAEL of 0.12 mg/kg/day from effects on neonatal pups in the rat multigeneration reproduction study and an uncertainty factor of 300 (including an additional modifying factor of 3 to account for the severity of the effects).

As noted above, this acute toxicity in rat pups results solely from their exposure to abamectin in the milk they ingest. It is well understood that abamectin concentrates in fat and that rat milk has considerably more fat content than that of most other species (including humans), so that the exposure level for the rat dams considerably understates the exposure level of the affected rat pups. As discussed earlier, the blood-brain barrier of the neonatal rat pup is not fully formed until a week or more after birth, while in humans the barrier is complete well before birth. Due to these differences between rats and humans, using the neonatal rat to model risks to infants arguably is inappropriate; certainly use of the 0.0004 mg/kg/day RfD derived from the abamectin level in the rat dams' diet introduces additional conservative safety factors. Additional assurance comes from the absence of adverse effects in studies using neonatal and juvenile monkeys and from the absence of adverse effects in nursing human infants whose mothers have been treated with ivermectin.

Notwithstanding these issues, Merck has calculated chronic exposure estimates and compared them to this RfD. Using mean anticipated residues, adjusted for percent crop treated with abamectin, the chronic exposure for the overall U.S. population was estimated to be 0.000005 mg/kg/day, which is approximately 1.4% of the RfD. For infants, exposure was similarly estimated to be 0.000005 mg/kg/day (1.4% of the RfD). The exposure estimates for the two most highly exposed population subgroups, children 1 to 6 years old and children 7 to 12 years old, were 0.000013 mg/kg/day (3.2% of the RfD) and 0.000008 mg/kg/day (2.1) of the RfD), respectively.

2. *Acute exposure assessments.* In evaluating the potential hazard of abamectin acute exposure for women of childbearing age, EPA currently uses a NOAEL of 0.05 mg/kg/day for maternotoxic effects of abamectin in CF–1 mice and a NOAEL of 0.06 mg/kg/day for developmental effects of the delta 8,9-isomer in CF–1 mice. To assess the potential hazard of acute exposure of infants and children, EPA uses the rat 2-generation reproduction study NOAEL of 0.12 mg/kg/day based upon the toxicity observed in the nursing pups.

The relevance of the neonatal rat model has already been discussed. As to the relevance of the CF–1 mouse studies, Merck research has shown that both the induction of cleft palate in fetuses and the induction of maternal

toxicity at low dose levels result from a heritable genetic deficiency that precludes some animals of that strain from producing P-glycoprotein. In a recent study, where dams that expressed P-glycoprotein were treated with the delta 8,9-isomer of abamectin and mated to males with and without P-glycoprotein, every fetus that did not inherit the ability to express P-glycoprotein developed cleft palate while every fetus that inherited the ability to express P-glycoprotein fully was free of the malformation. Additionally, in the dams (all of whom were chosen because they possessed the ability to express the P-glycoprotein) no effects were seen at the 1.5 mg/kg/day dose (the only dose tested), in contrast to the much lower maternotoxicity NOAELs (as low as 0.05 mg/kg/day) seen in comparable studies using abamectin or its delta 8,9-isomer in CF–1 mice that had not been tested for ability to express P-glycoprotein. Epidemiological studies of humans treated with ivermectin, as well as breeding-animal studies on ivermectin conducted to obtain its approval as animal drug and surveys of adverse reaction reports (billions of treatments have been administered to animals) all indicate a lack of a human population susceptible to the induction of birth defects by ivermectin or abamectin. Accordingly, the CF–1 mouse is not an appropriate model to assess the toxicity of the avermectins.

Despite these issues, Merck has incorporated these toxicity endpoints from the CF–1 mouse into acute exposure assessments. (For purposes of simplification, Merck has used the NOAEL of 0.05 mg/kg/day for acute exposure assessments for the overall U.S. population and also for women of childbearing age.) These assessments show that the margins of exposure (MOEs) at the 95th percentile of exposure (using a Monte Carlo analysis conducted in accordance with Tier 3 of EPA' June 1996 ''Acute Dietary Exposure Assessment''guidance document) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U.S. population was estimated to be 0.000023 mg/kg/day (MOE of 2,146), while that for women greater than 13 years of age was 0.000017 mg/kg/day (MOE of 2,970). For children 1 to 6 years old, the 95th percentile of exposure was estimated to be 0.000042 mg/kg/day (MOE of 2,863), while that for children 7 to 12 years old was 0.000030 mg/kg/day (MOE of 3,965). For infants, the 95th percentile of exposure was estimated to be 0.0028 mg/kg/day (MOE of 4,244).

E. Aggregate Exposure

The dietary assessments (both acute and chronic) accounts for all anticipated dietary exposure for tolerances that are subject to this request (citrus and derivatives, cottonseed, meat, meat byproducts, milk, and hops), and all other active and pending tolerances for abamectin. The other active tolerances are for tomatoes, strawberries, celery, lettuce, cucurbits, peppers, apples, pears, almonds, and walnuts. The tolerance petition for potatoes is pending. The assessments also take into account the use on grapes under an emergency exemption.

Additional uses of abamectin include a bait for fire ants, an indoor crack and crevice treatment, and a roach bait; however, significant exposure from these products is not likely. The fire ant bait contains approximately 0.011% abamectin and is used primarily in the southern portion of the United States, where the fire ant is most prevalent. Post application exposure resulting from mound-directed treatment is considered unlikely, and significant exposure from the broadcast treatment is also unlikely since the treatment rate is very low (1.0 lb of bait, containing only 50 mg of abamectin, per acre). In a recent exposure study using the crack and crevice treatment, no measurable air or surface residues were detected. Significant exposure is not expected from the roach bait because of the child resistant safety packaging and the essentially non-existent vapor pressure of abamectin.

Based upon the available studies of abamectin's fate in the environment, there is no reason to expect human exposure to residues of abamectin in drinking water. It has been clearly demonstrated that abamectin does not leach.

The typical therapeutic dose of ivermectin as a human drug is 200 µg/kg (0.2 mg/kg). Merck is in the process of quantitatively assessing the total dietary exposure resulting from abamectin and ivermectin uses. Generally, use of ivermectin in food-producing animals is only once per year and the ivermectin residues in most treated animals are below the level of detection.

F. Endocrine Effects

There is no evidence that abamectin is an endocrine disrupter. Evaluation of the rat multigenerational study demonstrated no effect on the time to mating or on the mating and fertility indices, suggesting no effects on the estrous cycle, on mating behavior, or on male or female fertility at doses up to 0.4 mg/kg/day, the highest dose tested. Furthermore, the range finding study demonstrated no adverse effect on female fertility at doses up to 1.5 mg/kg/day, the highest dose tested. Similarly, chronic and subchronic toxicity studies in mice, rats, and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract, or to the thyroid or pituitary (based upon organ weights and gross and histopathologic examination). In the developmental studies, the pattern of toxicity observed does not seem suggestive of any endocrine effect. Finally, experience with ivermectin in breeding animals, including sperm evaluations in multiple species, shows no adverse effects suggestive of endocrine disruption.

G. International Tolerances

The U.S. tolerances for pears and citrus are greater than the Codex proposals, reflecting the differences in how the United States and Codex CCPR treat the highest residue values from field studies. The differences in tolerances for cottonseed and milk are the result of differences in the limits of detection of the analytical methods accepted by the two organizations. Assuming label directions are followed, actual anticipated residues in foods in commerce should not be affected by the different tolerances, since the same residue database has been used to set both the Codex and U.S. tolerances.

H. Safety to Infants and Children

Merck's petition notes that EPA has evaluated abamectin repeatedly since its introduction in 1985 and has found repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of abamectin. The FQPA authorizes the employment of an additional safety factor of up to 10X to guard against the possibility of prenatal or postnatal toxicity, or to account for an incomplete database on toxicity or exposure. Merck states that the database for abamectin is complete and argues that there is no need for an additional safety factor because of the conservatism in the end points selected for risk assessment. Additionally, there is much more information regarding human risk potential than is the case with most pesticides, because of the widespread animal-drug and human-drug uses of ivermectin, the closely related analog of abamectin.

It is the opinion of Merck that the use of an additional safety factor to address

risks to infants and children is not necessary. The established endpoints for abamectin in the CF–1 mouse and the neonatal rat have been shown by Merck to be overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration to support the allowable daily intake for ivermectin residues in food from treated animals.

No evidence of toxicity was observed in neonatal rhesus monkeys after 14 days of repeated administration of 0.1 mg/kg/day (highest dose tested) and in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day (highest dose tested). The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than two times the LD_{50} in the adult rat and more than 20 times the LD_{50} in the neonatal rat. The absence of a steep dose-response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to avermectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.''

II. Administrative Matters

A record has been established for this notice of filing under docket number PF–677 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

The official record for this notice of filing, 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Authority: 7 U.S.C. 136a.

Dated: December 3, 1996.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 96–31303 Filed 12–09–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5655–4]

State Program Requirements; Approval of Application by Oklahoma to Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency.

ACTION: Final approval of the Oklahoma Pollutant Discharge Elimination System under the Clean Water Act.

SUMMARY: On November 19, 1996, the Regional Administrator for the Environmental Protection Agency (EPA), Region 6, approved the application by the State of Oklahoma to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the State. The authority to approve state programs is provided to EPA in Section 402(b) of the Clean Water Act (CWA). The approved state program i.e., the Oklahoma Pollutant Discharge Elimination System (OPDES) program is a partial program to the extent described in this Notice (see section titled ''Scope of the OPDES program), which will operate *in lieu* of the EPA administered NPDES program pursuant to Section 402 of the CWA. The OPDES program will be administered by the Oklahoma Department of Environmental Quality (ODEQ). In making its decision, EPA has considered all comments and issues raised during the publicly noticed comment period. Summaries of the comments and EPA responses are contained in this notice. The comments and public hearing record are contained in the administrative record supporting this notice.

EFFECTIVE DATE: November 19, 1996. Because CWA section 301(a) prohibits new discharges until they are authorized by an NPDES permit, this action is immediately effective to avoid further suspension of permitting actions in Oklahoma and the unnecessary burden such a suspension would impose on new dischargers.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell at U.S. EPA, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202, or by calling (214) 665–7513, or electronically at

CALDWELL.ELLEN@EPAMAIL.EPA.GOV

or Norma Aldridge, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212, or by calling (405) 271–5205.

SUPPLEMENTARY INFORMATION: Oklahoma's application for OPDES program approval was submitted on June 10, 1996, and final supplements were received on August 20, 1996. The documents were described in the Federal Register Notice of August 29, 1996, (61 FR 45420) in which EPA requested comments and gave notice of public hearing. Further notice was also provided by way of publication published on August 28, 1996, in The Lawton Constitution, the Daily Oklahoman, the Tulsa World, the McAlester News Capital & Democrat, the Guymon Daily Herald, and the Woodward News. Copies of the application were made available at the addresses below and could also be purchased from the State for the cost of $358.65 (the cost of the principal documents, i.e the Attorney General's Statement, Memorandum of Agreement, Program Description, and the Enforcement Management System all without their associated appendices is $163.35). An electronic copy of the documents stored on computer disk was provided at no cost to interested parties which supply disks to ODEQ for that purpose. (Citizens may still request a disc copy and should supply 3 new, 3.5'' high density/double sided microdisk. The documents will be in WordPerfect 6.0.) EPA provided copies of the public notice to permitted facilities, Indian tribes, and other federal and state agencies.

As a part of the public participation process, both a public meeting and hearing were held in MidWest City, Oklahoma, on September 30, 1996. The public meeting provided as an informal question and answer session, and began

at 2 pm ending at 4:30 pm. The hearing started at 7 pm and lasted until 7:30 pm. Oral comments were recorded during the hearing and are contained in the administrative record supporting this action. Written comments were accepted by EPA through October 21, 1996. All comments presented during the public comment process, either at the hearing or in writing, were considered by EPA in its decision. EPA's responses to the issues raised during the comment period are contained in the Responsiveness Summary provided in this notice. A copy of EPA's decision and its Responsiveness Summary has been sent to all commenters and interested parties (those persons requesting to be on the mailing list for EPA actions in Oklahoma).

Copies of the final program documents for the OPDES program are available to the public during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1446 Ross Avenue, Dallas, Texas 75202, (214) 665–7513;

ODEQ Headquarters, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

The Regional Administrator notified the State of the program approval decision by letter dated November 19, 1996, and notice of EPA's final decision has been published in the newspapers in which the public notice of the proposed program appeared (listed above). As of November 19, 1996, EPA suspended issuance of NPDES permits in Oklahoma (except for those permits which EPA retained jurisdiction as specified below in the section titled ''Scope of the OPDES Program''). The State's OPDES program will implement federal law and operate *in lieu* of the EPA-administered NPDES program. EPA does, however, retain the right to object to OPDES permits proposed by ODEQ, and if the objections are not resolved, to issue the permit itself.

On May 8, 1996, EPA issued a final rule amending minimum State program requirements. The amendment explicitly requires that all states that seek to administer an NPDES program must provide an opportunity for judicial review in state court of final permit decisions that is sufficient to provide for, encourage, and assist public participation in the permitting process. The Attorney General Statement submitted by Oklahoma addresses the issue of judicial standing, asserting that Oklahoma complies with the review criteria expressed in 61 FR 20972 (May 8, 1996). Based on a review of Oklahoma legal authority, the explanation provided in the State's AG Statement and discussions with ODEQ attorneys, it appears that Oklahoma law meets the amended State NPDES program requirement.

Changes to the OPDES Proposed Documents

No changes were made to the proposed OPDES program documents based on information obtained in the public comments received, however, EPA has requested two changes to the Memorandum of Agreement (MOA) clarifying how the OPDES program will be consistent with federal requirements and policy. These changes are minor and do not require additional public notice. No commenter noted these portions of the MOA or issues in any submitted comments.

1. Section C of the Oklahoma/EPA MOA (Jurisdiction over Permits) has been revised to clarify that EPA is retaining authority for the administration of EPA issued general permits, and *not* NPDES program authority over those classes of discharges which are covered by those general permits (See below ''Scope of the OPDES Program'' A.6.). This would include the general permit for discharges from UST remediation water discharges and the following storm water general permits: Baseline construction storm water general permit (57 FR 41209), NPDES permit numbers OKR10*###; Baseline non-construction storm water general permit (57 FR 41297), NPDES permit numbers OKR00*###; and Multi-sector storm water general permit (60 FR 51108), NPDES permit numbers OKR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers—e.g. OKR00Z999). The revised language is as follows:

EPA will temporarily retain authority to administer general permits for:

—All existing discharges of storm water associated with industrial or construction activity (40 CFR 122.26(b)(14)), including allowable non-storm water, authorized to discharge under an NPDES storm water general permit as of the date of program assumption.

—New discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under an NPDES storm water general permits, excluding new discharges subject to a new source performance standard.

—All existing and new discharges resulting from implementing corrective action plans, as required by 40 CFR 280, for cleanup of groundwater contaminated by releases from Petroleum Underground Storage Tank Systems (UST).

Case-by-case transfers for individual storm water and UST dischargers will be made using the following procedures:

—ODEQ may request early transfer of an individual facility or a class of storm water dischargers at any time. All requests will be in writing and will include a brief rationale.

—If ODEQ and EPA agree to provide an individual permit *in lieu* of general permit coverage, the State will include outfalls for the affected discharges in a draft OPDES permit and the public notice of the draft permit will concurrently notice the transfer of authority for the facility's discharges to ODEQ.

—A permittee with a wastewater discharge or storm water discharge that is not eligible for coverage under an EPA storm water general permit must apply to DEQ for an individual permit.

Final transfer of general permitting authority for storm water and UST discharges will be made using the following procedures:

—No later than three years from the date of program assumption, the State will make the necessary changes to State statutes in order to qualify for general permitting authority.

—Within 90 days of the effective date of the new statutes, the State will submit a supplemental Attorney General's statement, along with a copy of the relevant statutes, certifying that the Executive Director has the authority to issue general permits.

—If EPA concurs with the Attorney General's statement, the Agency will publish notice of the transfer of general permits for the remaining storm water and UST discharges to ODEQ and send a copy to the appropriate mailing list.

—Once the Executive Director of ODEQ assumes authority in accordance with a promulgated final rule to issue general permits, the State will become the permitting authority (subject to EPA oversight) for all discharges of storm water associated with industrial and construction activity, UST remediation discharges. EPA storm water general permits and any effective general permits for UST remediation discharges will then be transferred to ODEQ for administration. Within 30 days of the transfer of authority, EPA will provide

ODEQ with a list of all facilities authorized to discharge under these general permits.

2. Oklahoma proposed a regulation for consideration for self-reporting of noncompliance (Title 252:2–117). At the time of this authorization the regulation is not finalized. As agreed by EPA and ODEQ, language has been added to page 39 of the MOA ensuring that the final regulation will be consistent with NPDES program requirements. The new language is as follows:

''The DEQ's proposed audit rule and any associated policy and/or guidance which may be used to mitigate penalties for delegated facilities under the OPDES program, must receive final EPA concurrence prior to implementation by the State.''

Once the regulation is finalized, ODEQ will send a revised Program Description and/or Enforcement Management System explaining the rule's implementation with regard to the OPDES program. The State will also send a supplemental Attorney General's Statement to ensure the regulation will be consistent with NPDES requirements. To the extent EPA finds that a final rule modifies or supplements the OPDES program and constitutes a program revision, in accordance with 40 CFR 123.62 these revisions of the original OPDES program will be publicly noticed in the Federal Register and major newspapers in the State to provide for public comment on the revision.

Scope of the OPDES Program and Clarifications on EPA Authority and Oversight

All NPDES files under the jurisdiction of ODEQ will be transferred from EPA to the state within 30 days. NPDES permits under ODEQ's jurisdiction will become state administered OPDES permits and will be reissued (upon expiration) or modified by the ODEQ. All permits brought to public notice by ODEQ after this authorization and under its OPDES authority will be OPDES permits providing NPDES authorization to those dischargers.

A. EPA Authority

Oklahoma's OPDES program is a partial program, which conforms to the requirements of section 402(n)(3) of the Clean Water Act. The OPDES program applies to all discharges covered by the authority of ODEQ. This includes most discharges of pollutants subject to the federal NPDES program (e.g. municipal wastewater discharges, pretreatment, and most industrial point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with section 405 of the Act and 40 CFR part 503). ODEQ does not have regulatory authority over facilities regulated by other agencies in the State of Oklahoma, therefore EPA will remain the NPDES regulatory authority for the following discharges:

1. Agricultural industries regulated by the Oklahoma Department of Agriculture including concentrated animal feeding operations and silviculture. EPA will remain the NPDES permitting authority for all point source discharges associated with agricultural production, services, silviculture, feed yards, livestock markets and animal wastes.

2. Oil and Gas exploration and production related industries and pipeline operations regulated by the Oklahoma Corporation Commission. EPA will retain NPDES authority over these industries and their discharges to surface waters of the state.

3. Discharges in Indian Country. The State of Oklahoma does not seek jurisdiction over Indian Country. EPA will retain NPDES authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). The state of Oklahoma has undertaken steps to revise regulation 252:605–1–3(c) clarifying ODEQ does not seek to issue authorized OPDES permits to discharges in Indian Country. EPA and ODEQ will work together with tribal authorities to resolve questions of permitting authority for individual discharges.

4. Discharges of radioactive materials regulated by the federal government (i.e. those radioactive materials covered by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.)). EPA does not have the authority to approve the OPDES program to regulate radioactive wastes governed by the Atomic Energy Act. The regulatory authority for radioactive materials will remain under the jurisdiction of the U.S. Department of Energy and the Nuclear Regulatory Commission. (Some industrial discharges which contain very low level radioactive wastes (e.g. manufacturers of watches may discharge trace amounts of radium, and hospital wastes sometimes contain iodine isotopes) which are not regulated under the Atomic Energy Act and may be regulated by EPA; upon authorization of the OPDES program, the authority to regulate those discharges may become the responsibility of ODEQ.)

5. Oklahoma Ordinance Works Authority (OOWA). EPA will retain enforcement authority for OOWA (NPDES permit No. OK0034568), located in Pryor, Oklahoma, and all industries served by this facility. ODEQ is legally responsible for implementing the pretreatment program at OOWA.

6. Authority over EPA issued general permits: EPA will retain authority to administer general permits in accordance with 40 CFR 123.1. As explained in the Federal Register Notice proposing approval of the OPDES program, Oklahoma is revising its statutes and regulations to provide the Executive Director of the Oklahoma Department of Environmental Quality with the full authority to issue general permits under the OPDES program. This revision of Oklahoma Law is to ensure that the Oklahoma general permitting program is consistent with the requirements of 40 CFR 123.25(c). In the Federal Register Notice concerning the proposal of the OPDES program, EPA asserted that ''Until the state completes this transfer of authority, EPA will retain full permitting and enforcement authority for those discharges which are covered, or proposed to be covered by EPA issued general permits.'' EPA provided that it would transfer this authority and the administration of the general permits to the State once ODEQ has revised its program to include general permitting authority. EPA now wishes to clarify that the State has program authority over all classes of discharges (except as listed above). EPA will not retain program authority over those discharges except to the extent it will continue to administer EPA issued general permits.

This clarification will translate into only minor changes for permittees in the State of Oklahoma. Until the transfer of general permit authority to ODEQ, EPA will continue to administer those general permits it has issued or proposed in Oklahoma. Until otherwise notified by EPA or the State, permittees covered by those general permits will continue to report all compliance information to EPA Region 6. Also, any facility eligible for coverage under these permits will send its notice of intent to EPA rather than ODEQ. Until otherwise notified by the State or EPA, all Notices of Intent and Termination (NOIs and NOTs) for coverage under EPA's general permits for storm water (only) should continue to be sent to the EPA NOI Processing Center (mail code 4203), 401 M Street, SW, Washington, DC 20460. The only variation from the proposed program will be authority to reissue the general permits. ODEQ is the permitting authority, and as such, will reissue the general permits once that authority has been transferred to ODEQ. EPA may not reissue the general permits once they have expired. If ODEQ has not been able to revise its program to include general permitting authority prior to the

expiration of a general permit, it could issue individual permits instead. In the interim, any discharger covered by an EPA general permit may request that its discharge be covered by an individual permit issued by the State as described in the MOA language quoted above (Changes to the OPDES Proposed Documents #1).

The Federal Register Notice of August 29, 1996, proposing approval of the OPDES program (61 FR 45420–45426), at page 45422, paragraph 2 refers to ''Phased Program Authority.'' To eliminate any confusion that EPA meant that Oklahoma's NPDES Program is a ''partial and phased'' program in the context of Section 402(n)(4) of the Clean Water Act, 33 USC 1342(n)(4), EPA is clarifying that the word ''phased'' was used in a generic sense and not the statutory meaning of a ''phased program'' as that term is used in 402(n)(4). A phased program in accordance with CWA section 402(n)(4) provides a state up to 5 years to assume administration for categories of dischargers considered ''point sources'' by the CWA. ODEQ has the legal authority to administer the program to include those discharges covered by EPA's general permits using individual permits, thus, EPA considers the OPDES program as covering all discharges under the jurisdiction of the ODEQ in Oklahoma. Therefore, Oklahoma's program is not a ''phased'' program as that term is used in section 402(n)(4) of the Clean Water Act.

7. Status of applications, proposed permits, contested permit actions, and unresolved EPA enforcement actions: Except for the files listed below, all pending NPDES permit applications and issued NPDES permits under jurisdiction of ODEQ will be transferred to Oklahoma within 30 days of the approval of the OPDES program. In accordance with the signed MOA, EPA will retain temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; and compliance files and authority for all open enforcement orders until such time as ODEQ has issued parallel orders or EPA has resolved the enforcement action.

Proposed Permits: EPA shall retain permit decision-making authority over permits which have been publicly noticed until they are issued and effective. Once these permits are effective, they will be transferred to ODEQ unless contested. The permit files will be transferred to the state as the permits become effective.

Contested Permit Actions: EPA will retain permits for which variances or evidentiary hearings have been requested until such time as they are resolved. As each request is resolved, EPA will notify ODEQ and transfer jurisdiction of the permit to ODEQ. EPA shall also maintain enforcement lead over discharge permits with a pending evidentiary hearing request; these will be transferred to the state upon resolution of the issue for which the hearing was requested.

Enforcement Actions: EPA Region 6 will retain primary enforcement authority after the date the OPDES program is approved for a number of facilities which have unresolved compliance issues. These permittees will continue to report to EPA on all compliance issues including regular submittals of Discharge Monitoring Reports for their NPDES permits. Authority for these permits can subsequently be transferred to the State one of two ways: (1) The outstanding compliance issue can be resolved and the permittee has returned to compliance, or, (2) the State can issue a parallel administrative action to address the outstanding compliance issue. As a practical consideration, enforcement authority for municipal or county facilities that are operated by the same governmental entity will not be transferred to the State as long as one of its major facilities has an unresolved compliance issue. NOTE: EPA in coordination with ODEQ will inform *all* permittees in writing of their reporting responsibilities. Permittees should continue to report as specified by both their State and Federal permits until otherwise notified.

B. Status of Regulation Changes and Corrections

1. Indian Country. Amendments to regulation OAC 252:605–1 will be presented to ODEQ's Environmental Quality Board (EQB) in March for approval.

2. General Permitting Authority. This change of authority will be proposed to the 1997 Legislative session as an amendment to 27A O.S. Section 2–14–181 et seq.

3. Finalization of Audit Privilege Regulation. This proposed regulation will be before the EQB on November 26, 1996, and will be codified as OAC 252:2–11–7 once the rulemaking process is completed.

Responsiveness Summary

The following is a summary of the issues raised by persons commenting on EPA's proposed approval and EPA's responses to those issues.

1. Issue: EPA received many comments from industry, businesses, associations, and municipalities supporting authorization of the OPDES program. These commenters cite examples of good working relationships with the ODEQ and confidence in the technical skill and ethics of the staff and management of that agency. These commenters also point out the benefits of having a system run at the state level that is more readily accessible and cost effective than the system of having both a state and federal permitting program.

Response: EPA is pleased with the apparent confidence the citizens of Oklahoma have in their Department Of Environmental Quality. EPA believes that approval of the OPDES program will provide both an environmentally protective permitting program, as well as one which will be responsive to the needs of citizens and businesses in Oklahoma.

2. Issue: Some municipalities expressed concern about the need to raise fees to support the OPDES program. These commenters support EPA approval of the program, while calling for more proportional fee system or financial support for municipalities. Only one municipality supported the authorization of the OPDES program conditioned upon no additional cost to ''mandated participants'' of the program.

Response: States applying to administer the NPDES program must establish that they have the financial ability and structure to run the program which EPA would approve (40 CFR 123.21). In the sources of funding identified by ODEQ for the OPDES program there is a fee system for permittees. The structure and necessity for the fee system was researched by ODEQ, reviewed by EPA, and reevaluated by an independent, third party study. EPA is satisfied the fee system outlined in the OPDES program is appropriate.

3. Issue: A national trade association sent comments objecting to EPA's assertion that authorization of a state program under NPDES was a ''federal action'' requiring consultation under section 7 of the Endangered Species Act (ESA). The association draws the conclusion from the ESA that EPA is not authorized nor is under any obligation to consult on any action that would not jeopardize a species. The association asserted that EPA approval of a state program is no more of a ''federal'' action than its review of state-issued permits; that EPA's authorization is not a ''discretionary'' action and therefore is not subject to the requirements of ESA. The commenters added that EPA is under no obligation to initiate formal consultation where the action is not

likely to adversely affect listed species. The commenters believe that because the state must administer the same program EPA does, there is no change to the ''environmental baseline,'' and therefore jeopardy ''* * * is not remotely likely.'' The commenters object to the conditions of the agreements reached by EPA, ODEQ and FWS during informal consultation, and believes them to be equivalent to ''reasonable and prudent measures'' more appropriate to a formal consultation. The commenter does not believe EPA has the authority to object to state issued permits for their potential effects on listed or proposed species. Additionally, the commenter does not agree with EPA, ODEQ, and FWS to include proposed species or habitat in the consultation agreements.

Response: The commenters refer to ''EPA's review and approval of a state permitting program'' and compares it to EPA's review of state issued permits. It is from this comparison that some confusion for the commenters may arise. The approval of a state program under section 402 of the CWA is a federal authorization and not simply a review of the state's documents. EPA views the approval as ''discretionary'' in that it must work with the state to develop mutual agreements in the MOA which is then signed by both agencies.

The regulations implementing the ESA includes in the term ''action * * * all activities or *programs* of any kind *authorized,* funded, carried out, in whole or in part, by Federal agencies in the U.S. or on the high seas.'' (50 CFR 402.02) When an action is determined by the agency to have the potential to ''affect'' listed species or critical habitat, the agency must consult or confer with the FWS (and for marine species National Marine Fisheries Service) to determine if species will be adversely effected. The agencies involved may elect to start with informal consultation. During this optional process the FWS ''* * * may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.'' (50 CFR 402.13) This process may also be applied to avoid jeopardy of a species which have been proposed for listing (50 CFR 402.10). Including agency ''conferences'' on proposed species and their habitat helps avoid the need for reinitiation of consultation after proposed species have been formally listed.

The consultation conducted by Region 6, ODEQ, and FWS applies to future actions by the state which could jeopardize listed or proposed species. No environmental baseline exists for the proposed state run program. If any ''programmatic'' environmental baseline exists, it applies only to past permitting actions issued by EPA and not future actions that may be issued by the State. A state program is operated *in lieu* of the federally administered NPDES program. The program is based not on CWA and its implementing regulations, but instead on state regulations and statutes. A state program cannot be judged on the baseline of the federal system that preceded it.

While it may not be clear that the section 7 consultation is specifically required for a program authorization, ESA and its implementing regulations do not restrict any agency from voluntarily consulting and conferring with Fish and Wildlife Service on actions it believes may affect listed species. The commenter for the association himself stated that ''* * * whether EPA was required to consult with FWS is not the issue * * *.'' EPA working cooperatively with ODEQ and FWS did informally confer and consult on species and habitat protection in the State of Oklahoma. This cooperation resulted in the agreements cited by the commenters. Region 6 believes consultation conducted on the authorization of a state NPDES program is consistent with the intent, definitions and the requirements of the ESA and CWA. The conditions of the agreements were placed in the EPA/ODEQ MOA to ensure that EPA and ODEQ had clear responsibilities with regard to carrying out the agreements.

EPA's authority to object to state issued permits is outlined in 40 CFR 123.44 which provides that EPA may object to the issuance of a permit which does not comply with the CWA, regulations, or the MOA; or, would in any other respect be outside the requirements of the CWA or its implementing regulations. CWA section 301(b)(1)(C) incorporates in the Act's protection any more stringent requirements required by any other Federal law or regulation. Region 6 does not believe that the conditions of the consultation agreements go beyond the authority of EPA to object to state issued NPDES permits.

4. Issue: A citizens group located in Grove, Oklahoma expressed concern that they had not been satisfied with ODEQ response to complaints they had made regarding the water quality of Cave Springs and Honey Creek, and the discharge of wastewater from Simmons Industries in Missouri. These citizens were bothered that the tone of the notices proposing this program were ''pro-industry.'' These citizens ask DEQ why it feels competent to take responsibility for the NPDES program; and ask EPA if it is not an important link in the protection of environmental resources. These citizens also express concern regarding agricultural industries.

Response: While the commenters may have a legitimate concern about the impacts of Simmons Industries on the water quality of Cave Springs and Honey Creek, the wastewater discharges cited by the citizens are regulated by the Missouri Department of Natural Resources (MDNR), not ODEQ. ODEQ may comment on the issuance of permits outside its jurisdiction which may impact water quality in Oklahoma, and may appeal to EPA if permits issued in Missouri do not meet water quality standards for that stream segment in Oklahoma. However ODEQ is not authorized to take enforcement action against dischargers in neighboring states. It is the understanding of Region 6 that ODEQ has communicated its concerns and those of the citizens to MDNR and EPA, requesting action to protect the water quality in these streams. Recently ODEQ has been communicating with Missouri's authorized agency recommending more stringent limits in the permit which MDNR is currently drafting.

While ODEQ does not have the authority to address pollutants from agricultural industries, ODEQ is working to address all point and non-point sources of pollutants within its jurisdiction. Authorization of the OPDES program under the CWA may help Oklahoma develop more comprehensive programs to improve water quality in the State. However, EPA's specific authorization of the OPDES program does not extend to programs regulating air and solid wastes, nor does it include point sources which are not within the jurisdiction of ODEQ or the CWA (see Scope of the OPDES Program and Clarifications on EPA Authority and Oversight. A.1. above).

The written agreements of this authorization process will formalize the partnership which has existed between EPA and ODEQ since the Oklahoma agency's formation, and will provide the structure for the side-by-side relationship between the two agencies. Region 6 will continue to be ready and available to work with ODEQ and the citizens of Oklahoma to ensure the environment is protected.

The OPDES program, the 43rd state program to be authorized under section 402 of the CWA, includes pretreatment, federal facilities and sewage sludge.

STATE NPDES PROGRAM STATUS

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	—	—	03/04/82
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	—	—	10/23/92
Florida	05/01/95	—	05/01/95	05/01/95*
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	—	01/04/84
Indiana	01/01/75	12/09/78	—	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	—	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Louisiana	08/27/96	08/27/96	08/27/96	08/27/96
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	—	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	—	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	—	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	—	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	—	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah—(06/14/96 Approved Sludge Prgm)	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	—	03/16/82	08/26/93
Virgin Islands	06/30/76	—	—	—
Virginia	03/31/75	02/09/82	04/14/89	04/20/91
Washington	11/14/73	—	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	—	09/24/91
Totals	42	36	30	31

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 27.
Number of Fully Authorized Programs, Including Sludge = 1.
*: Phased Federal facilities & storm water programs by 2000.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that all federal agencies must consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a section 106 consultation on a federal undertaking are found at 36 CFR part 800. EPA's approval of the State NPDES permitting program under section 402 of the Clean Water Act is a federal undertaking subject to this requirement, but the State's subsequent issuance of OPDES permits may not be. EPA has thus consulted in accordance with section 106 of the NHPA to assure protection of eligible properties will be provided in connection with State permit actions. In the consultation, EPA, the SHPO and ODEQ outlined procedures by which ODEQ and the SHPO will confer on permit actions likely to affect historic properties. These processes are reflected in a memorandum of understanding signed by EPA and the SHPO on EPA's oversight role and objection procedures on permits when the two state agencies can not agree on the protection of historic properties. The EPA/ODEQ MOA includes conditions for EPA and ODEQ to follow to ensure that the requirements of the consultation with the SHPO are met.

B. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult on federal actions which may affect federally listed species to insure they are unlikely to jeopardize the continued existence of those species or adversely modify their critical

habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. EPA's approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent OPDES permit actions are not. EPA completed informal consultation with the U.S. Fish and Wildlife Service (FWS or the Service). In the consultation, EPA, the Service, and ODEQ outlined procedures by which ODEQ and FWS, will confer on permits which are likely to affect federally listed species. These processes are reflected in a Memorandum of Understanding between the State and FWS. In addition, a consultation agreement has been reached between EPA and FWS on EPA's oversight role and objection procedures when ODEQ and FWS cannot agree on the protection of species in an individual State permit action. These conditions are reflected in the EPA/ODEQ MOA.

I hereby authorize the OPDES program in accordance with 40 CFR part 123.

Dated: November 19, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–31274 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 3, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

OMB Number: 3060–0704.

Expiration Date: 05/31/97.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form Number: N/A.

Estimated Annual Burden: 138,175.5 total annual hours; 266.2 hours per respondent (avg.); 519 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $435,000.

Description: In the Second Report and Order (Order), adopted in CC Docket No. 96–61, the Commission eliminated the requirement that nondominant interexchange carriers file tariffs for interstate, domestic interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic interexchange services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31257 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the Payment of State and Local Property Taxes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision and Reissuance of Policy Statement.

SUMMARY: The Statement of Policy revises and reissues the FDIC's ''Statement of Policy Regarding the Payment of State and Local Property Taxes'' issued on June 4, 1991. As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (''the RCDRIA''), the FDIC is conducting a systematic review of its regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see 60 FR 62345 (Dec. 6, 1995)). The FDIC has reviewed its 1991 Policy Statement and has concluded that it should be revised and reissued. This revised Statement of Policy would replace the 1991 Policy Statement.

The revised Statement of Policy would reflect (1) the statutory ''sunset'' of the Resolution Trust Corporation (''RTC'') on December 31, 1995, resulting in the FDIC's succession to the RTC's remaining responsibilities; and (2) the developing caselaw in the area.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: William P. Stewart, Real Estate Specialist, ORE, FDIC (202) 416–4229; David N. Wall, Senior Counsel, FDIC Legal Division (202) 736–0115; or David Fisher, Counsel, FDIC Legal Division (202) 736–3103.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Statement of Policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., it is certified that the Statement of Policy will not have a significant economic impact on a substantial number of small entities. In addition, the Statement of Policy will not impose regulatory compliance requirements on depository institutions of any size.

DISCUSSION

I. Introduction

Section 15 of the Federal Deposit Insurance Act (''FDIA''), 12 U.S.C. 1825, provides immunity from all taxation imposed by any state, county, municipal, or local taxing authority, except for ad valorem real property taxation. This immunity from taxation, and its limited exception for real property taxation, apply to the FDIC both in its corporate capacity and when it is acting as a receiver for a failed financial institution. 12 U.S.C. 1825 (a) and (b),[1] respectively. See also 12 U.S.C. 1823(d)(3)(A).

On June 4, 1991, the FDIC and the RTC each issued a ''Statement of Policy Regarding the Payment of State and Local Property Taxes.'' The two policy statements were essentially identical. The RTC statement was published at 56 FR 28426 (June 20, 1991); the FDIC statement was not published in the Federal Register but was made publicly available in FDIC's Law, Regulations, and Related Acts. Since their issuance, several cases involving the FDIC's and RTC's tax immunity and the Corporations' implementation of their policy statements have been litigated to conclusion. Moreover, on December 31, 1995, the RTC terminated and the FDIC

[1] Section 219 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') added subsection (b) to clarify that the FDIC's immunity extends to receiverships.

succeeded to its remaining responsibilities. Accordingly, the RTC termination, the developing judicial interpretation of the FDIC's tax immunity, and the requirements of the RCDRIA warrant a reissuance of the FDIC policy statement with certain minor changes.

II. Background

In providing for the orderly liquidation of a failed financial institution, the FDIC has only a limited ability to prepare in advance for managing the assets of a financial institution for which it has been appointed receiver. Moreover, the difficulties of administration may often be compounded by the poor quality of the affected institution's records, which may be incomplete or in disarray, or both.

Frequently, records regarding ad valorem real property tax liabilities are not current. In many instances, taxes that are already delinquent at the time the receiver is appointed become further delinquent, and taxes that are not delinquent become so. Because of the importance of property tax revenues for state and local municipal finances, and given the magnitude of the FDIC holdings of real property and the potential effect thereon of section 15(b) of the FDIA, the FDIC in 1991 adopted a Statement of Policy Regarding the Payment of State and Local Property Taxes (''Policy'') to provide guidance concerning its payment of such taxes. Having had five years of experience with that Policy, the FDIC now adopts a revised policy (hereinafter ''Revised Policy'') to reflect certain minor changes now deemed advisable as a result of litigation and practical experience.

Application to Resolution Trust Corporation Assets

On December 31, 1995, the RTC terminated. Pursuant to 12 U.S.C. 1441a(m), the FDIC has succeeded the RTC as receiver for all institutions for which the RTC was acting as receiver at the time of its termination, as well as to any assets which the RTC held in its corporate capacity at that point. Therefore, it is appropriate to issue this Revised Policy to clarify that its provisions apply equally to all receiverships and assets transferred from the RTC.

III. Explanation

A. Scope and Applicability

Section 15 of the FDIA is silent about the immunity of the FDIC when acting as conservator. The legislative history of section 15(b), however, as well as the similarity of powers and duties of conservators and receivers, suggest that the FDIC, as conservator, should enjoy similar tax immunity. On the other hand, the FDIC recognizes that financial institutions in conservatorship continue to operate as business entities. Similar considerations obtain with respect to a bridge bank, and when the FDIC is managing a special asset pool arising out of a large bank assisted transaction. Accordingly, the Revised Policy conforms with the former Policy and provides that the FDIC, when acting in such capacities, will not assert the tax immunity recognized in section 15(b), although it reserves the right to reconsider this position in the future.

The FDIC is sometimes appointed as conservator for an institution that has acquired certain assets and assumed certain liabilities from a receiver pursuant to a purchase and assumption agreement. In such cases, the liabilities assumed generally do not include all tax obligations. The Revised Policy provides, as did the original Policy, that the FDIC, as conservator, will not be liable for those obligations not assumed from the receiver. This disclaimer of liability is not based on a claim of conservatorship immunity; rather, liability is disclaimed because the institution in conservatorship has not legally assumed those obligations. A bridge bank that has acquired assets and assumed liabilities in a similar manner is also entitled to disclaim tax-related obligations it has not legally assumed.

Section 15 of the FDIA is also silent as to whether immunity applies to the operations of a subsidiary of an institution in receivership or conservatorship. Certain legal and policy considerations may support the position that immunity applies to the operations of a subsidiary in the same manner as it applies to the operations of the receivership or conservatorship. Nevertheless, because of various concerns, including the maintenance of the separate corporate identities of subsidiaries, the Revised Policy provides that such immunity will not be asserted at this time. The FDIC reserves the right to reconsider whether immunity applies to the operations of subsidiaries.

The Revised Policy eliminates the discussion of these points appearing in Section A of the original Policy in favor of the more extensive discussion in Section H.

B. Taxes

1. Payment of Taxes

Like the original Policy, the Revised Policy provides that the FDIC will pay proper tax obligations, but recognizes that prompt payment must be consistent with sound business judgement and the orderly administration of receiverships. It confirms that Section 15 immunity applies to all assets acquired in the course of the FDIC's liquidation operations.

2. Taxes on Owned Real Property

Section 15(b) of the FDIA expressly waives the FDIC's immunity with respect to ad valorem real property taxation. Accordingly, like the original Policy, the Revised Policy acknowledges that property which the FDIC owns in fee, however acquired, is subject to ad valorem real property taxation. Like the original Policy, the Revised Policy also recognizes that the waiver of immunity in section 15(b) is only for real property taxes assessed according to the property's value. Thus, immunity has not been waived for taxes imposed on real property that are not based on value, and the Revised Policy so states. For example, some types of special assessments, which traditionally are based on property factors other than value, such as front footage, are not ad valorem real property taxes and therefore the FDIC is not liable for them. See *Federal Reserve Bank of St. Louis* v. *Metrocentre Improvement District* #1, City of Little Rock, Arkansas, 657 F.2d 183 (8th Cir. 1981); *United States* v. *City of Adair,* 539 F.2d 1185 (8th Cir. 1976).

3. Taxes on Secured Interests in Real Property

The largest category of assets which the FDIC acquires as receiver is loans secured by mortgage interests in real property. Like the original Policy, the Revised Policy acknowledges that real property which is the subject of such interests is also subject to ad valorem real property taxation.

4. Taxes on Personal Property

Because section 15 of the FDIA waives immunity only for ad valorem real property taxation, the Revised Policy, like the original Policy, provides that the FDIC is immune from all forms of personal property taxation.

5. Other Related Taxes

Like the original Policy, the Revised Policy makes clear that the FDIC is immune from taxes imposed on it as a result of transactions involving real property, even if the tax is measured by the value of the property. Such taxes are not taxes on the property itself, but rather excise taxes on transactions involving real property. Among these are transfer and recordation taxes, and certain fees for handling foreclosure

sales, which the FDIC will not pay. For example, in *Resolution Trust Corporation* v. *Lanzaro,* 140 N.J. 244, 658 A.2d 282 (N.J. 1995), the New Jersey Supreme Court held that a sheriff's fee for handling a foreclosure sale so far exceeded the value of the services rendered that it amounted to a tax from which the RTC was immune under section 15(b) of the FDIA.

C. Interest and Penalties

State statutes typically provide for the accrual of interest and penalties if real property taxes are not paid when due. The character and amount of such charges vary from state to state. Section 15(b)(3) of the FDIA expressly provides that the FDIC is not liable for any amounts ''in the nature of penalties or fines, including those arising from the failure of any person to pay any . . . tax . . . when due.'' This provision expresses the common law rule, see, e.g., *Missouri Pacific Railway Co.* v. *Ault,* 256 U.S. 554 (1921), and is consistent with the general rule that receivers (and innocent creditors) should not be burdened by punitive assessments. See *Professional Asset Management* v. *Penn Square Bank,* 566 F. Supp. 134 (W.D. Okla. 1983). The Revised Policy implements this provision by providing that the FDIC will neither pay, nor recognize liens for, such amounts. Similarly, the FDIC will not pay attorneys' fees or other costs which state law may impose upon delinquent taxpayers. *Irving Independent School District, et. al* v. *Packard Properties Ltd., et. al.,* 762 F. Supp. 699 (N.D. Texas 1991).

While the FDIC is not liable for penalties arising from taxes not timely paid either by it or by previous owners of the property, the Fifth Circuit Court of Appeals has held that liens for such penalties that were imposed prior to the FDIC's ownership remain on the property during the FDIC's ownership. And, while the FDIC is not obligated to pay the penalties secured by such liens during its ownership of the property, the liens remain on the property, and the penalties so secured become the obligation of any subsequent owner. *Irving Independent School District, et al.* v. *Packard Properties Ltd., et. al.,* 970 F.2d 58 (5th Cir. 1992).

The FDIC believes that the Fifth Circuit decision is directly contrary to the decision of the United States Supreme Court in *Simonson* v. *Grandquist,* 287 U.S. 489 (1961). Accordingly, the FDIC reserves the right to challenge this position in jurisdictions not covered by the Fifth Circuit Court of Appeals.

Historically, the United States and its instrumentalities have always been immune from claims for interest, except where Congress has expressly waived such immunity. See, e.g., *Library of Congress* v. *Shaw,* 478 U.S. 310 (1986). Section 15 of the FDIA is silent as to whether immunity is waived for interest accruing on delinquent tax amounts, and that silence suggests immunity has not been waived. In analogous situations, courts have utilized varying analytical approaches to determine whether the waiver of immunity from real property taxes implicitly carried with it a waiver for interest. Compare, *Reconstruction Finance Corp.* v. *Texas,* 229 F.2d 9 (5th Cir. 1956), cert. denied, 351 U.S. 907 (1956), with *United States* v. *Consumers Scrap Iron Corp.,* 384 F.2d 62 (6th Cir. 1967).

Recent Supreme Court decisions raise further uncertainty whether immunity from interest should be considered to be waived in the absence of an express provision. Compare, *Loeffler* v. *Frank,* 486 U.S. 549 (1988), with *Library of Congress* v. *Shaw,* 478 U.S. 310 (1986). The FDIC recognizes the importance to state and local governments of revenues derived from real property taxes. Thus, the Revised Policy continues to provide that the FDIC generally will pay interest on delinquent real property taxes, but adds language clarifying that payment of a delinquency charge in the nature of interest for periods before and during FDIC ownership will be made only to the extent the interest payment obligation is secured by a valid lien. Otherwise, post-ownership interest will be paid pursuant to generally applicable FDIC rules and procedures.

The purpose of interest is to compensate for the loss of the use of funds resulting from the failure to pay taxes when due. Thus, interest is to be distinguished from additional amounts which are charged as punishment for failure to pay when due. There is no uniformity among the states regarding the imposition of interest or penalties for late payment of taxes. Some states impose both an interest charge and a penalty, while others impose only interest or a penalty.

The characterization of the charge under state law as ''interest,'' ''penalty,'' ''compensatory,'' or ''punitive'' is not determinative. That is a question determined under federal law. See *Missouri Pacific Railroad* v. *Ault,* 256 U.S. 554 (1921). Compare *United States* v. *La Franca,* 282 U.S. 568 (1931). Nonetheless, the FDIC has determined to follow generally the characterization of additional charges as ''interest'' or ''penalty'' as determined by the law of the state, and will normally pay those charges which state law denominates as ''interest'' at the state statutory rate. In some states, although the state statute denominates a charge as ''interest,'' the supreme court of the state has held that the charge is a penalty. In such instances, the judicial rule will be applied and no interest will be paid.[2]

In addition, state law will continue to be monitored and, in the event that a state legislature or court characterizes as interest a charge which is clearly and demonstrably a penalty, the FDIC will not pay such amount. This could be the result, for example, if a fixed ''interest'' amount is charged without reference to the time the base tax amount is delinquent. The FDIC specifically reserves all rights to challenge any interest charge it believes to be a penalty.

D. Tax Liens

1. Foreclosure

Section 15(b)(2) of the FDIA provides that ''no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation.'' Even in the absence of such an express provision, the courts have held that a real estate tax lien could not be foreclosed in derogation of an interest (whether fee or mortgage interest) held by an entity invested with federal immunity where that immunity had not been waived. See *New Brunswick* v. *United States,* 276 U.S. 547 (1928); *Rust* v. *Johnson,* 597 F.2d 174 (9th Cir. 1979).

Section 15(b)(2) makes clear that, notwithstanding the waiver of immunity for ad valorem real property taxation, state and local taxing authorities may not sell or foreclose against property in which the FDIC holds an interest without fully protecting that interest. This prohibition recognizes the considerable burden faced by the FDIC in administering the assets involuntarily acquired by it, and that substantial value would be lost to the Corporation solely because of lack of knowledge of the property interest if real estate tax liens could be enforced through traditional sale or foreclosure remedies. The original Policy asserted the

[2] While this was formerly the case in the State of Texas, its legislature amended the pertinent Texas Tax Code section, effective August 26, 1991, to provide that interest payable under that section ''is to compensate the taxing unit for revenue lost because of the delinquency.'' Tex. Tax Code Ann. section 33.01(c). The purpose of that amendment was to reverse the Texas Supreme Court's decision in *Jones* v. *Williams,* 121 Tex. 94, 45 S.W.2d 130 (Tex. 1931), which held that amounts denominated as interest were in reality penalties imposed for failure of duty to pay taxes in a timely manner, rather than charges made for the use or detention of money.

position, based on the New Brunswick and Rust cases, that a mortgage interest held by the FDIC is ''property'' and that a taxing authority could not foreclose out that interest without the FDIC's consent.

In *Matagorda County, et al.* v. *Law, et al.*, 19 F.3d 215 (5th Cir. 1994), the Fifth Circuit Court of Appeals upheld the FDIC's position that a mortgage lien interest held by it is ''property'' within the meaning of section 15(b)(2) of the FDIA. Thus, the court of appeals concluded that, while the taxing unit's lien was valid and senior to the FDIC's lien interest, the tax lien could not be foreclosed so as to extinguish the FDIC's interest in the property unless the FDIC so consents. Accordingly, like the original Policy, the Revised Policy continues to provide that a mortgage lien held by the FDIC cannot be eliminated without its consent. See also, *Simon* v. *Cebrick, et al.*, 53 F.3d 17 (3rd Cir. 1995).

2. Attachment

Section 15(b)(2) of the FDIA provides that no involuntary lien shall attach to the property of the Corporation. One example of an involuntary lien is a lien that automatically attaches for delinquent taxes. Because the assets of a financial institution for which the FDIC has been appointed receiver do not become the ''property of the Corporation'' until the receivership appointment, any involuntary liens that attached prior to the appointment of the receiver are valid. Although in most states a real estate mortgage interest represents an interest in the real property, it is not tantamount to ownership of the property itself. Because the involuntary lien for delinquent real property taxes attaches to the property itself, nonconsensual liens purporting to attach to property owned in fee by the FDIC are considered void, but liens may attach to property in which the FDIC holds only a mortgage interest as security for a loan. See *New Brunswick* v. *U.S.*, *supra.*

3. Priority

The waiver of immunity from ad valorem real property taxes indicates that, with respect to liens that properly attached to property before the FDIC obtained fee title to such property (whether by appointment as receiver, lien foreclosure, or otherwise), the taxing authority is entitled to have its lien satisfied from the value of the property. With respect to property owned in fee, therefore, the effect of the prohibition against foreclosure or sale by the taxing authority is that the FDIC, by granting or withholding consent to foreclosure, can control the time and manner in which property is sold.

The FDIC takes the same position with respect to such tax liens when it holds only a mortgage interest in the property. Thus, a valid lien for ad valorem real property taxes and interest will be recognized as being entitled to priority over the FDIC's mortgage interest (assuming that the tax lien would be entitled to priority under state law over a non-federal mortgage holder).

The FDIC will recognize any state law priority given to property tax liens that attached prior to its obtaining any interest in the property. However, because immunity is not waived for taxes other than ad valorem real property taxes (such as personal property taxes), any liens for taxes other than ad valorem real property taxes that attach to property after the FDIC acquires a lien or security interest in such property will be subordinate to the Corporation's interest. Such subordination is required because if the value of the property is not sufficient to cover both the FDIC's lien and the tax lien, to provide priority for the tax lien would diminish the value of the Corporation's interest, thereby subjecting it to the taxation from which it is immune.

4. Sale of Tax Liens

Some states provide for a different, usually higher rate of interest if the tax lien has been sold in satisfaction of tax claims. Moreover, this rate is applied to the entire amount of taxes, interest, and penalties paid by the tax lien or property purchaser. In this case, if a tax sale takes place before the FDIC obtains a fee interest in the property, or with respect to a tax lien that has priority over a lien held by the Corporation, the FDIC will pay the entire amount due to the purchaser of the lien. The charges are considered to be merged together in the hands of the purchaser to whom the amount paid is simply the purchase price for the release of the lien or property, subject to redemption. For a sale that takes place with respect to a lien that is junior to the lien of the FDIC, or after the FDIC obtains a fee interest in the property, the sale must protect fully the FDIC's fee interest or lien. Some states may provide for the accrual of an additional penalty after the tax lien on the property has been sold in satisfaction of the tax claims. Regardless of when the sale takes place with respect to the FDIC's acquisition of an interest in the property, such penalties will not be paid.

5. Liens for Undetermined Amounts

A new section has been added to the former Policy Statement to address a minor difference between the FDIC's and the RTC's treatment of certain non ad valorem taxes. Generally, the FDIC does not recognize claims against a receiver unless the amount of the claim is fixed and certain at the time of receivership. In most cases, property tax assessments are for fixed amounts, and a statutory lien arises on the tax assessment date to secure that fixed amount. If such a fixed tax obligation arises prior to the receiver's ownership of the property, section 15(b)(1) does not eliminate the liability. Similarly, the lien may attach if the FDIC does not own the property (although under some circumstances the lien may effectively be subordinated to the FDIC's interest—see discussion under D.3., supra).

Under some municipal tax procedures, however, such as those established pursuant to the California Mello-Roos Community Facilities Act of 1982, a non ad valorem tax lien may be recorded at the time such tax is authorized (such as upon the establishment of a community facilities district), but the amount of a particular periodic tax obligation will not be fixed until a date in the future. The amount may fluctuate from period to period depending on a factor such as a prevailing interest rate or the rate of delinquency in the tax district.

Such a tax is in fact not imposed until the date the amount is determined and therefore is barred by section 15(b)(1) if that date does not precede the date upon which the receiver became owner of the property. Similarly, any lien that purports to secure such a tax is inchoate and therefore void under section 15(b)(2), even if the lien was recorded prior to the receiver's ownership of the property. The RTC as a matter of policy elected to pay such taxes in the particular case of California Mello-Roos special taxes when the notice of lien was recorded prior to receivership. In view of the past reliance of California local community facilities districts on the RTC policy (particularly in their assumptions as to revenues), and the potentially disruptive effect of any change in such policy, the FDIC has elected to continue the RTC's policy in California with respect to Mello-Roos assessments on those properties now owned by the FDIC that (1) were owned by the RTC on December 31, 1995, or (2) have become property of the FDIC through foreclosure of a security interest held by the RTC on that date. Otherwise, the FDIC may challenge such assessments.

E. Challenges to Assessed Valuation

Section 15(b)(1) of the FDIA provides that ''notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.'' This language permits the receiver to challenge the assessed value of a real property it currently owns whether or not the receiver was the owner of the property at the time of assessment.

The statute is very broad on its face. For example, it authorizes a receiver to challenge a prior assessment which served as the basis for a tax paid by a borrower prior to the receivership, when the institution held only a mortgage interest. The apparent purpose of this provision, however, was to permit the receiver to contest tax assessments made at the time property was owned in fee and especially where such tax has not been paid, on the ground that the taxes were based on an incorrect assessed valuation.

Because high assessed valuations could help a troubled institution avoid required regulatory write downs, it was often not in the institution's interest to challenge overstated assessment valuations. Like the original Policy, the Revised Policy focuses on this and provides that challenges generally will be limited to the current and immediately preceding tax years, and to situations involving previously filed tax protests. The Revised Policy also recognizes, however, that where substantial amounts are at issue, and the likelihood of success is great, assessments may be challenged to the full extent permitted by federal law, including periods when the property was owned in fee by the FDIC as receiver or by an institution subsequently placed in receivership. The Tenth Circuit Court of Appeals has affirmed the FDIC's position, holding that ''we perceive nothing in the plain language of the statute temporally limiting the right of the FDIC to seek and obtain revaluation. The Congress established that right without limitation, and it is improper to judicially ingrain such a restriction on that right.'' *FDIC* v. *Lowery, et al.*, 12 F.3d 995, 997 (10th Cir. 1993).

Although under the statute the FDIC is not obligated to pay any amounts based on a challenged assessment until the challenge is resolved, the Revised Policy permits the Corporation to tender payment of taxes during the pendency of a challenge based on the assessment level it deems appropriate, provided such payment will not prejudice any challenge.

The text of the Revised Policy Statement follows:

FDIC Statement of Policy Regarding the Payment of State and Local Property Taxes

After considering (1) the powers granted to it under the Constitution and federal law, (2) its obligation to maximize recoveries from the disposition of financial institutions and their assets, and (3) the potential effect of its actions upon state and local tax administration, the Federal Deposit Insurance Corporation (the ''FDIC'') has issued the following policy statement to provide guidance as to how it will administer its statutory responsibilities in this area.

A. Authority

This Statement of Policy is issued pursuant to the FDIC's powers and authorities granted by the Federal Deposit Insurance Act (''FDIA''), 12 U.S.C. §§ 1811, et seq., and in particular section 15 of the FDIA, 12 U.S.C. § 1825.

B. Scope and Applicability

This policy statement supersedes the Statements of Policy issued by the FDIC and the Resolution Trust Corporation (''RTC'') in 1991. It generally applies to the Corporation when it is liquidating assets of an insured depository institution in its corporate or receivership capacities (the ''Corporation''). It applies to any tax, penalty, interest, or other related charge imposed or sought to be imposed on property to whose ownership the FDIC succeeds in such capacities.

C. Taxes

Payment of Taxes: The Corporation will pay its proper tax obligations when they come due. Furthermore, the Corporation will pay claims for delinquencies as promptly as is consistent with sound business practice and the orderly administration of the insured depository institution's affairs. The Corporation may decline to pay property taxes, including delinquency charges or other claims, in situations where abandonment of its interest in the property is appropriate.

Owned Real Property: Owned real property of the Corporation is subject to state and local real property taxes, if those taxes are assessed according to the property's value. The Corporation is immune from real property taxes assessed on other bases.

Secured Interests in Real Property: Real property which is subject to a security or lien interest in favor of the FDIC is subject to ad valorem taxes and taxes assessed on other bases.

Personal Property: The Corporation is immune from all forms of taxation on personal property.

Other Related Taxes: The Corporation is immune from taxes other than ad valorem real property taxes. Taxes on sales, transfers, or other dispositions of Corporation property are generally in the nature of excise taxes which are levied on the transaction and not on the property (although the calculation of the amount of tax may be based on the property's sales price); the Corporation is immune from such taxes.

D. Interest and Penalties

Interest: The Corporation will pay interest for periods before and during FDIC ownership on delinquent taxes properly owed at the rate provided under state law but only to the extent the interest payment obligation is secured by a valid lien. The Corporation will generally follow a state's own characterization as to whether a delinquency charge constitutes a penalty, but will reserve its right to challenge any charge (or portion thereof) called interest that is demonstrably a penalty.

Penalties: The Corporation is not liable for any amounts in the nature of fines or penalties. The Corporation will not pay, or recognize liens for, such amounts. The Corporation will not pay attorneys' fees or other similar costs that may be imposed under state law in connection with the resolution of tax disputes.

E. Tax Liens

General Principles: If any ad valorem real property taxes (including interest) on Corporation owned property are secured by a valid lien (in effect before the property became owned by the Corporation), the Corporation will pay those claims. With respect to property not owned by the Corporation, but in which the Corporation has a lien interest, any ad valorem real property taxes (including interest) will be paid so long as they are secured by a valid lien with priority over the Corporation's lien interest. Any taxes other than *ad valorem* real property taxes which are secured by a valid lien in effect before the Corporation acquired an interest in the property, and which have priority under state law over any lien interest of the Corporation, will be paid. However, if abandonment of its interest in the property is appropriate, the Corporation may elect not to pay such claims.

Foreclosure: No property of the Corporation is subject to levy, attachment, garnishment, foreclosure, or

sale without the Corporation's consent. Furthermore, a lien for taxes and interest may attach to property in which the Corporation has a lien or security interest, but the Corporation will not permit a lien or security interest held by it to be eliminated by foreclosure without the Corporation's consent.

Sale of Tax Liens: In cases in which a tax lien has been sold to a private party under state law, if (1) the sale takes place before the Corporation obtains a fee interest in the property, or if the Corporation has a lien interest in the property and the tax lien has priority over the Corporation's lien, and (2) the Corporation desires to eliminate the tax lien purchaser's interest, the Corporation will pay the amount required by state law to satisfy such interest (other than any fees or penalties specifically imposed to redeem such interest). If the tax lien does not have priority, the Corporation will take whatever action is necessary to ensure that its own interest is satisfied first. If the Corporation has a fee interest, the sale must protect the Corporation's interest.

Liens for Undetermined Amounts: The Corporation generally will not pay non ad valorem taxes, including special assessments, on property in which it has a fee interest unless the amount of tax is fixed at the time that the Corporation acquires its fee interest in the property, nor will it recognize the validity of any lien to the extent it purports to secure the payment of any such amounts. With respect to property in California now owned by the Corporation that was owned by the RTC on December 31, 1995, or that became property of the Corporation through foreclosure of a security interest held by the RTC on that date, the Corporation will continue the RTC practice of paying special taxes imposed pursuant to the Mello-Roos Community Facilities Act of 1982 if the taxes were imposed prior to the RTC's acquisition of an interest in the property.

F. Challenges to Assessments

The Corporation is only liable for state and local taxes which are based on the value of the property during the period for which the tax is imposed, notwithstanding the failure of any person, including prior record owners, to challenge an assessment under the procedures available under state law. In the exercise of its business judgment, the Corporation may challenge assessments which do not conform with the statutory provisions, and during the challenge may pay tax claims based on the assessment level deemed appropriate, provided such payment will not prejudice the challenge. The Corporation will generally limit challenges to the current and immediately preceding taxable year and to the pursuit of previously filed tax protests. However, the Corporation may, in the exercise of its business judgment, challenge any prior taxes and assessments provided that (1) the Corporation's records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the Corporation, (3) the challenge will not unduly delay the sale of the property, and (4) there is a reasonable likelihood of a successful challenge.

G. Dispute and Notification Procedures

Disputes: The Corporation will attempt to advise taxing authorities of its statutory rights and resolve all tax disputes as taxes become due. In order to dispose of property subject to disputed tax claims, the Corporation may, as business judgment dictates, enter into agreements with taxing authorities, title companies, or prospective purchasers which provide for the disputed amount to be held in escrow. When the closing of a transaction is threatened because of the disputed tax amounts, the Corporation may, as business judgment dictates, elect to pay the disputed tax claims under protest. In all such cases the Corporation shall reserve its legal rights to a refund of such disputed amounts and may pursue, through litigation if necessary, a reimbursement of the disputed amounts and any attendant costs, expenses and interest.

Notification: The Corporation will attempt to notify state and local taxing authorities of the existence of an interest in property which the Corporation believes to be within the authority's jurisdiction.

H. Subsidiaries, Bridge Banks and Conservatorships

For the present, the Corporation will not assert section 15 tax immunity for bridge banks, special asset pools covered by assistance transactions where the Corporation does not retain ownership, or conservatorships. However, a bridge bank, conservatorship of a newly-formed institution, or an assisted acquirer is not liable for any obligations not specifically assumed from a receiver (as in a ''pass-through receivership''). In this situation, the acquiring institution may not be liable for any penalties that continue to accrue after the establishment of the *de novo* institution.

Additionally, for the present, the Corporation has determined generally not to assert section 15 tax immunity on behalf of state-chartered corporations, the stock of which is wholly or partially owned by the Corporation acting in any of its capacities.

By Order of the Board of Directors. Dated at Washington, D.C., this 26th day of November 1996.

Federal Deposit Insurance Corporation.

Jerry Langley,

Executive Secretary.

[FR Doc. 96–31208 Filed 12–9–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice and request for comments.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The ASC is soliciting comments on 12 CFR part 1102, subpart D, entitled, ''Description of Office, Procedures, Public Information,'' regarding: (a) whether the proposed collection of information is necessary for the proper performance of the ASC's functions, including whether the information shall have practical utility; (b) the accuracy of the ASC'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 on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments and recommendation on this proposal must be received on or before February 10, 1997.

ADDRESSES: Send comments to Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200; Washington, D.C. 20037., or via Internet e-mail to marcw1(@)asc.gov. All written

comments will become a matter of public record and will be summarized in the ASC's request for Office of Management and Budget (''OMB'') approval.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, via mail to the Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200; Washington, D.C. 20037; Internet e-mail at marcw1(@)asc.gov; or telephone at (202) 634–6520, from whom copies of the information collection and supporting documents are available.

SUPPLEMENTARY INFORMATION:

Title: ''Description of Office, Procedures, Public Information,'' 12 CFR part 1102, subpart D.

OMB Control No.: 3139–0006.

Type of Request: Extension of currently approved collection.

Form no.: None.

Description of respondents: All members of the public.

Frequency of collection: On occasion.

Needs and uses: The information collection will enable the ASC to comply with the Freedom of Information Act, as amended, (''FOIA'') 5 U.S.C. 552. It will be used by the ASC and its staff in determining whether requests for access to ASC records should be provided and whether appeals from adverse agency decisions regarding access should be granted under FOIA.

Estimated number of respondents: 11.

Frequency of response: Once.

Estimated total average burden per respondent: 20 minutes.

Estimated total annual burden: 3.67 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: December 4, 1996.

Ben Henson,

Executive Director.

[FR Doc. 96–31318 Filed 12–9–96; 8:45 am]

BILLING CODE 6201–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; announcing an Open Meeting of the Board

TIME AND DATE: 2:00 p.m., Wednesday, December 18, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule—FHLBank System Corporation.
- Approval of 1997 FHLBank Presidents' Appointments and Base Salaries.
- Approval of 1997 Office of Finance Managing Director's Appointment and Base Salary.
- Final Adption of Superisory Determination Appeal Procedures.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary of the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–31490 Filed 12–6–96; 3:06 pm]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 207–011552–002.

Title: Colombia Express Cooperative Working Agreement.

Parties: Associated Transport Line, Inc. (''ALT''); Smith & Johnson Carriers, Inc. (''S&J''); Colombia Express (the ''Joint Service'').

Synopsis: The proposed modification would permit the parties to restructure their agreement as a joint service and rename it the Columbia Express Joint Service Agreement.

Dated: December 4, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–31254 Filed 12–9–96; 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 24, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gene Bihlmaier Trust No.1, and Steve Bihlmaier Co-Trustee, both of Osborne, Kansas; to acquire a total of 25 percent of the voting shares of Osborne Investments, Inc., Osborne, Kansas, and thereby indirectly acquire Farmers National Bank of Osborne, Osborne, Kansas.

Board of Governors of the Federal Reserve System, December 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31308 Filed 12-9-96; 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 January 6, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pinnacle Bancshares, Inc., Jasper, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle Bank, Jasper, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Security Bancorp, Searcy, Arkansas; to acquire 100 percent of the voting shares of First Community Bank, National Association, Conway, Arkansas, a *de novo* bank, the successor by merger with First Community Bank, Conway, Arkansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Keene Bancorp, Inc. 401(K) Employee Stock Ownership Plan & Trust, Keene, Texas; to acquire 30.87 percent of the voting shares of Keene Bancorp, Inc., Keene, Texas, and thereby indirectly acquire First State Bank, Keene, Texas, and Itasca State Bank, Itasca, Texas.

Board of Governors of the Federal Reserve System, December 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31310 Filed 12-9-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to acquire certain assets of and assume certain liabilities of Prime Financial Corporation, Costa Mesa, California, and thereby engage in servicing mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska; to acquire Platte Valley Ag Credit Co.; Platte Valley Lending Company; Platte Valley Investment Center, Inc.; and Platte Valley National Mortgage Company; all of Scottsbluff, Nebraska, and thereby engage in making and servicing loans, pursuant to §§ 225.25(b)(1) and (b)(4), and in securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15), of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31309 Filed 12-9-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, December 16, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1997 Federal Reserve Board officer salary structure and merit program.
2. Proposals regarding a Federal Reserve Bank's building requirements.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31493 Filed 12–6–96; 3:37 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 932–3143]

Progressive Mortgage Corporation; Sanford Cramer; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Ohio-based mortgage banker, and its president, to provide full and accurate disclosure of finance charges, annual percentage rates, and other terms and conditions of financing, in compliance with the Truth in Lending Act (TILA). The agreement settles allegations that Progressive Mortgage provided false and misleading information about payment schedules and the cost of credit to mortgage applicants, in violation of the TILA.

DATES: Comments must be received on or before February 10, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John M. Mendenhall, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for November 25, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)96)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Progressive Mortgage Corporation, a mortgage banker and its president Sanford Cramer.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that proposed respondents failed to include premiums for mortgage insurance in calculating the finance charge and the annual percentage rate for mortgage loans. Respondents failed to accurately disclose to consumers the payment schedule and total of payments scheduled to repay the obligation in its Truth in Lending Act disclosures.

The Complaint also alleges that Sanford Cramer President provided false and misleading written disclosures relating to the Truth in Lending Act about consumer credit transactions.

The proposed Consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts and practices in the future. Part I of the order prohibits Progressive from engaging in the alleged practices in the future. Part I also requires Progressive to calculate and make all disclosures required by the Truth in Lending Act and cease from misrepresenting any term or condition of financing for any consumer credit transaction.

Paragraph II of the Order addresses the specific practices at issue by prohibiting Cramer from misrepresenting the annual percentage rate, the finance charge, the monthly payment amount or the total of payments in any written disclosure. He is also prohibited from misrepresenting any term or condition of financing for any consumer credit transaction.

The remainder of the proposed order consists of a six year recordkeeping provision and other standard compliance provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–31266 Filed 12–9–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center, publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *HHS Payment Management System Forms (PMS–270 and PMS–272)—0937–0200—Extension.*

The PMS–270, Request for Advance or Reimbursement is used to make advances or reimbursement payments to grantees. It serves in place of the SF–270.

Respondents: State and local governments; profit and nonprofit businesses and organizations receiving grants from HHS; *Total Number of Respondents:* 25; *Frequency of Response:* monthly; *Average Burden per Response:* 15 minutes; *Estimated Annual Burden:* 75 hours.

The PMS–272, Federal Cash Transactions Report, is used to monitor Federal cash advances to grantees and obtain Federal cash disbursement data. It serves in place of the SF–272. *Respondents:* State and local governments; profit and nonprofit businesses and institutions receiving grants from HHS; *Total Number of Respondents:* 11,050; *Frequency of Response:* quarterly; *Average Burden per Response:* 4 hours; *Estimated Annual Burden:* 176,800 hours.

Total Burden: 176,875 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–2045. Written comments and recommendations for the proposed information collection should

be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Douglas F. Mortl, PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: December 14, 1996.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 96–31370 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–17–M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995; as last amended at 61 FR 24939–40). This notice reflects the reorganization of the Office of the Administrator and the establishment of two independent components in the Health Resources and services Administration (HRSA). The changes are as follows:

I. Delete the Office of the Administrator in its entirety and replace with the following:

Section RA–00 Mission. The mission of the Immediate Office of the Administrator is to improve the health of the Nation by assuring quality health care to underserved, vulnerable and special-need populations and by promoting appropriate health professions work force capacity and practice, particularly in primary care and public health.

Section RA–10 Organization. The Office of the Administrator (OA) is headed by the Administrator, who reports directly to the Secretary. The OA includes the following components:

(A) Office of the Administrator (R)
(B) Aids Program Office (RAA)
(C) Office of Equal Opportunity and Civil Rights (RA2)
(D) Office of Policy and Information Coordination (RA3)
(E) Office of Planning, Evaluation and Legislation (RA5)
(F) Office of Communications (RA6)
(G) Office of Public Health Affairs (RA8)
(H) Office of Minority Health (RA9)

Section RA–20 Functions. *A. Immediate Office the Administrator (RA).* Leads and directs programs and activities of the Agency and advises the Office of the Secretary of Health and Human Services on policy matters concerning them.

B. AIDS Program Office (RAA). Coordinates all AIDS-related activities within the Agency; (2) advises the Administrator on policy, clinical, and educational issues pertaining to the administration of HRSA's AIDS program; (3) keeps the Administrator informed of any difficulties arising within or outside HRSA that might adversely affect the Agency's ability to carry out its AIDS responsibilities; (4) coordinates the formulation of an overall strategy and policy for the HRSA AIDS programs; (5) working with the Office of Planning, Evaluation and Legislation, coordinates the preparation of HRSA's AIDS-related programmatic, budgetary and legislative proposals; (6) monitors and analyzes AIDS-related policy and legislative developments for their impact on HRSA's AIDS activities; (7) reviews AIDS-related program activities to determine their consistency with established policies; (8) coordinates HRSA's comments on AIDS-related reports, position papers, legislative proposals including requests from other agencies; (9) represents the Agency and the Department at AIDS-related meetings, conferences, task forces etc; (10) plans and carries out special AIDS-related assignments for the Administrator.

C. Office of Equal Opportunity and Civil Rights (RA2). Directs, coordinates, develops, and administers the Agency's equal opportunity, civil rights, and ethics programs. Specifically: (1) provides advice, counsel and recommendations to Agency personnel, including the field offices, on equal opportunity, and civil rights, and represents HRSA in all EEO areas; (2) administers affirmative action programs to ensure equality of opportunity in employment; (3) manages the civil service complaints system and prepares final Agency decisions; (4) manages the complaints system for Commissioned Corps personnel under provisions of Public Health Service Personnel Instruction 6 and issues proposed dispositions; (5) develops and directs implementation of the requirements of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Americans With Disabilities Act, as they apply to recipients of HRSA funds; (6) provides technical assistance and guidance to the Agency on developing education and training programs regarding equal opportunity and civil rights; (7) promotes the awarding of contracts under Section 8(a) of the Small Business Act which pertains to minorities and women; (8) approves settlement agreements and attorney fees; and (9) applies all applicable laws, guidelines, rules and regulations in accordance with those of the DHHS Office of Equal Employment Opportunity, and Civil Rights Staffs.

D. Office of Policy and Information Coordination (RA3). Advises the Administrator and other key Agency officials on program priorities and policy issues; (2) establishes and maintains review and tracking mechanisms and systems that provide agencywide coordination and clearance of policies, regulations and guidelines; (3) contributes to the analysis, development and implementation of agencywide programs and policies through coordination of information from relevant Agency program components and other related sources; (4) plans, organizes and directs the Agency's Executive Secretariat with primary responsibility for preparation and management of written policy and other routine communications to and from the Administrator; (5) coordinates the preparation of proposed rules and regulations relating to Agency programs and coordinates Agency review and comment on other DHHS regulations that may affect the Agency's programs; and (6) oversees and coordinates the Agency's committee management system.

E. Office of Planning, Evaluation and Legislation (RA5). Serves as the Administrator's primary staff element and principal source of advice on program planning, program evaluation and legislative affairs; (2) develops the Agency's long-range program plan; (3) develops the Agency's strategic plan encompassing its long-range goals, objectives and priorities; (40) directs all Agency efforts to analyze cost/benefit of Agency's programs; (5) develops and implements comprehensive Agency evaluation programs; (6) conducts policy analyses and develops policy positions in Agency programmatic areas; (7) directs Agency's legislative affairs to develop legislative proposals and an agencywide legislative program; (8) develops and coordinates the Agency's health services research plan; (9) directs performance measurement activities, including technical assistance and standards development and assessment; and (10) coordinates the program data activities across the Agency, including the design and

management of program tracking and surveillance.

F. Office of Communications (RA6). Provides communications expertise, advice and support to the Administrator and other Agency officials; (2) provides leadership and directs Agency strategic communications policies and programs; (3) serves as focal point for coordination of Agency communications with other DHHS agencies and with field, State, local, voluntary and professional organizations; (4) develops and implements national communications initiatives to inform and educate the public, health care professionals, policymakers and the media; (5) researches, writes and prepares speeches and audiovisual presentations for the Administrator; (6) develops and implements policies, guidelines, and procedures and coordinates Agency external and internal communications including those for the development, review, processing, quality control, and dissemination of Agency communications products, including those disseminated electronically; (7) serves as Agency Communications and Public Affairs Officer establishing and maintaining productive relationships with the media; (8) implements the Freedom of Information Act for the Agency; and (9) conducts and coordinates the Agency's exhibits and graphics design activities to promote the agencywide identity.

G. Office of Public Health Affairs (RA8). Serves as the Agency's principal advisor and coordinator for clinical, public health, women's, international and other health affairs. Specifically: (1) provides consultation and assistance to senior Agency officials and others on clinical and health professional issues; (2) serves as the Agency's focal point on efforts to strengthen the practice of public health as it pertains to the HRSA mission; (3) coordinates the Agency's international health activities; (4) advises on policies and promotes internal and external program activities that address women's health; and (5) establishes and maintains communications with health organizations in the public and private sectors to support the mission of HRSA.

H. Office of Minority Health (RA9). Serves as the principal Agency advisor and coordinator for the special needs of minority and disadvantaged populations including advice on committee membership; (2) establishes short and long-term objectives for health activities addressing minority and disadvantaged populations; (3) participates in organization and planning activities to meet national minority health needs and collaborates with Agency budget officials to assure an appropriate share of funds is devoted to minority health programs; (4) consults with public and private sector agencies and organizations to assure minority health issues are addressed; (5) participates in focusing Agency activities and objectives to assure equity in access to resources and health careers for minorities and the disadvantaged; (6) establishes and manages an agencywide data collection system for minority health activities and initiatives, including White House, DHHS, Historically Black Colleges and Universities, and Educational Excellence for Hispanic Americans initiatives; (7) reviews inter/intra-Agency agreements related to racial/ethnic minority and disadvantaged populations; (8) participates in the formulation of HRSA's goals, policies, legislative proposals, priorities, and strategies as they affect medical, public health and other professional organizations and institutions of higher education involved in or concerned with the delivery of health services to minorities and disadvantaged populations; and (9) links HRSA minority and disadvantaged program efforts to potential partners at the Federal, State, and local levels and provides agencywide expertise on the development of culturally appropriate programs and materials.

II. Establish the Office of Rural Health Policy (RH) as follows:

Section RH–00 Mission
Section RH–10 Organization
Section RH–20 Function

Section RH–00 Mission. The Office of Rural Health Policy serves as a focal point within the Department and as a principal source of advice to the Administrator and Secretary for coordinating efforts to strengthen and improve the delivery of health services to populations in the nation's rural areas.

Section RH–10 Organization. The Office of Rural Health Policy.

Section RH–20 Function. Placed before Director, Maternal and Children Health Bureau (RM), as follows: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health; (4) stimulates and coordinates interaction on rural health activities and programs in the Agency, Department and with other federal agencies; (5) supports rural health center research and keeps informed of research and demonstration projects funded by States and foundations in the field of rural health care delivery' (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates congressional and private sector inquiries related to rural health; (8) advises the Agency, Administrator and Department on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas to attract and retain physicians and other health professionals; (9) oversees compliance by HCPA with the requirement that rural hospital impact analyses are developed whenever proposed regulations might have a significant impact on a substantial number of small rural hospitals; (10) oversees compliance by HCFA with the requirement that 10 percent of its research and demonstration budget is used for rural projects; (11) supports specialized rural programs on minority health, mental health, and agricultural health and safety; (12) plans and manages a nationwide rural health grants program; and (13) plans and manages a program of grants to States to initiate and expand offices of rural health.

III. Establish the Office of management and Program Support (RS), as follows:

Section RS–00 Mission
Section RS–10 Organization
Section RS–20 Function

Section RS–00 Mission. The Office of Management and Program Support provides the highest quality management, financial, personnel and administrative leadership and service in support of the Health Resources and Services Administration.

Section RS–10 Organization. The Office of Management and Program Support (RS) consists of the following:

A. Office of Management and Program Support (RS)
B. Division of Management Services (RS1)
C. Division of Financial Management (RS2)
D. Office of Human Resources and Development (RS3)
E. Division of Grants and Procurement Management (RS4)

F. Office of Field Coordination (RS5)
G. Office of Information Resources Management (RS6)

A. Office of Management and Program Support (RS). Provides agencywide leadership, program direction and coordination to all phases of management; (2) provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (3) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, human resources management, debt management, information resources management, grants and contracts management, procurement, real and personal property accountability and management, and administrative services; (4) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (5) serves as the Agency's focal point for field programs and activities except those field functions of the Division of Federal Occupational Health; (6) coordinates DHHS tort claims panel and associated activities; (7) administers the Agency's internal controls and integrity activities; and administers the Agency's Ethics program.

B. Division of Management Services (RS1). Provides agencywide leadership and direction in the areas of management policies and procedures, and property management and serves as the Executive Officer for the Office of Management and Program Support and the Office of the Administrator. Specifically: (1) provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority: (2) conducts and coordinates the Agency's issuances, records, reports, forms, and mail management programs; (3) manages the intra- and interagency agreements process; (4) conducts agencywide management improvement programs; (5) conducts management and information studies and surveys; (6) oversees and coordinates the implementation of legislation, directives and policies relating to the Privacy Act; (7) plans, directs, and coordinates administrative management activities and services including personnel, financial, materiel management, and general administrative services for the Office of the Administrator and the Office of Management and Program Support; (8) acts for the Associate Administrator for Management and Program Support concerning space, parking and communications management for headquarters and represent him/her in matters relating to the management of the Parklawn Building complex; and (9) advises on and coordinates agencywide policies and procedures required to implement General Services Administration and departmental regulations governing materiel management, including transportation, motor vehicle, and utilization and disposal of property.

C. Division of Financial Management (RS2). Provides advice and assistance to the Administrator and the Associate Administrator for Management and Program Support on financial policy planning and analysis; (2) maintains liaison with the Office of the Secretary on all activities relating to the Agency's financial, fiscal and audit responsibilities; (3) develops the long-range program and financial plan for the Agency collaboration with the Office of Planning, Evaluation and Legislation and other administrative components; (4) develops policies and instructions for budget preparation and presentation; (5) prepares budget submissions and participates in budget hearings; (6) allocates resources, including dollars and positions; (7) manages a system of budgetary fund and full-time equivalent personnel controls; and (8) maintains Agency oversight of fiscal and auditing services provided to HRSA by the Program Support Center.

D. Office of Human Resources and Development (RS3). Plans, conducts and evaluates the Agency's human resource studies, programs, policies and reports; (2) provides advice and assistance to management officials on individual actions arising from headquarters and field components; (3) administers the Agency's training functions; (4) acts as the focal point for the Agency's labor relations activities; (5) develops and provides guidelines and regulation for the Agency's personnel programs; (6) administers the Agency's merit and performance awards programs; (7) plans, directs and administers the appointing and processing of civil service employees; (8) plans and conducts position management surveys; (9) operates and oversees the Agency's merit promotion program; (10) manages and coordinates the Agency's personnel security program; (11) ensures that management practices and policies related to the Commissioned Corps are coordinated throughout the Agency; (12) ensures compliance with established personnel rules and regulations governing HRSA; (13) and administers the Agency's Ethics program.

E. Division of Grants and Procurement Management (RS4). Provides leadership in the planning, development, and implementation of policies and procedures for grants, contracts, and other assistance mechanisms; (2) exercises the sole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation of interpretation and application of the Department of Health and Human Services policies and procedures governing contracts and grants management; (4) develops and issues policy and procedural materials for the Agency's contracts and grants programs; (5) establishes standards and guides for and evaluates contracts and grants management operations throughout the Agency; (6) coordinates the Agency's positions and actions with respect to the audit of grants and contracts, and also coordinates responses to General Accounting Office audit reports and monitors the implementation of General Accounting Office recommendations; (7) provides professional accounting advice relative to the management of grants and contracts; and (8) maintains liaison directly or through the Office of Field Coordination with grantee and contractor institutions and organizations and other components of the Department.

F. Office of Field Coordination (RS5). Serves as the Agency's focal point for Field programs and activities. Specifically: (1) oversees and manages HRSA activities in the field; (2) advises the Administrator on appropriate resource allocation for field activities; (3) at the direction of the Administrator, assists in the implementation and evaluation of HRSA programs in the field through coordination of activities, and assessing the effectiveness of programs to identify opportunities for improving policies and service delivery systems; (4) develops and implements activities in the field designed to improve customer service and relationships; (5) at the direction of the Administrator, develops and coordinates the field implementation of special program initiatives which involve multiple HRSA field components and/or multiple HRSA programs; (6) serves as field liaison to the Administrator, Bureau Directors, State and local health officials as well as private and professional organizations; (7) acts as liaison to provide administrative and financial support services to HRSA field components; (8) provides technical assistance to the Agency's Field Council; and (9) exercises line management authority as delegated from the Administrator to the Field Coordinators related to general administrative and management functions.

G. Office of Information Resources Management (RS6). Provides leadership in the development, review and implementation of policies and procedures to promote improved information resources management capabilities and practices throughout HRSA; (2) develops and coordinates HRSA-wide plans and budgets for the management of information technology and services, including centralized data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) identifies and coordinates HRSA-wide information needs and develops or coordinates with others the development of creative answers to these needs; (5) plans, manages, administers and coordinates the HRSA-wide microcomputer network including all required linkages to other networks inside and outside HRSA including mainframe systems; (6) provides information support to the Office of the Administrator; (7) designs, develops, catalogues and manages data bases, information resources, including those data bases developed within the HRSA Bureaus, and the acquisition and use of external bases and information resources that support HRSA needs; (8) manages and coordinates state-of-the-art expertise for information science and technology; (9) provides consultation, technical advice and assistance and coordinates training in the use of ADP resources; (10) develops and coordinates the implementation of information security programs; (11) maintains liaison and coordinates information resources management with the HRSA Bureaus; (12) maintains liaison with HHS, PHS, other Federal agencies, States and professional organizations and associations concerning health information interests allied to the HRSA mission; and (13) reviews all HRSA requests for DP resources, providing ADP clearance for all appropriately justified requests.

Section R–30 Delegations of Authority. All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: November 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–31371 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–15–M

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection project. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 9, 1997.

ADDRESSES: Written comments on the proposed information collection should be submitted within 30 working days of this notice directly to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, (OMB); New Executive Office Building, Room 10235; Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (303) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

The 1997 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In early 1997, AHCPR intends to conduct a survey of establishments to collect information from employees concerning employer-sponsored health insurance. This survey is an integration of two previous surveys, now components of MEPS–IC. The two surveys, which collected similar information, were:

1. The 1987 Health Insurance Plans Survey (HIPS) sponsored by AHCPR's predecessor, the National Center for Health Services Research; and

2. The 1994 National Employer Health Insurance Survey (NEHIS) sponsored by AHCPR, the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA).

The MEPS–IC survey will be conducted using a sample of employers (including both public and private sectors) and health insurance providers. The sample will be comprised of two parts:

1. A list sample of employers selected from sample frames available from the Bureau of the Census; and

2. A group of employers and other health insurance providers identified by respondents in the 1996 MEPS-Household Component (HC). The MEPS–HC is a household survey which collects information concerning health care expenditures and related data for individuals. This household survey collects information similar to the 1987 National Medical Expenditure Survey.

Data collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs, and costs to employees.

For employers that can be matched to the MEPS–HC respondents, data will also be collected indicating the actual plan selected by the respondent and the plan costs.

Data will be produced in two forms: (1) files containing employer information from the list sample of selected employers; and (2) files containing linked 1996 MEPS–HC respondent and employer information.

The data are intended to be used for purposes, such as:

- Generating national and State estimates of employer health care offerings;
- Producing aggregate data on national and State estimates of spending on employer-sponsored health insurance for analyzing results of national and State health care policy data to model the demand for health insurance; and
- When pooled with data from the 1996 MEPS–HC survey, providing a valuable source of information concerning household responses regarding choices of health plans and costs and benefits of these plans.

These data provide the basis for researchers to address significant questions for employers and policymakers alike.

Method of Collection

The data will collected using a combination of modes. AHCPR intends to first contact the employers by telephone. This contact will provide information on the availability of health insurance from that employer and essential persons to contact. Based upon this information, AHCPR will send a mail questionnaire to employers and others identified by employers. In order to assure high response rates, AHCPR will followup with a second mailing at an acceptable time interval, followed by a telephone call to collect data from

those who have not responded to the mailings.

As part of this process, for large respondents reflecting high burdens, such as State employers and large firms, AHCPR will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats.

Data

Type of review: Regular Submission.

Affected Public: Employers.

Estimated Annual Number of Respondents: 38,500.

Estimated Time Per Respondent: .83.

Estimated Total Annual Burden Hours: 32,000.

Estimated Annual Total Costs to Government: $5,700,000.

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection and they will become a matter of public record.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: December 2, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–31255 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

Announcement of Workshop

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), the Cystic Fibrosis Foundation, and the University of Washington announce the following workshop.

Name: Newborn Screening for Cystic Fibrosis: A Paradigm for Public Health Genetics Policy Development.

Times and Dates: 8 a.m.–5:30 p.m., January 13, 1997. 8 a.m.–4 p.m., January 14, 1997.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Workshop will enable academic and public health professionals to discuss and clarify issues and to provide individual input to develop guidance on population-based newborn screening for cystic fibrosis. This workshop will bring together leaders from the fields of cystic fibrosis research, clinical practice, public health, and newborn screening for an updated discussion of the benefits and risks of newborn screening for cystic fibrosis. Nationally, a wide range of newborn screening tests are now widely accepted and used. Since the immunotrypsinogen test for cystic fibrosis has been available, experts have been discussing adding this test to the newborn screening panel. Previous symposiums, held in 1983 and 1991, concluded that routine newborn screening for cystic fibrosis should not be more widely implemented until newborn diagnosis has been demonstrated to lead to significant clinical benefits. Recently, the discovery of the Cystic Fibrosis Transmitbrain Conductive Regulator (CFTR) gene renewed interest in this possibility, as the sensitivity and specificity of testing could be improved. Since cystic fibrosis is a genetic disease of public health importance, public awareness of cystic fibrosis is generating increased interest in health policies related to newborn screening.

Matters to be discussed: The Workshop will include sessions on the following: (1) decision making in newborn screening for Cystic Fibrosis (CF), (2) laboratory considerations in newborn screening for CF, (3) progress in newborn screening and interventions for CF, (4) ethics and health policy of newborn screening for CF, (5) update on international newborn screening programs, followed by break-out group discussions and final conclusions.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Dwight Jones, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia, 30341, telephone 770/488–7160, FAX 770/488–7197. Registration is not required. A limited number of hotel rooms are reserved for the ''Cystic Fibrosis Workshop'' until December 20, 1996, at the Emory Inn, 1634 Clifton Road, Atlanta, Georgia 30333, telephone 404/712–6700.

Dated: December 4, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–31325 Filed 12–9–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The Office of Child Support Enforcement OCSE–156, Child Support Enforcement Program Quarterly Report and OCSE–158, Child Support Enforcement Program Annual Data Summary Report.

OMB No.: 0970–0057.

Description: The authority to collect and report the information requested on these forms is found in sections 452(a)(4), 452(a)(5), 452(a)(10), 469 of the Social Security Act. These data are highly aggregated and used in a management function to establish the effectiveness and efficiency of State child support programs. The Federal Office of Child Support Enforcement will use the data to carry out its oversight role and submit the Annual Report to Congress.

Respondents: State governments, District of Columbia, Guam, Virgin Islands and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–156	54	4	3.7	799.2
OCSE–158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.0

Additional Information:

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: October 21, 1996

Doug Godesky,

Reports Clearance Officer.

[FR Doc. 96–31258 Filed 12–9–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0433]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for exemption from the food additive listing requirements that are submitted under § 170.39 (21 CFR 170.39).

DATES: Submit written comments on the collection of information by February 10, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances Used in Food-Contact Articles—§ 170.39—(OMB Control Number 0910–0298)—Extension

Under section 409(a) of the act (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless it either conforms to the terms of a regulation prescribing its use or to an exemption for investigational use. Consequently, the safety of the substance under its intended conditions of use must be established, and a food additive regulation issued, before the substance can be used in food. In accordance with section 409 of the act, manufacturers of all components of a food-contact article (e.g., food packaging or food processing equipment) whose use meets the food additive definition in 201(s) of the act (21 U.S.C. 321(s)) must submit a petition establishing the safe conditions of use before such food-contact articles may be marketed, unless they are the subject of an exemption for investigational use under section 409(i) of the act.

Section 170.39 establishes a process that provides a manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation (Federal Register of July 17, 1995 (60 FR 36582)). The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration is at or below 0.5 part per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.39	60	1	60	88	5,280

There are no capital costs or operating and maintenance costs associated with this collection of information.

This annual reporting estimate is based on information received from representatives of the food packaging and processing industries and on agency records. Typically, FDA receives 60 threshold of regulation exemption requests per year; these requests are equally divided between simple and complex type submissions. These requests require between 26 to 110 hours to prepare.

Dated: December 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31320 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0445]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's requirements for State and local governments' applications for exemption from preemption for medical device requirements.

DATES: Submit written comments on the collection of information by February 10, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Judith V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. FDA submitted a copy of this notice to OMB for its review of this information collection and requested emergency processing. OMB approved the information collection through March 31, 1997, and assigned OMB Control No. 0910–0129. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control No. 0910–0129—Reinstatement)

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
Total Burden Hours	6	2	6	110	330

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in the above table on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years. Persons are not required to respond to a collection of information unless it displays a valid control number.

Dated: November 29, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31321 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0266]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 9, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Judy V. Bigelow, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1479.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Surgical Instrument Marking Tape Survey

The mandate of FDA's Center for Devices and Radiological Health under the authority of sections 201–905 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321–395), and regulations contained in Title 21 of the Code of Federal Regulations includes the approval and adequate labeling of medical devices. Section 903(b)(2)(c) of the act (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to medical devices.

The regulatory status of adhesive-backed, colored tape on medical devices is under review by FDA. The tape is frequently applied to medical devices, particularly surgical instruments, to facilitate sorting. It may be considered an accessory to medical devices used in surgical treatment as defined by 21 CFR 878.4800.

There are two case reports in the literature in which adverse events are attributed to the use of adhesive-backed, colored tape to mark surgical instruments (*Journal of Oral Maxillofacial Surgery,* 41:687–688, 1983; and *British Journal of Surgery,* 74:696, 1987). Two additional adverse event reports have been submitted to FDA.

The purpose of the survey is to estimate the proportion of the population at risk from this practice, and to determine if use of operating room nurse managers as proxies for sampling health care facilities for this purpose is effective. In addition, data will be collected to identify tape durability, extent of use, and whether there are any practices or procedures for marking surgical instruments and/or any human factors that could be altered to better protect the public health. Labeling information will also be collected.

The proposed randomized survey will be a one-time data collection effort. Completion of the survey is voluntary, and anonymity of individuals and institutions will be protected. Survey results will be available to participants upon request.

The only respondent burden will derive from the time needed to respond to survey questions. This will occur on a one-time basis. The length of the screening portion (questions 1–7) is estimated at 5 minutes, and the full survey length is estimated at an additional 25 minutes. Burden estimates are based on the need to have 308 surveys returned to achieve a statistically significant sampling.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screening Questions Only (30%)	92	1	92	0.083	7.63
Complete Survey (70%)	216	1	216	0.50	108
Total	308				115.63

There are no capital costs or operating and maintenance costs associated with this survey.

Dated: December 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–31360 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0473]

Medirex, Inc.; Premarket Approval of the Tripter-X1 Series Extracorporeal Shock Wave Lithotripters (Tripter-X1, Tripter-X1 Nova, and Tripter-X1 Compact)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medirex, Inc., Wellesley Hills, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Tripter-X1 Series Extracorporeal Shock Wave Lithotripters (Tripter-X1, Tripter-X1 Nova, and Tripter-X1 Compact). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 20, 1996, of the approval of the application.

DATES: Petitions for administrative review by January 9, 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: Russell P. Pagano, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On September 29, 1993, Medirex, Inc., Wellesley Hills, MA 02181, submitted to CDRH an application for premarket approval of the Tripter-X1 Series Extracorporeal Shock Wave Lithotripters (Tripter-X1, Tripter-X1 Nova, and Tripter-X1 Compact). These devices are indicated for use in the fragmentation of urinary tract stones (i.e., renal calyceal, renal pelvic, and upper ureteral stones).

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 20, 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 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 9, 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. 96–31359 Filed 12–9–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel.

This meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. for discussion and preparation of the Annual Report of the Chairman to the President for 1996. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, Room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide a roster of the committee members upon request.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4A48, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Name of Committee: President's Cancer Panel.

Date: December 16, 1996.

Place: LaGuardia Marriott, 102–05 Ditmars Blvd., E. Elmhurst, New York 11369.

Closed: 9:30 am to 4 pm.

Agenda: Discussion of preparation of the mandatory Annual Report of the Chairman to the President.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, NIH, Building 31, Room 4A48, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–1148.

This notice is being published less than 15 days prior to the meeting due to the urgent need to proceed with the meeting as scheduled to address this issue in a timely manner.

Dated: December 5, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–31369 Filed 12–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Adolescent Medicine HIV/AIDS Research Network FRA (Teleconference).

Date: January 9, 1997.

Time: 9:00 a.m. (EST)—12:00 noon.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852. Telephone: 301–496–1485.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: December 5, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–31366 Filed 12–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 19, 1996.

Time: 3:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 5, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–31367 Filed 12–9–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: December 20, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5112, Telephone Conference.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–31368 Filed 12–9–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 47952, September 11, 1996, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Cancer Institute as follows: In the Office of the Director, the name of the Office of Program Operations and Planning is changed to the Office of Science Policy.

Section N–B, Organization and Functions, under the heading National Cancer Institute (NC, formerly HNC), Office of the Director (NCI, formerly HNC1), is amended by deleting the name Office of Program Operations and Planning (NC16, formerly HNC16) and substituting the following new name: Office of Science Policy (NC16, formerly HNC16).

Dated: December 2, 1996.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 96–31365 Filed 12–9–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4123–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: December 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of management and Budget, New

Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410 telephone (202) 708–0050. This is not toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the proposed ''Public Housing/Section 8 Moving to Work Demonstration''.

Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 1–4–134, approved April 26, 1996) authorized a new demonstration program known as the public Housing/ Section 8 Moving to Work Demonstration (MTW). HUD is authorized to select up to 30 Housing Agencies (HAs) that administer the public and Indian housing and Section 8 programs to participate in MTW. Eligibility for MTW is limited to: (1) high-performing HAs; and (2) HAs that are selected for MTW through the Jobs-Plus initiative. HUD will select HAs for MTW through a merit-based process using specified selection criteria. A Federal Register Notice will invite HAs apply for MTW. Submission of an MTW plan, including comments from the public hearing, other public comments, and comments from current and prospective residents, and compliance with other submission and eligibility requirements are also required. HUD reserves the right to implement a second stage in the selection process, giving HAs an opportunity to further develop and revise their MTW plans.)

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by December 10, 1996:

(1) Title of the Information collection proposal: Public Housing/Section 8 Moving to Work Demonstration:

(2) Summary of the collection of information: Each respondent would be required to submit the following information:

1. MTW Plan
2. Evidence that the HA has provided for citizen and public housing residents participation
3. Assurances of an established reasonable rent policy
4. Compliance with the Housing Quality Standards (HQS) (24 CFR 982.401) for housing assisted under MTW
5. Compliance with reporting requirements

(3) Description of the need for the information and its proposed use:

To determine that HAs meet the selection criteria required by the Notice, preliminary MTW plan, current PHMAP score, assurances, compliance with HQSs and reporting requirements.

(4) Description of the likely respondents, and proposed frequency of the response to the collection of information: Respondents will be HAs.

The estimated number of respondents is 50. The proposed frequency of the response to the collection of information is one-time.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 50
Total burden hours: 4400
(@ 15 Hours per response)
Total Estimated Burden House: 4400

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 3, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–31337 Filed 12–9–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4056–N–06]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 9, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be receive within thirty (3) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 22, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Community Outreach Partnership Centers Program (COPC).

Office: Policy Development and Research.

OMB Approval Number: 2528–0180.

Description of the Need for the Information and its Proposed Use: The Community Outreach Partnership Centers Program is a demonstration program designed to provide applied research and Outreach activities to communities and neighborhoods to help

resolve locally identified urban problems. HUD selects and awards grants after a competitive selection process. The information collection will be used to ensure that grantees are spending their funds in accordance with statutory requirements and program goals.

Form Number: None.

Respondents: Not-For-Profit Institutions.

Frequency of Submission: Annually, Semi-annually, and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	120		1		80		9,600
Semi-Annual Report	25		2		16		800
Final Report	25		1		16		400
Recorddkeeping	25		1		16		400

Total Estimated Burden Hours: 11,200.

Status: Extension, with changes.

Contact: Jane Karadbil, HUD, (202) 708–1537; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–31338 Filed 12–9–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4174–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 9, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 3, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: HUD-Administered Small Cities Program Application for CDBG Funds and Performance Assessment Report (FR–4174).

Office: Community Planning and Development.

OMB Approval Number: 2506–0020.

Description of the Need for the Information and its Proposed use: The information obtained through the submission of form HUD–4124 will be used by HUD to rate and rank proposed projects for funding under the Small Cities CDBG Program. Form HUD–4052 is the Performance Assessment Report (PAR) which successful applicants (i.e., grantees) are required to submit on an annual basis to report on program progress.

Form Number: HUD–4124 and HUD–4052.

Respondents: State, Local, or Tribal Government and the Federal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–4124	300		1		40		12,000
Form HUD–4052	585		1		8		4,680

Total Estimated Burden Hours: 16,680.

Status: Reinstatement, with changes.

Contact: Robert Duncan, HUD, (202) 708–2690 ×4681; Cornelia Robertson-Terry, HUD, (202) 708–1322; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–31339 Filed 12–9–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1920–00–4503]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, United States Department of Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use in Trinity County, California.

SUMMARY: In accordance with title 43, Code of Federal Regulations, §§ 8364.1 and 8341.2, notice is hereby given that all the below listed lands and roads therein, administered by the Bureau of Land Management, have been closed to all motorized vehicle use; except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management

This closure affects all of the public lands and roads located within the following lands of Trinity County, California.

T.33N., R9W., M.D.M.,
SE/4 Sec. 23, SW/4 Sec. 24, NE/4 Sec. 26.
A total of approximately 340 acres.

DATES: This emergency closure action goes into effect February 1, 1997 and will remain in effect until the Authorized Officer determines it is no longer needed.

SUPPLEMENTARY INFORMATION: The authority for this closure and rule making is 43 CFR 8341.2 and 43 CFR 8364.2. Any person whol fails to comply with a closure order or rulemaking is subject to arrest and fines of up to $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT:

Charles M. Schultz, Area Manager, Bureau of Land Management, Redding Resource Area, 355 Hemsted Dr., Redding, CA 96002.

Charles M. Schultz,
Area Manager.

[FR Doc. 96–31262 Filed 12–9–96; 8:45 am]

BILLING CODE 4310–40–M

[AK–931–1430–01; AA–66900]

Public Land Order No. 6439; Revocation of Public Land Order No. 5549; Alaska; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This order will correct the Summary and Paragraph 2 of Public Land Order No. 6439, 48 FR 33713–33714, FR Doc. 83–19996.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599, 907–271–5477.

On page 33713, second column, the ''SUMMARY'' paragraph in Public Land Order No. 6439, which reads ''This order totally revokes a withdrawal of 46,080 acres of national forest lands. Of this acreage, 3,190 acres was conveyed to Shee Atika, Inc. The remaining 42,890 acres remain closed to operation of the general land laws, including mining and mineral leasing.'' is hereby corrected to read: ''This order totally revokes a withdrawal of 46,080 acres of national forest lands. Of this acreage, 3,190 acres were conveyed to Shee Atika, Inc. Approximately 19,810 acres of the lands are returned to national forest status, subject to such forms of disposition as may by law be made of National Forest System lands. The remaining 23,080 acres of national forest lands are also within the boundary of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act.''

On page 33714, first column, Paragraph 2, which reads ''The lands shall remain subject to administration by the Secretary of Agriculture under applicable laws and regulations as part of the Tongass National Forest and the Admiralty Island National Monument as established in Sec. 503(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (94 Stat. 2399). Accordingly, the lands remain closed to operation of the general public land laws, including mining and mineral leasing.'' is hereby corrected to read: ''The lands shall remain subject to administration by the Secretary of Agriculture under applicable laws and regulations. The lands listed under the subheading ''Kuiu Island,'' located solely within the Tongass National Forest, are returned to unrestricted national forest status, and are open to such forms of disposition as may by law be made of National Forest System lands, including mining and mineral leasing. The remaining lands, which are also part of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness pursuant to Sections 503(b) and 703(a) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399 and 2418, remain closed to operation of the public land laws, including mining and mineral leasing.''

Dated: November 26, 1996.

Robert C. Fisk,
Acting Resources Group Administrator, Division of Lands, Minerals, and Resources.

[FR Doc. 96–31261 Filed 12–9–96; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF JUSTICE

Attorney General; Certification of the Attorney General, Galveston County, Texas

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Galveston County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on September 23, 1975 (40 FR 43746).

Dated: December 5, 1996.

Janet Reno,
Attorney General of the United States.

[FR Doc. 96–31404 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–01–M

Attorney General; Certification of the Attorney General, Jefferson County, Texas

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and

Fifteenth Amendments of the Constitution of the United States in Jefferson County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on September 23, 1975 (40 FR 43746).

Dated: December 5, 1996.

Janet Reno,

Attorney General of the United States.

[FR Doc. 96–31403 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 96–20]

Jonathan Agbebiyi, M.D.; Revocation of Registration

On September 5, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Jonathan A. Agbebiyi, M.D. (Respondent) of Phoenix, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA2034306, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that on or about January 26, 1994, the Arizona Board of Medical Examiners revoked the Respondent's state medical license, and consequently, the Respondent was no longer authorized to handle controlled substances in the State of Arizona.

By letter dated February 24, 1996, the Respondent filed a timely request for a hearing, and the matter was docketed before administrative Law Judge Mary Ellen Bittner. On March 5, 1996, Judge Bittner issued an Order for Prehearing Statements. On March 14, 1996, in lieu of filing such a statement, the Government filed a motion for summary disposition, which was accompanied by a copy of the Board of Medical Examiners of the State of Arizona's (Board) Findings of Fact, Conclusions of Law and Order of Revocation dated January 26, 1994. Also attached to the Government's motion was a copy of a letter from a medical investigator for the Board to DEA dated August 31, 1995, stating that Respondent's license to practice medicine in Arizona remained revoked. In addition, Government counsel represented in its motion that on March 14, 1996, he had telephonically contacted the Board and confirmed that Respondent's license to practice medicine in Arizona had not been restored.

On March 14, 1996, Judge Bittner issued an order providing Respondent up to and including April 5, 1996, to file a response to the Government's motion. However, the Respondent did not file a response, and on April 30, 1996, Judge Bittner issued her Opinion and Recommended Decision. Judge Bittner found that Respondent lacked authorization to handle controlled substances in the State of Arizona; granted the Government's motion for summary disposition; and recommended that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on May 30, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge.

The Acting Deputy Administrator finds that on January 26, 1994, the Board of Medical Examiners for the State of Arizona revoked Respondent's license to practice medicine in the State of Arizona. Therefore, Respondent is not currently authorized to handle controlled substances in the State of Arizona. The Drug Enforcement Administration lacks statutory authority to issue or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts has practice. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Therial L. Bynum, M.D.,* 61 FR 3948 (1996); *Charles L. Novosad, Jr., M.D.,* 60 FR 47182 (1995); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993).

Judge Bittner also properly granted the Government's motion for summary disposition. Respondent did not file a response to the Government' motion. Respondent presented no evidence to contradict the fact that his license to practice medicine in the State of Arizona has been revoked, and therefore he is unable lawfully to handle controlled substances in that state. It is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984; see also *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

Therefore, having considered the facts and circumstances in this matter, the Acting Deputy Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Arizona.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration, AA2034306, previously issued to Jonathan Agbebiyi, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 9, 1997.

Dated: December 3, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–31251 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–41]

Anibal P. Herrera, M.D.; Continuation of Registration with Restriction

On August 31, 1994, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anibal P. Herrera, M.D. (Respondent) of Middletown, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AH3517298, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f), for reason that he has been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a).

By letter dated September 19, 1994, the Respondent, acting *pro se,* filed a timely request for a hearing, and following prehearing procedures, a hearing was held in New York, New York on April 27, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. On July 13, 1995, an attorney entered a notice of appearance

as counsel for Respondent, and submitted proposed findings of fact, conclusions of law, and argument. In addition, the Administrative Law Judge considered as post-hearing filings letters submitted by Respondent dated May 29 and June 30, 1995, and the Government's response dated June 12, 1995. On March 12, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be restricted to require the submission of a log of his controlled substance handling on a quarterly basis for three years. On April 1, 1996, Government counsel filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and on April 17, 1996, the record of these proceedings was transmitted to the Deputy Administrator. Subsequently, on April 22, 1996, Respondent's counsel requested an extension of time to file a response to the Government's exceptions, which was granted on April 29, 1996. Respondent then filed his response to the Government's exceptions on May 8, 1996.

The Acting Deputy Administrator has considered the record in its entirety, including the Government's exceptions and Respondent's response thereto, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with one noted exception, the Opinion and Recommended Ruling, Findings of Facts, and Conclusions of Law and Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a physician specializing in psychiatry. He graduated from the University of Buenos Aires Medical Center in 1955 and came to the United States in 1958, receiving his license to practice medicine in New York in 1965. He held various positions at local psychiatric centers and a local hospital, including staff psychiatrist, supervisor, unit chief, and director of psychiatric service at the hospital, until he retired in 1989. Since his retirement, Respondent has had a part-time psychiatric practice in Orange County, New York which has a Spanish speaking population of about 20,000. Respondent testified at the hearing before Judge Bittner that he was the only Spanish speaking physician in the county that would prescribe medication and provide counseling when needed.

In 1991, the New York Deputy Attorney General for Medicaid Fraud initiated an investigation of Respondent because his Medicaid billing was high for psychiatrists in his geographic area. A provider profile of Respondent's Medicaid billings for 1988 through 1992, revealed that almost all of the claims specified the code 90844 with the modifier ''WA''. During the time period covered by the investigation, the code 90844 represented psychiatric service of approximately 45–50 minutes with a minimum of 37 minutes, and provides for a $25.00 fee. The ''WA'' indicated that the service was rendered in an office setting and allows the provider to bill an additional $5.00. Other codes were available for other types and lengths of services. Prior to 1988, a different code was used for services similar to those covered by code 90844. Providers are furnished a manual with billing guidelines. Revisions to the code are made periodically and providers are sent code changes in their specialty field.

As part of the investigation of Respondent, an undercover investigator went to Respondent's office on approximately 15 occasions between May 1991 and June 1992. The undercover investigator presented legitimate medical reasons for the visits and was prescribed Xanax, a controlled substance. The Acting Deputy Administrator concludes that Respondent's proper prescribing of controlled substances to the undercover investigator is not an issue in these proceedings. The purpose of these visits was to determine whether Respondent was properly billing Medicaid based upon the amount of time spent with his Medicaid patients.

The first two undercover visits were for 24 and 20 minutes respectively, and Respondent billed Medicaid using the code 90844. An investigator that testified at the hearing before Judge Bittner stated that although these visits were shorter than the required 37 minutes, they were long enough that investigators ''didn't make anything out of that.'' The third visit lasted 14 minutes and the remaining visits ranged from between 4 and 10 minutes. The investigator testified that Respondent billed Medicaid using the Code 90844 for all of these visits despite their duration. The Administrative Law Judge found, and the Acting Deputy Administrator concurs that the record is not clear as to whether Respondent in fact billed Medicaid for two of these visits.

Before the last undercover visit on June 11, 1992, two investigators went to Respondent's office in their official capacity to discuss his billing practices. Respondent told the investigators that he had been participating in the Medicaid system since the 1960's and had always been reimbursed $30.00 for an office visit. Respondent stated that he had received the Medicaid manuals and updates and even showed them to the investigators. Respondent told the investigators that Medicaid patients accounted for 50% of his practice and that his secretary handles the office billing. Respondent initially told the investigators that he spent 30 to 35 minutes or longer with his Medicaid patients depending on their needs. Respondent was then asked whether he ever gave his patients less time and he stated that he sometimes only spent 20 to 30 with those patients. When the investigators revealed that they had conducted surveillance of his office, Respondent admitted that he had not spent the required amount of time with his Medicaid patients. Respondent stated however, that he did not look at his watch, but gave each patient as much time as needed. During this interview, Respondent never stated that he was purposely overbilling the Medicaid system, but he accepted responsibility for the billing.

Later on June 11, 1992, the undercover investigator made her last visit to Respondent's office. During this visit, the undercover investigator told Respondent that she had received a letter from the Department of Social Services questioning how much time she spent in her sessions with Respondent. The Government asserts that the tape recording of this visit indicates that Respondent told the undercover investigator to lie about the amount of time spent with Respondent. Respondent submitted a certified transcript of the recording which indicates that Respondent said, ''[y]ou cannot lie.'' The Acting Deputy Administrator concurs with Judge Bittner's finding that Respondent told the investigator, ''[y]ou cannot lie.''

On several occasions, while waiting to see Respondent, the undercover investigator timed other patients, and observed that they spent between 6 and 20 minutes with Respondent. The Acting Deputy Administrator agrees with Judge Bittner however, that there is no evidence in the record that these were Medicaid patients, and therefore does not find that these observations are relevant to this proceeding.

As part of the investigation, approximately 25 of Respondent's Medicaid patients filled out

questionnaires indicating the amount of time spent with Respondent. The questionnaires are not in evidence; however, the investigator testified that the answers varied, ''but the majority was like about 15 minutes or so.''

As a result of the investigation, Respondent was convicted on December 3, 1992, in the City Court of Middletown, County of Orange, State of New York, following this guilty plea of filing a false instrument in the second degree, a misdemeanor, in violation of section 175.30 of the Penal Law of the State of New York. Respondent was ordered to pay a fine and restitution of $22,000, which was the estimated amount of Respondent's overbilling to Medicaid. Respondent paid both the fine and the restitution amount.

An element of the offense for which Respondent was convicted is ''*knowing* that a written instrument contains a false statement or false information.'' N.Y. Penal Law section 175.30 (emphasis added). Respondent testified at the hearing before Judge Bittner that he did not know that the claims were false when he submitted them to Medicaid, but pled guilty because he accepted responsibility for improperly billing. He further testified that his plea resulted from bad legal advice and a desire to put the episode behind him. Respondent testified before Judge Bittner, and argues in his post-hearing filing, that he entered an *Alford* plea to the charge against him, whereby he admitted the facts, but not the criminal intent. See, *North Carolina* versus *Alford*, 91 S.Ct. 160 (1970). Other than Respondent's testimony, there is no other evidence in the record regarding the circumstances surrounding Respondent's guilty plea and its acceptance by the court.

Respondent explained that he had always billed Medicaid $30.00 for each session. According to Respondent, in the 1970's, if there was an approved treatment plan on file for a patient, a doctor could bill Medicaid $30.00 for each session regardless of the duration of the session. In 1985, the system changed and treatment plans were no longer required, and billing codes were established based upon the type and duration of service. Respondent claims that he was not aware of the time requirements. He testified that he told his part-time secretary who handles his billing to bill Medicaid $30.00 for each Medicaid patient he saw. The secretary looked for the appropriate billing code that reimbursed for $30.00, which was 90844.

As a result of his conviction, the United States Department of Health and Human Services excluded Respondent from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant, and Block Grants to States for Social Services programs for a period of 5 years effective 20 days after June 21, 1993. This is a mandatory exclusion pursuant to 42 U.S.C. 1320a–7(a).

On March 27, 1995, the State Board for Professional Medical Conduct for the State of New York suspended Respondent's license to practice medicine for three years, but stayed the suspension and placed his license on probation, during which time his billing records will be closely monitored.

Respondent testified that there have never been any complaints about his treatment of patients, and there have never been any malpractice suits or civil actions brought against him. He introduced 80 letters of support from patients and other doctors. All of the patients stated that they were very happy with Respondent's services, and many emphasized that Respondent gave them the time that they needed. Respondent testified before Judge Bittner that revocation of his DEA Certificate of Registration would impair his ability to properly treat his patients.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.

It is undisputed that subsection (5) of 21 U.S.C. 824(a) provides the sole basis for the revocation of Respondent's DEA Certificate of Registration. Pursuant to 42 U.S.C. 1320a–7(a), Respondent has been excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grants to States for Social Services programs for a five-year period until approximately mid-July 1998. The issue remaining is whether the Acting Deputy Administrator, in exercising his discretion, should revoke or suspend Respondent's DEA Certificate of Registration.

The Government contends that Respondent's registration should be revoked since he continues to deny that he intentionally overbilled Medicaid and therefore has shown no remorse for his actions. Respondent does not deny that he overbilled Medicaid and that he was convicted of filing a false instrument. Respondent contends, however, that he did not overbill Medicaid intentionally, and that he did not admit intent when he pled guilty, but did so to accept responsibility for the improper billing and to put the matter behind him. Respondent also argues that his DEA registration should not be revoked because there has never been a complaint about his practice of medicine and his services are badly needed in the community in which he practices.

The Administrative Law Judge recommended that Respondent's registration not be revoked, but that he be required to submit a log of his controlled substance handling on a quarterly basis for three years. Judge Bittner found that Respondent has admitted that he overbilled Medicare for some or all of the undercover visits, and for most of his other patients, and that his explanation for the overbilling is plausible. In her opinion, Judge Bittner addressed the Government's contention that Respondent's assertion of lack of knowledge of the proper Medicaid billing codes is not credible. The Government, in its brief as well as its exceptions, points to the investigator's testimony that Respondent changed his story as to the amount of time spent with Medicaid patients after learning that his office had been under surveillance; admitted to reading the Medicaid manuals; stated that he believed that the Medicaid system lent itself to wrongdoing; and told the undercover investigator to lie about the amount of time spent with Respondent. However, as Judge Bittner notes in her opinion, the Respondent testified that he told the investigator that he accepted responsibility for the overbilling; that he did not tell the investigator that he read the Medicaid manual; that he did not recall stating that the Medicaid system lent itself to dishonesty; and that the tape recording of the last visit of the undercover officer did not indicate that Respondent told the investigator to lie, but on the contrary stated that ''[y]ou cannot lie.'' Judge Bittner then concluded that she could not find that the investigator's recollection of the

interview was more accurate than Respondent's, and therefore could not find that Respondent was lying in his explanation of his billing practices.

The Acting Deputy Administrator agrees with Judge Bittner's conclusion. The Government continues to argue in its exceptions that it is significant that Respondent changed his story during his interview on June 11, 1992, regarding the amount of time spent with his Medicaid patients. The Acting Deputy Administrator does not find this troubling, since Respondent also stated during the interview that he was not one to look at his watch.

The Administrative Law Judge found that even though Respondent was convicted for filing a false instrument, he was not estopped from denying that he knew that his billing was wrong since ''the doctrine of issue preclusion applies only to issues actually litigated in an earlier proceeding.'' Judge Bittner went on to conclude that since Respondent pled guilty, the element of his knowledge was not actually litigated.

The Government filed an exception to this conclusion arguing that ''it is axiomatic that one who pleas [sic] guilty admits to all essential elements of the offense * * * '' and that ''DEA has consistently over a long period of time construed a guilty plea as an admission of the elements of that offense.'' The Government expressed concern that to adopt the Administrative Law Judge's conclusion, ''DEA would now allow registrants and applicants to collaterally attack convictions based upon guilty pleas in administrative revocation proceedings.'' In its response to the Government's exceptions, Respondent's counsel argues that Respondent entered an *Alford* plea to the misdemeanor of filing a false record in a court that is not a court ''of record'' and therefore there is no record surrounding Respondent's plea. Respondent maintain that all of the cases cited by the Government for the proposition that DEA should not ''go behind'' guilty please involved pleas to felony offenses which required an allocution in a court of record. Respondent further argues that by entering an *Alford* plea, Respondent ''pled to the underlying facts without acknowledging fraudulent intent in positioning those admitted acts.'' ''He did *not* admit to the offense, he admitted to the facts set forth in the indictment * * * (and t)here is no allocution on which to base a contrary finding inasmuch as he was allowed to plea in an arraignment court * * * .''

The Acting Deputy Administrator cannot concur with the Administrative Law Judge's conclusion that if a registrant or applicant's conviction is the result of a guilty plea, he/she is not precluded from arguing in the administrative proceedings any issues relating to the conviction since they were not actually litigated in an earlier proceeding. As the Government points out in its exceptions, DEA has consistently construed a guilty plea as an admission of the elements of the offense. In *Pearce* v. *United States Department of Justice*, 867 F.2d 253 (6th Cir. 1988), a physician's revocation was affirmed where the physician argued that even though he pled *nolo contendere* to a drug related felony, he was not really guilty of the charges since the prescriptions in question were issued for a legitimate medical purpose. In rejecting the physician's argument, the United States Court of Appeals stated that:

> The statute, however, does not require the government to prove the substance of the criminal violation at the administrative hearing. The purpose of the hearing is not to give the petitioner a chance to go behind or to set aside a guilty plea, or the equivalent of a guilty plea, in this case. Id. at 255.

However, the Acting Deputy Administrator is uncomfortable in this case with precluding Respondent from arguing that he did not intend to file false Medicaid claims. Respondent argues that he entered an *Alford* plea to the misdemeanor charge of filing a false instrument whereby he admitted the facts in the indictment, but not the elements of the offense. Respondent does not argue that there was no conviction, but argues that his plea was entered and accepted by a state arraignment court where there was no allocution surrounding the plea. Given the confusion over what exactly Respondent admitted, and without more evidence in the record regarding the exact circumstances surrounding Respondent's plea, the Acting Deputy Administrator is unable to determine if he's precluded from exploring Respondent's intent when filing the false claims. Consequently, the Acting Deputy Administrator has considered Respondent's explanation regarding his overbilling of Medicaid.

The Acting Deputy Administrator finds that the Drug Enforcement Administration has previously held that misconduct, like that at issue in this proceeding, which does not involve controlled substances may constitute grounds under 21 U.S.C. 824(a)(5) for the revocation of a DEA Certificate of Registration. See *Gilbert L. Franklin, D.D.S.*, 57 FR 3441 (1992); *George D. Osafo, M.D.*, 58 FR 37508 (1993); *Nelson Ramirez-Gonzalez, M.D.*, 58 FR 52787 (1993). However, in those cases, there were serious questions as to the integrity of the registrant.

The Acting Deputy Administrator finds that in this case, Respondent advanced a plausible explanation for his overbilling, yet never denied that he did in fact overbill the Medicaid system. He has accepted full responsibility for the filing of the claims and has paid restitution to the State of New York. In addition, given the needs of the community in which he practices and the action already taken by the Department of Health and Human Services regarding his Medicaid privileges and by the State of New York regarding his license to practice medicine, the Acting Deputy Administrator agrees with Judge Bittner that revocation of Respondent's DEA registration is not appropriate.

The Administrative Law Judge recommended that in light of Respondent's failure to comply with laws related to his medical practice, it is appropriate for DEA to monitor Respondent's handling of controlled substances. Judge Bittner therefore recommended that for three years following issuance of the final order, the following restriction be placed on Respondent's DEA registration:

> At the end of every calendar quarter, Respondent must submit a log of all controlled substances he has prescribed, administered, or otherwise dispensed during the previous quarter to the Special Agent in Charge of the nearest DEA office or his designee. The log shall include each patient's name, address, date of prescription or other dispensing, and the name and quantity of the controlled substance. The log shall be prepared by and signed by Respondent personally, except that he may ask an employee to verify its accuracy.

The Government filed an exception to this recommended disposition, contending that since there are no allegations that Respondent improperly handled controlled substances, maintenance of a log would be unnecessary. The Acting Deputy Administrator disagrees with the Government and agrees with Judge Bittner ''that some controls are necessary to ensure that he complies with laws relating to his dispensing and prescribing controlled substances.''

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 U.S.C. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH3517298, issued to Anibal P. Herrera, M.D., be continued, and any pending applications be granted, subject to the

above restriction. This order is effective December 10, 1996.

Dated: December 2, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–31252 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–4]

Roger Pharmacy; Revocation of Registration

On October 7, 1994, the Deputy Assistant Administrator. Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause to Roger Pharmacy (Respondent) of Gahanna, Ohio, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BR1448655, and deny any pending applications for renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that the pharmacy's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

On November 2, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Cleveland, Ohio on June 27, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify, and the Government introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On April 9, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on May 10, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Jon R. Martin, R.Ph. purchased Respondent pharmacy, located in Gahanna Ohio, in the late 1980's. Respondent is a high volume drug store that employees 10 to 15 individuals, and provides services not generally available from chain pharmacies, such as charge accounts and deliveries to the elderly.

In November 1990, a detective with the Narcotics Bureau of the Columbus, Ohio Police Department conducted a routine inspection of Respondent pharmacy and its exempt narcotics log book. Under both Federal and state law a prescription is not required to purchase certain Schedule V cough syrups, however a log book must be maintain containing the name and address of the purchaser, the name and quantity of the controlled substance purchased, the date of purchase, and the name of the dispensing pharmacist. In addition, there is a limit on the amount of cough syrup that may be purchased by an individual within a 48 hour period. The inspection revealed that on 11 occasions, between February 1989 and November 1990, individuals had purchased Schedule V exempt narcotic cough syrups from Respondent more than once in a 48 hour period in violation of both Federal and state law. Further examination of Respondent's exempt narcotic log book revealed that certain individuals bought exempt narcotics from Respondent frequently and over an extended period of time. Specifically, between February 20, 1989 and November 18, 1990, an individual purchased exempt narcotics from Respondent on 126 occasions; between March 24, 1989 and February 7, 1990, an individual purchased exempt narcotics from Respondent on 63 occasions; another individual purchased exempt narcotics from Respondent on 97 occasions between January 2, 1989 and February 3, 1991; between January 15, 1989 and December 29, 1990, an individual purchased exempt narcotics from Respondent on 104 occasion; an individual purchased exempt narcotics on 87 occasions between January 16, 1989 and February 10, 1991; and another individual purchased exempt narcotics from Respondent on 34 occasions between August 25, 1990 and February 2, 1991.

The detective interviewed three of these individuals who all admitted purchasing exempt narcotics from Respondent. One stated that when he went to Respondent, there would be a bottle of cough syrup waiting for him by the time he reached the pharmacy counter. Another individual admitted to signing the log book using different names.

On January 30, 1991, the detective interviewed Jon Martin, Respondent's owner and pharmacist, and asked him how long it would take someone to become addicted to codeine if he/she drank a bottle of cough syrup every day or every other day. Mr. Martin stated that in his opinion it would take approximately 60 days. The detective then asked Mr. Martin why he continued to sell cough syrup to the same individuals. Mr. Martin replied that as long as customers stayed within the 48 hour rule, he would sell the cough syrup to them because if he did not, they would just buy it elsewhere. Mr. Martin went on to state that the pharmacy business is a tough business and he might as well make money.

In April 1991, the Columbus Police Department informed DEA of the results of its investigation of Respondent. DEA compared the amount of exempt narcotics sold by Respondent with the amount sold by the other five pharmacies located in Gahanna, Ohio, and discovered that during an average month in 1991, Respondent sold twice the quantity of exempt narcotic products as all the other local pharmacies combined. On April 18, 1991, DEA went to Respondent pharmacy to evaluate its compliance with the Controlled Substances Act. It was discovered that Respondent did not have a biennial inventory as required by Federal regulations. At the hearing before Judge Bittner, when asked about this Respondent stated that, ''I suspect it was just a matter of being a little lax on getting things done. It was nothing intentional. There's a lot of things for me to do. * * * Some of them are nit-picky things I neglected doing. I'm sorry.'' The DEA investigators also discovered that Respondent could not account for 18 of the 126 Schedule II order forms that it had been issued by DEA between January 1989 and April 1991. Respondent testified at the hearing before Judge Bittner that he was surprised that the order forms were missing, and that ''paperwork has not always been one of (his) strong suits.''

As part of its investigation, DEA conducted an accountability audit at Respondent pharmacy of eight controlled substances. The audit revealed both overages and shortages of all but one of the audited substances. For example, Respondent pharmacy could account for 164 tablets of Dilaudid 2 mg. (a Schedule II controlled substances) more than it was accountable, and could not account for 1,160 tablets of APAP with codeine (a Schedule III controlled substance) for

which it was accountable. At the hearing before Judge Bittner, Mr. Martin stated that had he been informed of the shortages at the time of the investigation, he probably could have accounted for the shortages. However, both the DEA investigator that testified at the hearing and Mr. Martin testified that at the time of the accountability audit, the investigator asked Mr. Martin several times if he had given or shown the investigator all of the pharmacy's controlled substances and records.

The DEA investigator returned to Respondent pharmacy on April 25, 1991, to verify refill information, and discovered that Respondent's records did not indicate dates of refills or verification by the dispensing pharmacist. The investigator also discovered that Respondent's records of oral prescriptions did not include information required by Federal regulations. The investigator seized seven controlled substance prescriptions issued to an individualy purportedly by one doctor. On April 30, 1991, the investigator met with the doctor who advised the investigator that he had not authorized one of the prescriptions at all and that another prescription that he had issued had been refilled five times, when he had only authorized one refill.

As a result of the investigation by the Columbus Police Department, the Ohio State Board of Pharmacy (Board) found that on nine occasions between March 1989 and November 1990, Mr. Martin had violated the 48 hour rule regarding the dispensing of exempt narcotics, and that he had sold codeine cough syrup for other than a legitimate medical purpose. The Board concluded that Mr. Martin was guilty of gross immorality, dishonesty and unprofessional conduct in the practice of pharmacy, and on August 11, 1992, suspended his license to practice pharmacy for one year, fined him $5,000.00, but permitted the pharmacy to continue operating without restriction.

Mr. Martin pled guilty in the United States District Court for the Southern District of Ohio to one misdemeanor count of unlawful distribution of a codeine-based exempt narcotic, and in September 1993, he was placed on probation for one year, fined $2,500.00 and ordered to perform 50 hours of community service. Mr. Martin paid the fine, but was excused from performing some of the community service, and his probation was terminated early.

Both the Columbus detective and the DEA investigator testified at the hearing in this matter that they have not received any complaints regarding Respondent's controlled substance dispensing since the investigation in 1991. Mr. Martin testified at the hearing that he assumes full responsibility for what happened at Respondent pharmacy, and that he has instituted procedural changes so nothing like it will happen again. The pharmacy no longer sells exempt narcotics without a prescription even though a prescription is not required by Federal or state law. Mr. Martin has hired a pharmacist to be responsible for all controlled substance inventories, Schedule II order forms, and other DEA requirements. It is now the pharmacy's policy to call prescribing doctors to verify refill information, and to note that information on the prescription and in the computer.

However, Mr. Martin admitted at the hearing that he was aware that certain individuals came to his pharmacy to buy Schedule V cough syrup because he always sold it to them. When asked why the pharmacy stopped selling exempt narcotics without a prescription, Mr. Martin testified, ''it's cost me a lot of money and a lot of time and a lot of anguish in my life that I really don't need. And besides that, I certainly wasn't helping the people.''

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.,* Docket No. 88–42, 54 FR 16,422 (1989). In this case, factors one, two, three and four are relevant in determining the public interest.

As to factor one, ''recommendation of the appropriate licensing board * * *'' in 1992, the Ohio State Board of Pharmacy found that Mr. Martin had dispensed coedine cough syrup for no legitimate medical purpose and in violation of the prohibition against dispensing more than once in a 48 hour period to the same individual. As a result, the Board suspended Mr. Martin's license to practice pharmacy for one year. Mr. Martin's license to practice pharmacy and Respondent's license are currently unrestricted. While it is relevant that Respondent and its owner possess unrestricted state authorization to handle controlled substances, the Acting Deputy Administrator does not find it dispositive of whether Respondent's continued registration is in the public interest.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' the Acting Deputy Administrator concurs with the Administrative Law Judge that ''this factor strongly weighs in favor of finding that Respondent's registration would not be in the public interest.'' In the case of Schedule V exempt narcotic cough syrups dispensed without a prescription, the responsibility to ensure that these substances are dispensed for a legitimate medical purpose rests solely with the pharmacist. See *Arthur Sklar, R.Ph., d/b/a/ King Pharmacy,* 54 FR 34,623 (1989). The Ohio State Board of Pharmacy found that Mr. Martin dispensed exempt narcotics to certain individuals for no legitimate medical purpose. Mr. Martin admitted that he was aware that certain individuals came to his pharmacy to buy Schedule V cough syrup for no legitimate medical purpose, because he always sold it to them. He stated that if he didn't sell it to them, they'd just go buy it elsewhere. He violated the prohibitions against dispensing exempt narcotics to the same individual more than once in a 48 hour period. It was Mr. Martin's opinion that an individual who took Schedule V cough syrup every day or every other day, could become addicted within 60 days, yet he continued to dispense these substances to individuals on a regular basis over several years. The Acting Deputy Administrator agrees with Judge Bittner's finding that ''Mr. Martin abrogated his professional and legal responsibilities with respect to dispensing controlled substances.''

Regarding factor three, it is uncontested that in September 1993, Mr. Martin pled guilty in the United States District Court for the Southern District of Ohio to one misdemeanor count of unlawful distribution of a codeine-based exempt narcotic, and he

was placed on probation for one year, fined $2,500.00 and ordered to perform 50 hours of community service.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the evidence presented at the hearing in this matter clearly supports the conclusion that Respondent committed numerous violations of applicable laws and regulations. Respondent failed to maintain complete and accurate records of its controlled substances as required by 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the results of the accountability audit. Respondent failed to conduct a biennial inventory of its controlled substances as required by 21 CFR 1304.13. Pursuant to 21 CFR 1305.13, Respondent was required to preserve all Schedule II order forms. Its inability to account for 18 of its order forms indicates a violation of this regulation.

Respondent's maintenance of records regarding oral prescriptions and prescriptions refills was also deficient. Under 21 CFR 1306.21, a pharmacist may dispense a Schedule III or IV controlled substance pursuant to an oral prescription that is promptly reduced to writing by the pharmacist. The writing must contain all of the information required for a written prescription, including the date of issuance, the name and address of patient, and the name, address, and registration number of the prescribing practitioner. Respondent's oral prescription information failed to include the name and address of both the patient and the practitioner. Respondent's prescription refill records failed to include the date of the refill or verification information by the dispensing pharmacist, in violation of 21 CFR 1306.22(b) (1) and (3).

Respondent violated Section 3719.16 of the Ohio Revised Code and 21 CFR 1306.32 by selling codeine cough syrup on 11 occasions to the same individual more than once within a 48 hour period.

Of considerable concern to the Acting Deputy Administrator is Respondent's violation of 21 CFR 1306.04(a), which provides that:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription * * *

Accordingly, in situations where a prescription for a controlled substance is issued, both the prescribing practitioner and the dispensing pharmacist have the responsibility to ensure that the substances are being dispensed for a legitimate medical purpose. In this case, however, there is no prescribing practitioner. Therefore, the dispensing pharmacist bears the sole responsibility for evaluating the purpose and necessity for the dispensing of controlled substances. Mr. Martin himself admits that he ignored his responsibilities and dispensed the Schedule V cough syrups for no legitimate medical purpose. He attempted to justify his behavior by stating that if he did not sell the cough syrup, the customers would just go elsewhere. His only concern was to make money. Based upon these numerous violations of Federal and state laws and regulations relating to the dispensing of controlled substances, factor four is extremely significant in evaluating the public interest in this case.

Like Judge Bittner, the Acting Deputy Administrator notes Mr. Martin's testimony regarding the procedural changes that he has instituted to ensure that Respondent would comply with applicable laws and regulations in the future. However, he has delegated most of the responsibility concerning compliance to a pharmacist at Respondent. As the owner of Respondent, Mr. Martin is ultimately responsible for compliance, and by his own admission, he has not spent much time at Respondent recently.

The Acting Deputy Administrator concludes that regardless of whether Mr. Martin is present at the pharmacy or not, Respondent's continued registration is inconsistent with the public interest. Judge Bittner found that ''Mr. Martin displayed a total disregard for federal and State laws and regulations, and for his responsibilities as a licensed pharmacist and owner of a DEA registrant.'' The Acting Deputy administrator concurs with Judge Bittner's assertion that ''Mr. Martin testified that he accepted responsibility for his misconduct and recognized that he used poor judgment; however, his expression of regret was directed more to the consequences to himself of his action—the aggravation and loss of time and money—than to the conduct itself.'' Mr. Martin turned a blind eye to his duty as a DEA registrant to ensure that controlled substances were dispensed for a legitimate medical purpose. He characterized many of the registration requirements as ''nit-picky things.'' Those requirements are in place to guard against the diversion of controlled substances. To minimize these requirements demonstrates a lack of appreciation for the responsibilities of a DEA registrant. Consequently, the Acting Deputy administrator concludes that Respondent's continued registration is inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BR1448655, issued to Roger Pharmacy, be, and it hereby is revoked and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective January 9, 1997.

Dated: December 2, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–31253 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

AGENCY: Notice of information collection under review; application for waiver of ground of excludability.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on August 23, 1996, at 61 FR 43561, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments until January 9, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Waiver of Ground of Excludability.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–601. Office of Examinations, Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information collected on this form will be the Immigration and Naturalization Service (INS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3,000 respondents at 30 minutes (.500) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–31203 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–18–M

Immigration and Naturalization Service

Submission for OMB Emergency Review, Comment Request

ACTION: Notice of Information Collection Under Review; Reengineered Foreign Students Pilot Program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS was mandated by Congress under Subtitle D, Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to test a prototype of a reengineered Foreign Student and School Program. The statutory time line for implementation of this pilot program mandated by the Attorney General requires an emergency review of this information collection. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Richard Sloan (202–616–7600). This request for emergency approval, if approved, is good until June 9, 1997. Additionally, this notice will also serve as the 60 day public notification for comments as required by the Paperwork Reduction Act of 1995.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20530 (202–395–7316).

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burdens of the proposed collection of information, including the validly of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: New Collection.*

(2) *Title of the Form/Collection:* Reengineered Foreign Students Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Examinations—Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions, Business or other for-profit. The INS and the United States and Information Agency (USIA) are initiating a pilot project to test a prototype of a reengineered Foreign Student and School Program as mandated under Subtitle D, Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The pilot effort will test an administrative process to use a computer-supported notification and reporting process from schools to the INS regarding foreign students and exchange visitors through the duration of their status in the United States.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 respondents at 60 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 4, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–31314 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting by Teleconference

Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH), established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will hold an open full committee meeting by teleconference on December 18, 1996, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3437A and B, Washington, DC. The teleconference meeting will begin at 1:00 p.m. and end at approximately 3:00 p.m.

The purpose of ACCSH is to provide continuing advice and recommendations to the Occupational Safety and Health Administration (OSHA) on matters relating to safety and health in construction employment. OSHA is seeking advice and recommendations of ACCSH on how to evaluate the practical application of OSHA's construction safety and health standards to the residential construction industry. Accordingly, the teleconference meeting will explore ways ACCSH can assist OSHA, such as through the utilization of an ACCSH workgroup or outside consultants. Due to scheduling difficulties, OSHA is unable to wait until the regularly scheduled meeting of ACCSH in march 1997 to request assistance. For the same reason, OSHA is unable to provide the usual 15-day advance notice of this teleconference meeting. However, a discussion of the teleconference meeting will take place at the March 1997 ACCSH meeting.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meting. The request, which can be in writing or by phone, should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the phone number listed below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Room N3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC, 20210. An official record of the teleconference meeting will be available for public inspection at the OSHA Docket Office, Room N2625, Telephone 202–219–7894.

Signed at Washington, DC, this 5th day of December 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–31453 Filed 12–9–96; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

Correction

In the meeting notice published on Dec. 6, 1996, page 64767, please make the following corrections to the agenda:

In items 3–12, replace ''draft interim'' with ''draft final'' wherever it appears.

In item 13, replace ''proposed revisions'' with ''draft final revisions''

Dated: December 6, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–31484 Filed 12–6–96; 2:40 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Reactor Operator and Senior Reactor Operator Licensing Training and Requalification Programs.

2. Current OMB approval number: 3150–0101.

3. How often the collection is required: As needed per facility; generally once or less per year.

4. Who is required or asked to report: All reactor licensees and applicants for an operating license at power and non-power reactors.

5. The number of annual respondents: 75 for power reactors and 30 for non-power reactors annually.

6. The number of hours needed annually to complete the requirement or request: 27,882 hours annually for power reactor licensees and 124 hours annually for non-power reactor licensees.

7. Abstract: The NRC requests copies of initial and requalification training material and examinations from reactor licensees/applicants. The training material is used by the NRC staff to develop operator and senior operator licensing and requalification examinations. The initial examinations are reviewed, modified, and approved by the NRC staff for use in licensing operators and senior operators; the requalification examinations are inspected to verify regulatory compliance.

Submit, by February 10, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC

Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 3rd day of December, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–31322 Filed 12–9–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. STN 50–454, STN 50–455]

Commonwealth Edison Company (Byron Station, Units 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–37 and NPF–66, which authorize operation of Byron Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Ogle County, Illinois.

II.

In its letter dated March 14, 1996, the licensee requested an exemption from the Commission's regulations. Title 10 of the *Code of Federal Regulations,* Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low-temperature overpressure transients that would produce pressure excursions exceeding the P/T limits of Appendix G to 10 CFR Part 50 while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the P/T limits of Appendix G to 10 CFR Part 50. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., starting reactor coolant pumps, and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint. Applying LTOP instrument uncertainties as required by WCAP–14040, Revision 1, results in an LTOP setpoint that would have resulted in an operating window between the LTOP setpoint and the minimum pressure required for reactor coolant pump seals, which is too small to permit continued operation.

The licensee has requested the use of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection,'' which allows exceeding the safety limits of 10 CFR Part 50, Appendix G, by 10 percent. ASME Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. ASME Code Case N–514 has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of Section XI of the ASME Code requires that the P/T limits be calculated (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Byron reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Code, Section XI, Appendix G. This approach results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would

be reduced, thereby improving plant safety.

IV.

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (61 FR 37294).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of Nov. 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–31324 Filed 12–9–96; 8:45 am]

BILLING CODE 7590–01–P

Niagara Mohawk Power Corporation Nine Mile Point, Unit 1; Order Imposing a Civil Monetary Penalty

[Docket No. 50–220, License No. DPR–63, EA 96–079]

I.

Niagara Mohawk Power Corporation (Licensee) is the holder of Operating License No. DPR–63 (License), issued by the Nuclear Regulatory Commission (NRC or Commission). The License authorizes the Licensee to operate the Nine Mile Point Unit 1 nuclear facility in accordance with the conditions specified therein.

II.

An inspection of the Licensee's activities was conducted between February 17 and March 11, 1996. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 18, 1996. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated July 16, 1996. In its response, the Licensee admitted the two violations assessed a civil penalty in Section I of the Notice, but requested that the penalty be mitigated. In addition, the Licensee denied the two violations in Section II of the Notice that were classified individually at Severity Level IV and not assessed a civil penalty. The Licensee provided a supplemental response, dated August 15, 1996, in which the Licensee subsequently admitted one of the Severity Level IV violations that it had denied in the July 16, 1996 response.

III.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations for which the civil penalty was proposed occurred as stated in the Notice, and that an adequate basis was not provided for mitigation of the civil penalty. Therefore, the penalty proposed for the violations designated in Section I of the Notice should be imposed.

IV.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The Licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Plant North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

whether, on the basis of the violations set forth in Section I of the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 3rd day of December 1996.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix

Evaluation and Conclusion

On June 18, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $50,000 was issued to the Niagara Mohawk Power Corporation (licensee) for violations of NRC requirements. Two of the violations were classified in the aggregate at Severity Level III, and a $50,000 civil penalty was proposed. Two other violations were classified individually at Severity Level IV. The licensee responded to the Notice on July 16, 1996, and admitted the two violations for which a penalty was proposed, but requested that the penalty

be mitigated. The licensee also denied the two violations that were not assessed a penalty. In a supplemental response, dated August 15, 1996, the licensee admitted one of the Severity Level IV violations that it had denied in the July 16, 1996 response. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violations

A. Title 10 of the Code of Federal Regulations, Part 50, (10 CFR 50), Appendix B, Criterion III, ''Design Control,'' requires that measures be established to verify the adequacy of design, such as by design reviews, alternate or simplified calculational methods, or suitable testing.

Nine Mile Point Unit 1 Updated Final Safety Analysis Report (UFSAR), Sections VI.C.1.2 and III.A.1.2, state that the reactor and turbine building pressure relief panels will blow out at 45 pounds per square foot (psf) to prevent failure of the building superstructures at an internal pressure in excess of 80 psf.

Contrary to the above, between October 1993 and March 1995, measures established failed to verify the adequacy of design for Unit 1 reactor and turbine building pressure relief panels to blow out at the specified pressures. Specifically, in October 1993, NMPC made an error in the assumptions for calculations regarding the installed, oversized bolts in the reactor and turbine building pressure relief panels. The error was not identified, during the review process, by either the independent engineering reviewer or approver. It was not recognized until March 1995 that the relief pressures were in excess of the designed blowout pressure of the superstructures. (01013)

B. 10 CFR 50.59(a)(1), allows, in part, the holder of a license to make changes to the facility as described in the safety analysis report unless the proposed change involves an unreviewed safety question.

10 CFR 50.59(b)(1) requires, in part, the licensee to maintain records of changes in the facility, to the extent that these changes constitute changes in the facility as described in the safety analysis report. The records must include a written safety evaluation which provides the bases for the determination that the change does not involve an unreviewed safety question.

Nine Mile Point Unit 1 UFSAR Sections VI.C.1.2 and III.A.1.2 state that the reactor and turbine building pressure relief panels will blow out at 45 psf to prevent failure of the building superstructure at an internal pressure in excess of 80 psf.

Contrary to the above, from December 1969 to March 1995, the actual design configuration of the reactor and turbine building pressure relief panels was different from that described in the UFSAR, and Niagara Mohawk Power Corporation (NMPC) did not perform the required written safety evaluation to provide the bases for a determination that the deviation from the UFSAR description did not involve an unreviewed safety question. Specifically, in October 1993, NMPC identified that the wrong size bolts had been installed in the relief panels during initial construction. Calculations revealed that the reactor and turbine building pressure relief panels would not relieve until 53 and 60 psf, respectively. Subsequent calculations revealed that the panels would not relieve until the pressure was in excess of the superstructure design blowout pressure of 80 psf stated in the UFSAR, and the licensee neither performed the evaluation required by 10 CFR 50.59, nor did it undertake adequate corrective action to restore the facility to the licensing basis configuration as specified in the UFSAR. (01023)

This is a Severity Level III problem (Supplement I). Civil Penalty—$50,000

2. Summary of Licensee Response Requesting Mitigation of the Penalty

In its July 16, 1996 response, the licensee admitted the two violations for which the civil penalty was proposed and stated its belief that a civil penalty is not warranted. In support of this belief, the licensee noted that the deficiencies in the blowout panel construction do not represent a significant safety issue; the blowout panels would have functioned as designed to prevent failure of the building superstructures; and the panels would only function in the event of a high energy line break outside containment, a scenario that the licensee indicated is not considered a design basis event for NMP–1.

The licensee also expressed concern that the violations and civil penalty may be the result of applying a relatively recent regulatory position and philosophy to actions that occurred over three years ago. The licensee noted that it appears that the NRC is considering all statements and commitments in the UFSAR as ''stand-alone'' regulatory requirements, and has applied a new and restrictive interpretation to the definition of ''margin of safety'' terminology in 10 CFR 50.59. The licensee further notes that the plant condition was identified by its staff as a result of a proactive evaluation to resolve a minor discrepancy in the UFSAR.

The licensee further noted in support of its mitigation request that it had not been assessed a penalty since 1992; that it has demonstrated a proactive approach to safety; and, contrary to a statement in the NOV transmittal letter, that it took immediate actions to restore the pressure relief panels to a condition consistent with the UFSAR once the calculational error was discovered, and the NRC did not appear to give any credit for this.

3. NRC Evaluation of Licensee Response

The NRC has carefully considered the licensee's response and concludes that the licensee has not provided an adequate basis for mitigation of the civil penalty.

Although the licensee did not specifically contest the Severity Level classification of the two violations in Section I of the Notice, the licensee appears to take issue with that classification by indicating that the deficiencies in the pressure relief panel construction do not represent a significant safety issue. The NRC concedes that the pressure relief panels likely would have functioned as designed to prevent failure of the building superstructures,[1] and the panels function only in the event of a high energy line break outside containment, which is not considered a design basis event for NMP–1. However, the NRC notes that the full resolution of this issue is still under the licensee's evaluation. Notwithstanding the result of that resolution, the NRC maintains that the two violations represent a significant regulatory concern and, therefore, were classified appropriately in the aggregate at Severity Level III.

In making this determination, the NRC considered the fact that this condition (the actual design configuration of the pressure relief panels was different from that described in the UFSAR) existed for approximately 26 years, without any written safety evaluation to provide the basis for a determination that the deviation from the UFSAR description did not involve an unreviewed safety question. A number of facts are most noteworthy: (1) the licensee identified, in October 1993, that the wrong size bolts (¼-inch diameter, as opposed to the correct sized 3⁄16-inch diameter bolts) had been installed in the relief

[1] This NRC position is based on more recent licensee reviews performed after the enforcement conference, which determined that both the reactor and turbine buildings would be capable of withstanding internal pressures in excess of 100 psf without superstructure failure.

panels during initial construction, (2) the licensee's October 1993 evaluation of the wrong bolts utilized assumptions inconsistent with the assumptions described in the UFSAR [2] and (3) a subsequent review, in March 1995, of the evaluation performed in October 1993, revealed that the assumptions were incorrect and that the panels would not relieve until the pressure was in excess of the superstructure design blowout pressure stated in the UFSAR (80 psf). Nonetheless, the licensee neither performed the required evaluation, nor undertook adequate corrective action to restore the facility to the licensing basis configuration as specified in the UFSAR. Given the length of time this condition existed, the inappropriate and inconsistent use of assumptions not described in the UFSAR, and the failure to promptly resolve and take appropriate action to address the issue of building overpressure when indications of a problem surfaced in 1993, the NRC contends that the violations represent a significant regulatory concern and were classified appropriately at Severity Level III.

With regard to the licensee's concern that the violations and imposition of a civil penalty may be the result of applying a relatively recent regulatory position and philosophy to actions that occurred over three year ago, Violations I.A and B involve the licensee's original construction installation of incorrect-sized bolts on the pressure relief panels, resulting in a change to the facility from that described in the plant's UFSAR, without preparing a written safety evaluation as required by 10 CFR 50.59. The NRC has always regarded such a change as requiring a written safety evaluation in accordance with 10 CFR 50.59. Thus, there has been no change in the NRC's interpretation of this requirement as it applies to the changes addressed in Violations I.A and B.

The NRC also acknowledges that this plant condition was identified by the licensee staff as a result of a proactive evaluation to resolve a discrepancy in the UFSAR, and the licensee has not been assessed a penalty since 1992. These factors were considered by the NRC as part of the civil penalty assessment process set forth in the NRC Enforcement Policy (NUREG–1600), as were the licensee's corrective actions. In addition, although the NRC acknowledges that the licensee took immediate actions to restore the pressure relief panels to a condition consistent with the UFSAR once the calculational error was discovered, the NRC maintains that no credit was warranted for these corrective actions. In October 1993, the licensee identified that the wrong bolts had been installed in 1969, and calculated the relief pressures to be 53 psf for the reactor building and 60 psf for the turbine building. This calculation was in error, and the relief pressures were actually in excess of 80 psf as the licensee identified in March 1995, at which time the licensee removed every other bolt to place themselves in a condition that the licensee believed was in compliance with the UFSAR. It was not until after being questioned by the NRC prior to the conference, that the licensee identified that the March 1995 calculations were also wrong. In addition, the calculations used to support the removal of every other bolt were flawed, yet the licensee, at the time of the enforcement conference, had not completed the evaluation required pursuant to 10 CFR 50.59 to change the UFSAR. Therefore, the NRC maintains that credit is not warranted for the licensee's corrective actions, which according to the Enforcement Policy, results in a civil penalty of $50,000 being assessed. The NRC concludes that the penalty for this Severity Level III problem should not be mitigated.

4. Restatement of Violation II.B

10 CFR 50.72(b)(1)(ii)(B), requires, in part, that the licensee shall notify the NRC as soon as practical and in all cases within one hour of the occurrence of any event or condition, during operation, that results in the nuclear power plant, including its principal safety barriers, being seriously degraded or in a condition that is outside the design basis of the plant.

10 CFR 50.73(a)(2)(ii)(B) requires that the licensee shall submit a Licensee Event Report (LER) within 30 days of the discovery of any event or condition that results in the condition of the nuclear power plant, including its principal safety barriers being seriously degraded or in a condition that is outside the design basis of the plant.

Contrary to the above, in October 1993, NMPC did not notify the NRC within one hour of the discovery of a condition outside the design basis of the plant, nor did NMPC submit a LER within 30 days of discovery of a condition outside the design basis of the plant. Specifically, with the plant operating, NMPC determined that the actual blowout pressures of the reactor and turbine building pressure relief panels were in excess of the buildings' design basis pressures identified in the Unit 1 UFSAR, and NMPC failed to make and submit the required reports in the required time periods. (02024)

This is a Severity Level IV Violation (Supplement I).

5. Licensee Response Denying Violation II.B

The licensee, in disagreeing with this violation, noted that in October of 1993, the calculations associated with the oversized bolts in the blowout panels indicated that the reactor and turbine building panels would relieve at internal pressures of 53 and 60 psf, respectively, and the UFSAR indicated that the buildings' design basis pressure was in excess of 80 psf. The licensee, therefore, concluded that this situation was not reportable even though the calculated blowout pressures did exceed the 45 psf nominal value for bolt failure as indicated in the UFSAR.

The licensee stated that in reaching this conclusion, it considered the guidance in NUREG–1022, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73,'' and various statements in the Federal Register (FR) related to the reportability rule. The licensee notes that NUREG–1022 provides an example where high energy line break restraints are not installed, but indicates that this would not be considered reportable if analysis shows that the particular missing restraints are not needed for compliance with the design basis. The licensee further indicates that the preamble to the final rule in the August 29, 1983, FR notes, in regard to this section of the rule, that ''[i]t is not intended that this paragraph apply to minor variations in individual parameters or to problems concerning single pieces of equipment.'' The licensee also noted that an April 8, 1993 FR states: ''Furthermore, the wording of the criteria and the guidance in the preamble to the final rule imply that this impact on plant safety should be at a fairly high level,'' and ''Therefore, failure, specification problems, and loss of safety margins that apply to individual components are not reportable unless they effect the ability to satisfy plant safety functions [3].''

The licensee indicated that, based on the above guidance, it concluded in October of 1993 that the calculated blowout pressures of 53 and 60 psf for the reactor and turbine buildings, respectively, would still have the ability

[2] The UFSAR description of the failure mode was the panel bolts shearing (one-way process analysis resulting in calculated failures of 94 psf and 92 psf for the reactor and turbine building, respectively). However, the licensee chose to analyze the panel relieving process by using a metal tearing failure mode (two-way process analysis resulting in calculated failures of 53 psf and 60 psf for the reactor and turbine building, respectively).

[3] 58 FR 18167, 18174, April 8, 1993

to satisfy the plant design basis. Specifically, the blowout panels would still protect the buildings' superstructure from failure, which was considered the plant design basis. The licensee contended that the 45 psf value is not considered the plant design basis for reportability considerations and none of the principle safety barriers was seriously degraded. Therefore, the licensee does not consider that this condition was reportable given the information available in October 1993, and therefore disagrees with this violation.

The licensee also notes that the description of the violation in the Notice of Violation, and particularly, the discussion of the violation in the transmittal letter, suggests that the NRC is applying a relatively recent regulatory position regarding the status of numerical values within the UFSAR. Specifically, the licensee states that it appears that the NRC is considering all statements and commitments in the UFSAR as ''stand-alone'' requirements. The licensee further notes that while stated in the second paragraph on page two of the NOV transmittal letter, but not cited as such in any of the violations, it appears that the NRC considers that the failure of the blowout panels to function at the UFSAR stated pressure of 45 psf is, in itself, a violation of regulatory requirements and a reportable situation. The licensee disagrees with this interpretation of the legal significance of the UFSAR, and is participating with the Nuclear Energy Institute (NEI) to initiate a dialogue with the NRC regarding the resolution of this generic issue. The licensee further states that notwithstanding its efforts to reach agreement on what the interpretation of information in the UFSAR should be, the licensee believes that it is clear that the NRC's regulatory interpretation is inconsistent with the previously issued guidance on reportability as referenced in the licensee's response.

6. NRC Evaluation of Licensee Response

The NRC agrees that the licensee, based on its erroneous calculations in October 1993, concluded that the pressure relief panels would provide relief at values below the reactor and turbine building superstructure failure pressure of 80 psf. While the licensee clearly should have been aware that the pressure relief panels would provide relief at values above the 80 psf superstructure pressures if the calculation had been adequately performed, it is also clear that the licensee could not report a condition that it was not aware of, even though it should have been aware of the condition. Nonetheless, the licensee was aware that the panels' pressure relief values calculated in 1993 were above the stated value of 45 psf stated in the UFSAR at which the panels were supposed to provide relief. The NRC maintains that the licensee was outside of its design basis and decreased the margin to the pressure that would cause building failure and, therefore, the deviation from the UFSAR should have been reported to the NRC.

The NRC maintains this position, notwithstanding the licensee's contention that the guidance in NUREG–1022 would suggest that the condition was not reportable. The NRC believes that the licensee misinterpreted the NUREG–1022 guidance and in so doing, failed to report the subject condition to the NRC. Simply stated, the licensee's analogy of a missing high energy line break restraint, which subsequently is analyzed as not being required for compliance with the design basis, is not applicable to the pressure relief panels, a single component which provides a significant function in protecting the building superstructure in the event of an overpressure transient of the reactor or turbine buildings.

7. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigating the civil penalty. Accordingly, the NRC has determined that a monetary civil penalty in the amount of $50,000 should be imposed for the violations in Section I of the June 18, 1996 Notice. In addition, the licensee has not provided an adequate basis for the withdrawal of Violation II.B in the Notice.

[FR Doc. 96–31323 Filed 12–9–96; 8:45 am]
BILLING CODE 7590–01–P

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Revision.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to revise the list of enforcement matters on which the NRC staff must consult with the Commission, to modify the Policy to provide that most predecisional enforcement conferences will be open to public observation, to clarify the circumstances in which a licensee-identified violation will be treated as a non-cited violation, and consideration of risk in developing sanctions.

DATES: This revision is effective on December 10, 1996. Comments are due on or before January 9, 1997. The change to Part V of the Enforcement Policy concerning open predecisional enforcement conferences does not apply to conferences that were announced prior to the effective date of this revision.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm, on Federal workdays. Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower-Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–2741.

SUPPLEMENTARY INFORMATION: The ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG–1600. The Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X: Enforcement Action Against Non-licensees. As described below, the Commission is amending the Enforcement Policy to address issues regarding consultation with the Commission, open predecisional enforcement conferences, non-cited violations, and risk-significant violations.

Commission Consultation

Most enforcement decisions are made at the NRC staff level. However, based on guidance in Section III of the Enforcement Policy ''Responsibilities,'' certain cases require formal Commission consultation. The practice of Commission consultation has existed since the Enforcement Policy was first published as an interim Policy in 1980. After 1980, the number of cases requiring this type of consultation has more than doubled. Most of the criteria for consultation were adopted many years ago, to address particular

Commissioner concerns or areas where the NRC staff had little experience. The NRC staff has had substantial experience in implementing the objectives of the Enforcement Policy. It is relatively rare that the Commission deviates from the recommended NRC staff approach. Thus, there is less need for mandatory Commission involvement in many enforcement matters.

Based on these factors and considering the significant effort currently expended in providing Commission consultation on enforcement matters, the Commission has given the NRC staff more flexibility to decide what enforcement issues should be brought to the Commission's attention because of policy significance, controversy, or known Commission interest.

Section III of the Enforcement Policy is being modified to delete the specific requirements for consultation with the Commission before the NRC staff issues enforcement actions involving material false statements, orders or civil penalties to unlicensed individuals, or civil penalties to licensed reactor operators. Because of the egregious nature of material false statement cases, it is logical that they would be considered very significant regulatory concerns and be categorized at Severity Level I and require Commission consultation on that basis (Section III(3) of the Enforcement Policy). The Commission believes that consultation regarding individual actions should be based on the merits of the particular case. Further, under the current Policy, civil penalties are not normally issued to unlicensed individuals or operators. These cases would receive Commission consultation at the request of the Executive Director for Operations (EDO). The Commission receives advance notification of all orders, including those issued to unlicensed individuals.

In addition, consultation will no longer be required when the NRC staff exercises discretion under Section VII.B.2 [1] and refrains from taking enforcement action for certain violations identified during extended shutdowns. The Commission will receive advance notification through Enforcement Notifications (ENs) for the first exercise of discretion for a plant meeting the criteria of Section VII.B.2. Notification, not consultation, will be required when the NRC staff exercises discretion under Section VII.A.1 in matters in which the civil penalty to be proposed deviates from more than two times the amount of the base civil penalty. However, item (2) of Section III of the Policy is being clarified to require consultation when the NRC staff proposes a civil penalty greater than 3 times the Severity Level I values shown in Table 1A for a single violation or problem. The NRC staff will continue to provide notification to the Commission for all civil penalties and orders.

Predecisional Enforcement Conferences

Historically, the Enforcement Policy has provided that enforcement conferences are closed meetings between the NRC and licensees to exchange information on potential safety issues. Section V of the current Enforcement Policy states that conferences, ''are not normally open to the public observation.'' However, on July 10, 1992, the Commission established a 2-year trial program to determine if the Policy should be changed to make most enforcement conferences open to the public. On July 19, 1994, the NRC announced that the trial program would be continued until the Commission had acted on the enforcement review team's recommendations.

The announcement of the trial program explained that the Commission's decision on whether to establish a permanent policy for making enforcement conferences open would be based on an assessment of the following criteria:

(1) Whether the fact that the conference was open impacted the NRC's ability to conduct a meaningful conference and/or implement the NRC's enforcement program;

(2) Whether the open conference impacted the licensee's participation in the conference;

(3) Whether the NRC expended a significant amount of resources in making the conference public; and

(4) The extent of public interest in opening the enforcement conference.

Under the trial program, approximately 25 percent of all eligible enforcement conferences were open to public observation. Open enforcement conferences were conducted in each regional office and with various types of licensees. Members of the public attended 40 of the 113 open conferences conducted. In most cases, three or fewer members of the public attended. The Commission received and evaluated comments from licensees and members of the public.

The most significant concern in allowing public observation at enforcement conferences was that open conferences could inhibit open and candid discussions between the NRC and licensees, limit the free exchange of information, reduce conference effectiveness, and negatively impact the enforcement program. Although industry reiterated this concern during the trial program, the Commission has not found that open enforcement conferences conducted during the trial program were substantially less frank and open, nor was the NRC prevented from obtaining the information required to implement its enforcement program. In some cases, the NRC staff needed to ask licensees additional questions, but the information ultimately provided was always sufficient to meet predecisional enforcement conference goals.

Opening predecisional enforcement conferences is consistent with the agency's principles of good regulation and normal agency policy (''Staff Meetings Open to the Public; Final Policy Statement,'' 59 FR 48340; September 20, 1994). The intent of open conferences is not to maximize public attendance, but to provide the public with an opportunity to observe the regulatory process. Although making highly technical meetings open to the public exposes participants to the risk that information may be misunderstood or misconstrued, the Commission does not find that the risk outweighs the public confidence gained by allowing open observation of NRC predecisional enforcement conferences.

After considering the impact on the NRC's ability to exercise its regulatory and safety responsibilities, the impact on the candor and openness of communications during enforcement conferences, the impact on NRC resources, and the benefit to the public, the Commission has decided to modify the Enforcement Policy to provide that most conferences will be open to public observation. However, as for any public meeting, the NRC retains the discretion to close the conference for a specific case. The criteria for closing conferences are currently addressed in Section V of the Enforcement Policy. With two additions, these criteria will continue to be used. The changes involve opening a conference if it is based on an NRC Office of Investigations (OI) report that has been publicly disclosed and providing flexibility to open or close a conference with the approval of the Executive Director for Operations. The Enforcement Policy will continue to emphasize that predecisional enforcement conferences are open for public observation and not participation consistent with the NRC's policy on open meetings. The change to the Enforcement Policy that opens predecisional enforcement conferences

[1] After the issuance of NUREG–1525, Section VII.B.3 of the Enforcement Policy was renumbered as Section VII.B.2.

will be applied to conferences for which the date is announced after the effective date of this revision.

Non-Cited Violations

The Enforcement Policy provides examples of when discretion generally should be considered for departing from the normal approach under the Policy. Section VII.B.1. addresses non-cited violations (NCVs) which are used to recognize the existence of a legal violation but are not formal violations. NCVs are used to provide an incentive to licensees to identify and correct violations. Criterion 1.(a). in Section VII.B.1. is a Severity Level IV violation that was ''identified by the licensee, including identification through an event.''

This discretion is normally used when the licensee identifies and corrects a non-recurring violation. However, this provision is not normally used for violations that meet the criteria for Severity Level III violations, and where the circumstances justify characterization at Severity Level IV. Such cases normally are the more significant Severity Level IV violations. In addition, the NRC has considered whether this exercise of discretion should normally be used in cases involving violations identified through an event. If the root cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event, the licensee should not be rewarded by the NRC's exercising discretion not to cite the violation. On the other hand, there may be cases when, notwithstanding a self-disclosing violation, the licensee demonstrated initiative in identifying the violation's root cause. In such a case, an NCV may be appropriate.

In general, when the licensee's identification is through an event, discretion should only be exercised when the licensee has demonstrated initiative. Further, the violation should be cited if it caused the event, the cause is obvious, or a clear opportunity existed to identify the violation and take action to prevent the event. The Commission believes that the Enforcement Policy should be clarified by deleting the reference to identification through an event in the criterion in Section VII.B.1.(a) to make it clear that use of discretion is not automatic if the violation is identified through a self-disclosing event.

Risk-significant Violations

In evaluating violations for enforcement, the higher the risk from a violation, the greater the severity level and sanction should be. However, the converse is not necessarily true; low risk should not necessarily result in no sanction or a minor violation being cited. This is because many violations, although having low risk significance, may indicate a broader problem, often indicative of a programmatic licensee failure to comply with NRC requirements and, therefore, have a high regulatory significance.

The Enforcement Policy currently does not address risk explicitly, except in Section VII.A.1.e, which addresses the escalation of enforcement sanctions in situations when the excessive duration of a problem has resulted in a substantial increase in risk. Although there is inherent discretion in the Enforcement Policy to increase Severity Levels and sanctions based on risk, the Commission believes it is appropriate to modify the Policy to state the consideration of risk aspects more clearly.

In analyzing risk, the NRC recognizes the uncertainties associated with risk assessment. Generally, qualitative rather than quantitative risk assessments are made given the number of variables associated with risk assessment. Risk should be a consideration in proposing enforcement actions, but not necessarily determinatative. In developing higher civil penalties, the Commission intends to consider, where appropriate, assessing separate civil penalties for each violation that is aggregated into a Severity Level II problem.

Therefore, to provide sufficient discretion to be able to appropriately consider risk in enforcement decisions, Section IV of the Policy is being modified to state that in considering the significance of a violation, the NRC considers the technical significance, i.e., actual and potential consequences, and the regulatory significance; and that in evaluating the technical significance, risk is an appropriate consideration. Further, Section VII.A.1.(e) is being modified to state that exercise of discretion should be considered in situations where the violation has resulted in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase.

Paperwork Reduction Act Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy is amended by revising Section III, the first paragraph in Section IV, Section V, and Sections VII.A.1.(e) and VII.B.1(a) to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

* * * * *

III. Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Nuclear Material Safety, Safeguards and Operations Support (DEDS), and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research (DEDR), have been delegated the authority to approve or issue all escalated enforcement actions.[4] The DEDS is responsible to the EDO for the NRC enforcement programs. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement programs. The Director, OE, acts for the Deputy Executive Directors in enforcement matters in their absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the appropriate Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities.

[4] The term ''escalated enforcement action'' as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

Enforcement orders are normally issued by a Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Director, Office of the Controller, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, ''Exercise of Enforcement Discretion.'' The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose a civil penalty greater than 3 times the Severity Level I values shown in Table 1A for a single violation or problem;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any action the EDO believes warrants Commission involvement;

(5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(6) Any proposed enforcement action on which the Commission asks to be consulted.

IV. Severity of Violations

Regulatory requirements[5] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

* * * * *

V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective action taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective action.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public observation against

[5] The term ''requirement'' as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, ''Staff Meetings Open to Public,'' published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800–952–9674, (3) a toll-free electronic bulletin board at 800–952–9676, and on the World Wide Web at the NRC Office of Enforcement homepage (www.nrc.gov/OE). In addition, the NRC normally will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the ''Standard Operating Procedures for Providing Security Support for NRC Hearings and Meetings,'' published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18″ be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VII. Exercise of Discretion

* * * * *

A. Escalation of Enforcement Sanctions

* * * * *

1. * * *

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

* * * * *

B. Mitigation of Enforcement Sanctions

* * * * *

1. Licensee-Identified Severity Level IV Violations. The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

(a) It was identified by the licensee;

* * * * *

Dated at Rockville, MD, this 4th day of December, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–31319 Filed 12–9–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 2:30 p.m. on December 9, 1996.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. C96–1.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–31406 Filed 12–6–96; 10:50 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

Notice of Vote to Close Meeting

At its meeting on December 2, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for January 6, 1997, in Washington, D.C. The members will be briefed on: (1) Classroom Publication Prices; (2) a proposed filing with the Postal Rate Commission for Parcels; and (3) will consider funding approval for International Service Centers.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

As to the first and second item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

As to the third term, the Board determined that pursuant to section 552b(c) (3) and (10) of title 5, United States Code; and section 410(c) (2) and (3) of title 39, United States Code; and section7.3 (c) and (i) of title 39, Code of Federal Regulations, the meeting is

exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c) (3), (9) and (10) of title 5, United States Code; section 410(c), (2) and (3) of title 39, United States Code; and section 7.3(c), (i) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–31443 Filed 12–6–96; 12:44 pm]

BILLING CODE 7710–12–M

Sunshine Act Meeting; Board of Governors

Amendment to Closed Meeting Agenda

Federal Register Citation of Previous Announcement: 61 FR 58431, November 14, 1996, and 61 FR 59473, November 22, 1996.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 2, 1996.

CHANGE: Addition of the following items to the closed meeting agenda:

1. Consideration of Compensation Issues.
2. Consideration of Purchasing Procedures.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, (202) 268–4800.

At its meeting on December 2, 1996, the Board of Governors of the United States Postal Service voted unanimously to add to the agenda consideration of (1) compensation issues, and (2) purchasing procedures, and that discussion on the items was closed to the public pursuant to section 552b(c) (2), (6) and (7) of title 5, United States Code; and section 7.3 (b), (f) and (g) of title 39, Code of Federal Regulations, and that no earlier announcement was possible.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting was properly closed to public observation, pursuant to section 552b(c) (2), (6) and (7) of Title 5, United States Code; and section 7.3 (b), (f) and (g) of Title 39, Code of Federal Regulations.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–31444 Filed 12–6–96; 12:44 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22369; No. 812–10254]

Midland National Life Insurance Company, et al.

December 4, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Midland National Life Insurance Company (''Midland''), Midland National Life Separate Account A (''Separate Account A''), Midland National Life Separate Account C (''Separate Account C,'' together with Separate Account A, the ''Midland Separate Accounts''), Investors Life Insurance Company of Nebraska (''Investors''), Investors Life Separate Account B (''Separate Account B''), and Investors Life Separate Account D (''Separate Account D,'' together with Separate Account B, the ''Investors Separate Accounts'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 17(b) granting an exemption from the provisions of Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit a transfer of assets and assumption of liabilities of Separate Account B by Separate Account A and of Separate Account D by Separate Account C.

FILING DATE: The application was filed on July 15, 1996, and amended on December 2, 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 30, 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 writer'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 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Jack L. Briggs, Esq., Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, South Dakota 57193.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Law Clerk or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Midland, a South Dakota stock life insurance company, is a wholly-owned subsidiary of Sammons Enterprises, Inc.

2. Midland established the Midland Separate Accounts as separate accounts pursuant to South Dakota law. Each of the Midland Separate Accounts is a ''separate account,'' as defined by Section 2(a)(37) of the 1940 Act, and is registered with the Commission pursuant to the 1940 Act as a unit investment trust.

3. Certain variable life insurance contracts sponsored by Midland and issued through Separate Account A are registered with the Commission pursuant to the Securities Act of 1933 (the ''Securities Act''). Certain variable annuity contracts sponsored by Midland and issued through Separate Account C are registered with the Commission pursuant to the Securities Act.

4. Each of the Midland Separate Accounts is divided into ten investment divisions, each of which invests exclusively in shares of a corresponding portfolio of Variable Insurance Products Fund or Variable Insurance Products Fund II (together, the ''funds''), open-end management investment companies registered with the Commission pursuant to the 1940 Act.

5. Investors, a South Dakota stock life insurance company, is a subsidiary of Midland.

6. Investors established the Investors Separate Accounts as separate accounts pursuant to South Dakota law. Each of the Investors Separate Accounts is a ''separate account,'' as defined by Section 2(a)(37) of the 1940 Act, and is registered with the Commission

pursuant to the 1940 Act as a unit investment trust.

7. Certain variable life insurance contracts sponsored by Investors and issued through Separate Account B are registered with the Commission pursuant to the Securities Act. Certain variable annuity contracts sponsored by Investors and issued through Separate Account D are registered with the Commission pursuant to the Securities Act.

8. Each of the Investors Separate Accounts is divided into ten investment divisions, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

9. Midland and Investors have determined to engage in transactions whereby Investors will be reorganized with and merged into Midland, with Midland as the surviving corporation (such transactions, collectively, the ''Reorganization''). Prior to the effective date of the Reorganization, an Agreement and Plan of Reorganization (the ''Agreement'') will have been approved and adopted by the respective Boards of Directors of Midland and Investors, the South Dakota Division of Insurance and any other applicable regulatory authority.

10. On the effective date of the Reorganization: (a) Midland will assume ownership of all the assets of Investors, including all the assets held in the Investors Separate Accounts; (b) Midland will conduct the business presently conducted by Investors, and will be responsible for satisfaction of all of the liabilities and obligations of Investors; and (c) Investors will cease to exist as a separate corporate entity. Midland will then control two separate accounts supporting identical variable universal life insurance contracts, and two separate accounts supporting identical variable annuity contracts.

11. After considering the nature and purpose of each separate account, the respective Board of Directors of Midland and Investors have determined that the efficiency of the operations of the separate accounts after the Reorganization could be improved, and the overall administration enhanced, by merging Separate Account B into Separate Account A, and by merging Separate Account D into Separate Account C. The Reorganization will be structured so there will be no change in the rights and benefits of persons having an interest in any of the variable life insurance contracts or variable annuity contracts issued by the separate accounts.

12. Following the transactions set forth in the Agreement, each Separate Account B contract owner will possess a number of Separate Account A units, (both full and fractional) that when multiplied by the unit value of Separate Account A units, would result in an aggregate unit value equal to the aggregate unit value of the units the contract owner had in Separate Account B immediately before the consummation of the Reorganization. A similar method of crediting units will apply to Separate Account C units credited to Separate Account D contract owners.

13. Upon the effective date of the Reorganization, Midland will succeed to all of the business and operations of Investors, including the obligations pursuant to the variable life and variable annuity contracts issued by Investors. Midland will distribute to each Separate Account B and Separate Account D contract owner: (a) a contract rider indicating that such contracts are thereafter funded by Separate Account A or Separate Account C, as appropriate; (b) a prospectus supplement in the form of a letter informing such contract owners of the Reorganization; and (c) a copy of the current prospectus for Separate Account A or Separate Account C, as appropriate.

14. Except for the change in the depositor and the separate account funding the variable life or variable annuity contracts, all the rights and benefits of Separate Account B and Separate Account D contract owners will remain unchanged after the Reorganization. In particular, the assets supporting the former Separate Account B and the former Separate Account D will continue to be invested exclusively in shares of the Funds. The fees deducted from the assets supporting the former Separate Account B and Separate Account D after the Reorganization will not differ in type or amount from those currently being deducted from Separate Account A and Separate Account C, respectively.

15. Midland and Investors assert that the substitution of Separate Account A for Separate Account B as the investment vehicle for the variable life contracts and of Separate Account C for Separate Account D as the investment vehicle for the variable annuity contracts will have no tax consequences for contract owners. Midland and Investors will pay all of the costs in connection with the proposed Reorganization and no charges will be imposed on or other deductions made from the separate accounts in connection with the Reorganization.

16. After the effective date of the Reorganization, Separate Account B and Separate Account D will each submit an application to the Commission pursuant to Section 8(f) of the 1940 Act to deregister as an investment company.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or sell any security or other property from or to such registered company.

2. Section 17(b) of the 1940 Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the 1940 Act if evidence establishes that: (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; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

3. The Reorganization may be subject to the provisions of Section 17(a) of the 1940 Act since an investment company (Separate Account B or Separate Account D) is selling its assets to another investment company (Separate Account A or Separate Account C) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act to the extent necessary to exempt the Reorganization from the provisions of Section 17(a) of the 1940 Act.

5. Applicants assert that the terms of the Reorganization are fair and reasonable and that the investment objectives, policies, restrictions and portfolios of the participating investment companies are compatible. All of the separate accounts concerned invest exclusively in shares of the Funds and, after the consummation of the Reorganization, Separate Account A and Separate Account C will continue to invest in shares of the Funds, providing holders of variable contracts issued by Investors with the same investment options. Accordingly, the Reorganization will not result in any change in the investment objectives, policies, restrictions, or portfolios of the separate accounts funding the variable contracts issued by Investors.

6. The Reorganization will not result in any change in charges, costs, fees or expenses borne by any contract owner. No direct or indirect costs will be

incurred by any separate account concerned as a result of the Reorganization.

7. Applicants assert that the Reorganization does not involve overreaching on the part of any party involved and is consistent with the general purposes of the 1940 Act. The purpose of each of the mergers involved in the Reorganization is to consolidate two identical separate accounts, both of which issue identical contracts and invest in the same underlying Funds, into a single separate account. These mergers will allow for administrative efficiencies and cost savings by Midland because it can consolidate its separate account operations. It will also allow owners of contracts of Investors to participate in separate accounts that have sizeable net assets.

8. Applicants represent that the Reorganization is consistent with the policy of each separate account as set forth in its registration statement. Because the assets of the Investors Separate Accounts will continue to be invested in shares of one or more portfolios of the Funds after the Reorganization, the assets underlying all of the various contracts will continue to be invested in accordance with the investment policies recited in their respective registration statements.

9. Applicants represent that the Midland Separate Accounts will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses pursuant to Rule 12b–1 of the 1940 Act, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan pursuant to Rule 12b–1.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the investment policies of the Midland Separate Accounts and the Investors Separate Accounts as recited in their registration statements, are consistent with the general purposes of the 1940 Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31332 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22366; 812–10166]

The Victory Portfolios, et al.; Notice of Application

December 3, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Victory Portfolios, SBSF Funds, Inc. dba the Key Mutual Funds (the ''Key Mutual Funds'') (collectively, the ''Funds''), and KeyCorp Mutual Fund Advisers, Inc. (''Key Advisers'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from the provisions of section 15(a) of the Act and rule 18f–2 thereunder, and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''1934 Act''), items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A, item 3 of Form N–14, item 48 of Form N–SAR, and sections 6–07.2(a), (b), and (c) of Regulation S–X.

SUMMARY OF APPLICATION: Applicants seek an order permitting Key Advisers, as investment adviser to the Funds, to enter into subadvisory contracts with sub-advisers without receiving prior shareholder approval, and the Funds to disclose only aggregate sub-advisory fees for each series in their prospectuses and other reports.

FILING DATE: The application was filed on May 23, 1996, and amended on September 16, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1996 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: The Victory Portfolios and Key Mutual Funds, 3435 Stelzer Road, Columbus, OH 43219–3035; Key Advisers, 126 Public Square, Cleveland, OH 44114–1306.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, 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.

Applicants' Representations

1. The Victory Portfolios, a Delaware business trust, and Key Mutual Funds, a Maryland corporation, are open-end management investment companies registered with the SEC under the Act. Each Fund currently has one or more investment series (''Series'') with different investment objectives and policies.[1]

2. The Funds plan to establish new Series, each structured as a ''fund of funds'' that will invest in shares of one or more other mutual funds beyond the limits in section 12(d)(1) of the Act. On May 20, 1996, applicants filed an application for exemptive relief from sections 12(d)(1) and 17 of the Act to implement and operate these funds. A ''fund of funds'' may invest in an underlying fund that is relying on the order requested in the immediate application.

3. Key Advisers, an Ohio corporation, is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). It is a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc., which is a wholly-owned subsidiary of KeyBank National Association, which is a wholly-owned subsidiary of KeyCorp. Under its current investment advisory agreement with The Victory Portfolios (the ''Current Agreement''), Key Advisers is responsible for conducting investment research and supervision and for the purchase and sale of investments. Under the Current Agreement, Key Advisers may delegate

[1] Applicants also request relief with respect to any future open-end management investment company advised by Key Advisers.

a portion of its responsibilities to a sub-adviser.

4. Key Advisers has entered into an investment sub-advisory agreement with its affiliate, Society Asset Management, Inc., on behalf of each Series of The Victory Portfolios except the Fund for Income Series and the Special Growth Fund Series. With respect to the day-to-day management of each of the Series, Society, under the sub-advisory agreement, makes decisions concerning, and places all orders for, purchases and sales of securities. The sub-advisory agreement does not result in the payment of additional fees by The Victory Portfolios.

5. Key Advisers currently serves as the investment adviser to two funds of the Key Mutual Funds that have recently commenced operations. Spears, Benzak, Salomon & Farrell, Inc. (''SBSF''), a New York corporation that is registered with the SEC as an investment adviser under the Advisers Act, currently serves as the investment adviser to the other four funds of the Key Mutual Funds. It is anticipated that the directors and shareholders of the Key Mutual Funds will be asked to approve Key Advisers as investment adviser to the Key Mutual Funds. The Key Mutual Funds will not rely on the requested relief until it receives the necessary shareholder approval and key Advisers becomes the investment adviser.

6. Key Advisers intends to adopt a ''manager of managers'' approach with respect to one or more existing or future Series of the Funds (''Participating Series''). Under this approach, Key Advisers would employ one or more investment advisers (''Money Managers'') to exercise investment discretion over the various asset classes in which the participating Series invest. Key Advisers would enter into a portfolio management agreement with each Money Manager (a ''Portfolio Management Agreement''). Each Portfolio Management Agreement would provide, among other things, that the Money Manager would be responsible for continuously reviewing, supervising, and administering the relevant Participating Series' investment program with respect to the portion of the Participating Series' assets assigned to it.

7. Subject to shareholder approval, each Participating Series would enter into an investment advisory agreement with Key Advisers (''Investment Advisory Agreement'') that would authorize the ''manager of managers'' approach. Under the Investment Advisory Agreement, Key Advisers would: (a) determine the asset classes in which Participating Series would invest; (b) evaluate and select Money Managers; (c) perform internal due diligence on prospective Money Managers and thereafter monitor Money Managers' performance through quantitative and qualitative analysis as well as in person, telephonic, and written consultations; (d) determine the percentage of assets to be managed by a particular Money Manager; (e) supervise compliance with the investment objectives and policies of each Participating Series; (f) authorize a Money Manager to engage in certain investment techniques for a Participating Series; (g) recommend to the boards of directors of the Funds (the ''boards'') whether Portfolio Management Agreements should be renewed, modified, or terminated; (h) recommend to the Boards the addition of new Money Managers as it deems appropriate; and (i) provide overall management and supervision of the Funds' operations.

8. In return for providing the services described in paragraph 7 above, Key Advisers would receive a fee from each Participating Series, computed as a percentage of net assets. Under the ''manager of managers'' approach, Key Advisers would pay the Money Managers out of this fee. The prospectus of each Participating Series will disclose the aggregate amount of the investment advisory fee paid to Key advisers, rather than the sub-advisory fees paid to individual Money Managers.

9. Except as discussed in the next sentence, applicants request an order permitting Key Advisers to enter into and materially amend Portfolio Management Agreements with Money Managers without obtaining shareholder approval. Key Advisers will not enter into a Portfolio Management Agreement with a Money Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the participating Series or Key Advisers other than by reason of serving as Money Manager of the Series (an ''Affiliated Money Manager''), without such agreement being approved by the shareholders of the applicable Participating Series.

10. Applicants also request an exemption from the disclosure provisions described below that may be deemed to require disclosure of fees paid to each Money Manager.

11. Form N–1A is the registration statement used by open-end management investment companies to register under the Act and to register their securities under the Securities Act of 1933 (the ''1933 Act''). Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A, taken together, may be deemed to require the Participating Series to disclose compensation paid to the investment company's investment adviser and the method of computing the fee.

12. Item 3 of Form N–14, the registration form for business combinations involving mutual funds, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' in item 2 of Form N–1A.

13. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the 1934 Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a tale of the current and pro forma fees using the format prescribed in item 2 of Form N–1A. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' the ''terms of the contract to be acted upon,'' and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers.

14. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to investment advisers.

15. Regulation S–X sets forth the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and the 1933 Act. Sections 6–07.2(a), (b), and (c) of Regulation S–X may be deemed to require that the Funds' financial statements contain information concerning fees paid to the Money Managers.

16. Applicants request an exemption to permit each Participating Series of the Funds to disclose (both as a dollar amount and as a percentage of a Participating Series' average daily net assets) only: the total advisory fee that Key Advisers is paid by each Participating Series, the aggregate fees that Key Advisers pays to all Money Managers managing the assets of each Series, and the net advisory fee retained by Key Advisers for its services

provided to each Participating Series after Key Advisers pays the Money Managers (collectively, ''Aggregate Fees''). If a Participating Series employs an Affiliated Money Manager, the Participating Series will provide separate disclosure of any fees paid to such Affiliated Money Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants assert that relief from section 15(a) and rule 18f–2 should be granted because the Participating Series will be operated in a manner so different from that of conventional investment companies that shareholder approval of advisory contracts would not serve any meaningful purpose. Applicants contend that, by investing in a Participating Series, shareholders, in effect, will hire key Advisers to manage the Participating Series' assets by using its proprietary investment adviser selection and monitoring process rather than by hiring its own employees to manage assets directly. Applicants argue that shareholders will expect that Key Advisers, under the overall authority of the board, will take responsibility for overseeing Money Managers and recommending their hiring, termination, and replacement.

3. Applicants contend that the requested relief also will benefit shareholders by enabling the Participating Series to operate in a less costly and more efficient manner. Applicants argue that the requested relief will reduce expenses because a Participating Series will not have to prepare and solicit proxies each and every time a Portfolio Management Agreement is entered into or materially modified. Applicants believe that the requested relief also will enable a Participating Series to hire, terminate, and replace Money Managers more efficiently. Applicants also contend that the requested relief will relieve shareholders of the very responsibility that they are paying Key Advisers to assume: the selection, termination, and compensation of Money Managers. Finally, applicants assert that several of the conditions in the application are designed to protect shareholder interests through careful Board oversight of the Participating Series and their arrangements with Key Advisers and the Money Managers.

4. Applicants argue that, under the manager of managers approach, disclosure of fees paid to Money Managers would not serve any meaningful purpose since investors will pay Key Advisers to retain and compensate the Money Managers. Applicants also contend that many Money Managers charge their customers for advisory services according to a ''posted'' fee schedule. Applicants note that, while Money Managers may be willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Thus, applicants contend that the requested disclosure relief may encourage Money Managers to negotiate lower advisory fees with Key Advisers, the benefits of which ultimately may be passed on to shareholders.

5. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that their request satisfies these standards.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Before a Participating Series may rely on the order requested herein, the operation of the Participating Series in the manner described in the application will be approved by a majority of each Participating Series' outstanding voting securities, as defined in the Act, or, in the case of a newly-created Participating Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder before offering shares of the Participating Series to the public.

2. The prospectus for each Participating Series will disclose the existence, substance, and effect of the order. In addition, each Participating Series will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus and any sales materials or other shareholder communications relating to the Participating Series will prominently disclose that Key Advisers has ultimate responsibility for the investment performance of the Participating Series due to its responsibility to oversee Money Managers and recommend their hiring, termination, and replacement.

3. Within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Portfolio Management Agreement, Key Advisers will furnish shareholders all information about the new Money Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order with respect to the disclosure of fees paid to the Money Managers. Such information will include disclosure of the Aggregate Fees and any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in a Participating Series' Portfolio Management Agreement. To meet this obligation, within 60 days of the hiring of a new Money Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, Key Advisers will provide shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the 1934 Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act, except as modified by the order with respect to the disclosure of fees paid to the Money Managers.

4. Key Advisers will not enter into a Portfolio Management Agreement with any Affiliated Money Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Participating Series.

5. At all times, a majority of each Fund's Board will not be ''interested persons'' of the Funds within the meaning of the Act (''Non-interested Trustees''), and the nomination of new or additional Non-interested Trustees will be placed within the discretion of the then existing Non-interested Trustees.

6. When a Money Manager change is proposed for a Participating Series with an Affiliated Money Manager, the Funds' trustees, including a majority of Non-interested Trustees, will make a separate finding, reflected in that Fund's board minutes, that such change is in the best interest of the Participating Series and its shareholders and does not involve a conflict of interest from which Key Advisers or the Affiliated Money Manager derives an inappropriate advantage.

7. Separate counsel knowledgeable about the Act and the duties of Non-

interested Trustees will be retained to represent each Fund's Non-interested Trustees. The selection of such counsel will be placed within the discretion of the Non-interested Trustees.

8. Key Advisers will provide each Fund's Board no less frequently than quarterly with information about Key Advisers' profitability for each Participating Series relying on the relief requested in the application. Whenever a Money Manager to a particular Participating Series is hired or terminated, Key Advisers will provide the Fund's Board with information showing the expected impact on Key Advisers' profitability, and quarterly reports will reflect the impact on profitability of the hiring or termination of Money Managers during the quarter.

9. Key Advisers will provide general management and administrative services to the Participating Series and, subject to board review and approval, will: (a) set the Participating Series' overall investment strategies, (b) recommend Money Managers, (c) allocate and, when appropriate, reallocate the Participating Series' assets among Money Managers, (d) monitor and evaluate Money Manager performance, and (e) oversee Money Manager compliance with the Participating Series' investment objective, policies, and restrictions.

10. No director, trustee, or officer of the Funds or Key Advisers will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Money Manager except for: (a) ownership of interests in Key Advisers or any entity that controls, is controlled by, or is under common control with Key Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31335 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38012; File No. SR–CBOE–96–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Collection of Commission Income by an Non-Executing Floor Broker and Pooling of Floor Brokerage

December 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 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 Item 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 Chicago Board Options Exchange, Incorporated proposed to delete Rule 6.25, Pooling of Floor Brokerage, and Rule 14.6, Collection of Floor Brokerage. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 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 delete two rules, Rule 6.25 and Rule 14.6, which place limitations on the conduct of a floor brokerage business on the floor of the Exchange. The Exchange believes that these rules are now no longer necessary to achieve their original purpose, *i.e.*, to ensure that customer orders are handled with due diligence, in light of the adoption of rules which specifically govern floor broker behavior and in light of changes in the industry over the last twenty years since these rules were adopted.

Rule 6.25

Rule 6.25, Pooling of Floor Brokerage, prohibits a member organization that has one or more floor brokers who are nominees of or whose memberships are registered for the member organization to enter into any agreement, arrangement, or understanding with another such organization whereby such organizations are to handle floor brokerage for each other. The rule 6.25 prohibition does not apply to the handling of floor brokerage by one such firm for another on an occasional basis or to an arrangement permitted by the Equity Floor Procedure Committee in writing. Buy its terms, the Rule also does not prohibit an independent floor broker from handing floor brokerage for a member organization.

Both Rule 6.25 and Rule 14.6 were adopted at the infancy of the Exchange in a very different environment than exists now. The adoption of these rules was a simple method to ensure that floor brokers provided good service to their customers. Rule 6.25 was intended to prevent the larger member firm organizations from dominating the floor brokerage business, thus limiting competition. A rule that prohibits a floor broker from employing the services of a member organization employing more than one floor broker, however, could severely limit that brokers ability to handle his order flow in an efficient and timely manner, particularly at those posts without an independent floor broker. The Exchange believes, therefore, that this rule might actually hinder the efficient representation of customer orders on the floor and that floor broker organizations should be given the opportunity to develop such relationships as they feel can best enable them to service their customers. According to the CBOE, deletion of Rules 6.25 and 14.6 would remove the Exchange from the business of making business determinations for the floor brokers about what type of relations can best meet their needs and allow them to best service their customers.

Rule 14.6

Rule 14.6, Collection of Floor Brokerage, requires a member who acts as a floor broker for another member to collect and retain the entire brokerage

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and prohibits the collecting broker from dividing the brokerage with any other person. Rule 14.6, however, does permit the brokerage earned by a nominee of, or a broker whose membership is registered for, a member organization to be paid to the member organization. In this event, the member's compensation from the member organization must be commensurate with the brokerage so contributed and other services rendered.

The deletion of Rule 14.6 would permit a floor broker who is absent from the trading crowd when the related trade occurs (''absent floor broker'') to collect and retain the brokerage commission for an order executed by another floor broker (''executing floor broker'') on behalf of the absent floor broker. Currently, the limitations of Rule 14.6 create a practical problem when a floor broker must leave a trading crowd to attend to other business or personal matters. In these situations, the floor broker often will give his orders to another floor broker to execute on his behalf in order to ensure the customer does not miss out on a market opportunity in his absence. However, the customer of the absent floor broker ordinarily will not have a relationship with the executing broker and will not expect to receive a bill from the executing broker. Under the proposed rule change, the absent floor broker would be entitled to bill the customer for the trade executed by the executing floor broker with the bill for all the other trades executed by the absent floor broker on behalf of that customer. The proposal, therefore, would reduce the chance of customer confusion and would also reduce administrative burdens for the floor brokers.

The Exchange believes it is proper for the floor brokers to make any business arrangements among themselves which they believe to be appropriate and which would lead to the efficient conduct of business. In light of the potential customer confusion and the administrative burdens, the Exchange does not believe the restriction against collecting brokerage for a trade executed on one's behalf serves a useful regulatory purpose in situations where a floor broker must leave a trading crowd for personal reasons or to attend to other business.

Regardless of who is being paid the brokerage commission for the trade, however, the floor broker who actually executes the trade would have to have his or her acronym placed on the trade ticket and would be responsible for using due diligence in the handling of the order and in fulfilling all the other responsibilities of a floor broker in the representation of the order pursuant to Exchange rules. The Exchange believes that because the executing floor broker will be held responsible under Exchange rules for handling the order, the order will be treated with proper care by the executing floor broker regardless of who is paid for the trade. In addition, the Exchange believes that floor brokers will have a financial incentive to execute the orders either because of a reciprocal relationship of passing along orders or through a sharing of the brokerage commission.

By eliminating outdated restrictions on the conduct of floor brokerage on the floor, the proposed rule change should help to provide floor brokers with the flexibility to develop relationships which should provide for the most efficient conduct of customer business on the floor and at the same time should avoid customer confusion by eliminating additional bills for brokerage services. The proposed rule change, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–63 and should be submitted by December 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31333 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38015; File No. SR–NYSE–96–32]

Self-Regulatory Organizations; New York Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Exchange's Policy on Tape Indications

December 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 26, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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 self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

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 NYSE, pursuant to Rule 19b–4 of the Act,[2] proposes to amend the Exchange Policy on Indications, Openings and Reopenings, which will be issued as an Information Memorandum.

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*

Indications are price ranges published on the tape before the opening or during a trading halt to display the probable price range in which a stock will open or reopen.

The Exchange's policy on dissemination of tape indications currently requires a minimum of 5 minutes to elapse between the first indication and the opening or reopening of a stock. In addition, when multiple indications are used, a minimum of 10 minutes must elapse after the last indication when it does not overlap the prior indication; a minimum of 5 minutes must elapse after the last indication when it overlaps the prior indication. In all cases, a minimum of 15 minutes must elapse between the first indication and the opening or reopening of a stock.

The Exchange is proposing that these minimum time periods before opening or reopening a stock be compressed from 15 to 10 minutes after the first indication; and to 5 minutes after the last indication, regardless of whether it overlaps the prior indication, provided that a minimum of 10 minutes elapse between the first indication and the opening or reopening of a stock. The Exchange believes that a minimum time period of 10 minutes for dissemination has proven sufficient in other contexts, such as the publication of imbalances of 50,000 shares or more of market-on-close orders on trading days other than expiration days.

Over the years, in developing procedures for openings, the Exchange has focused on providing a balance between timeliness and appropriateness of price, *i.e.*, achieving a price that reflects an appropriate equilibrium of buying and selling interest at the time. Since current procedures were formulated, the speed of communications has increased, meaning that relevant market information can be disseminated and responded to very quickly. The proposed rule change would shorten the time period for indications, thereby allowing the opening or reopening of a stock in a more expeditious fashion, while still providing sufficient time for appropriate pricing of orders.

The revised procedures for tape indications strike an appropriate balance between preserving the price discovery process while providing timely opportunities for investors to participate in the market.

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington D.C. 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–32 and should be submitted by December 31, 1996.

For the Commission, by the Division of market Regulation, Pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31334 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.19b–4.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Security, Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 12, 1996 from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, telephone 202–267–7451.

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 Aviation Security Advisory Committee to be held December 12, 1996, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. The agenda for the meeting will include the Baseline Working Group/ recommendations, Universal Access System Project Update, White House Commission recommendations and new legislative requirements. Attendance at the December 12, 1996, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

Issued in Washington, D.C. on December 5, 1996.

Anthony Fainberg,

Director of Civil Aviation Security, Policy and Planning.

[FR Doc. 96–31445 Filed 12–6–96; 1:09 pm]

BILLING CODE 4910–1B–M

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 16, 1997. The session begins with a Business session (non-Federal Board members only) from 1 p.m.–2 p.m. At 2 p.m., the General Program Session (open to all members and observers) is as follows: (1) Review of ITS America Antitrust Policy and Conflict of Interest Policy Statements; (2) Review and Approval of Previous Meeting's Minutes; (3) Report of the Executive Committee; (4) Coordinating Council Report; (5) State Chapters Council Report; (6) Report of the U.S. Federal ITS Initiatives; (7) Report on President's Commission on Critical Infrastructure Protection; (8) Report of Reauthorization Task Force; (9) Report of Board Special Task Force on Private Sector ITS Infrastructure Priorities; (10) President's Report: ITS Identity Campaign; (11) Report of the World Congresses—Orlando Overview and Berlin World Congress Update: (12) Standards Need Timeline; (13) Comparative Analysis Update; (14) Japanese AHS Update; (15) Other Business; (16) Adjournment until next Board Meeting, June 4, 1997, at the Sheraton Washington Hotel in conjunction with the Seventh ITS America Annual Meeting.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Boards of Directors of ITS AMERICA will meet on Thursday, January 6, 1996, from 1 p.m.–5 p.m.

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008; (202) 328–2000; Fax: (202) 234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 5, 1996.

Jeffrey Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–31340 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, January 14, 1997. The agenda is as follows: (1) Call to Order and Instructions; (2) Statement of Anti-Trust Compliance; (3) Approval of October 13, 1996, Meeting Minutes; (4) Federal Reports—Modal Administrations; (5) ITS AMERICA President's Report; (6) Sunset-Sunrise Task Force Report; (7) Dedicated Short-Range Communications (DSRC) Report; (8) Joint Meteorological Task Force Update; (9) Standards Needs Timeline; (10) Comparative Analysis Update; (11) Japanese AHS Update; (12) ITS Travel Demand Management Workshop Update; (13) Proposal for Task Force on Financial Issues; (14) Integrating GIS-Transportation and ITS Data Workshop Update; (15) World Congress and Annual Meeting Update; (16) Other Business; (17) Adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, January 14, 1997, from 8 a.m.–12 p.m. (Eastern Standard time).

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008; (202) 234–0700 or Fax: (202) 232–4140 or (202) 232–4158.

FOR FURTHER INFORMATION CONTACT:

Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by fax at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 5, 1996.

Jeffrey Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–31341 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Notification of Funds Availability for Next Generation High-Speed Rail Corridor Studies

AGENCY: Federal Railroad Administration; Department of Transportation.

SUMMARY: Pursuant to the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 (Public Law 104–205 (September 30, 1996)), the Federal Railroad Administration (FRA) has $900,000 in next generation high speed rail funds available for grants to eligible participants for high speed rail corridor planning assistance, including preliminary engineering and operational analysis, and other planning activities. This notice sets forth the criteria by which FRA will make its selection of grant recipients. The FRA strongly supports the advancement of high-speed rail in congested corridors where it can be an important component of a balanced transportation system. Further, FRA believes the development or continuation of high-speed rail in specific corridors should be undertaken as a partnership of states, localities, and the private sector, with support from the Federal government. Pursuant to the Swift Rail Development Act of 1994 (Public Law 103–440 (November 2, 1994)), the Secretary may provide financial assistance to a public agency or group of public agencies for corridor planning for up to 50 percent of the publicly financed costs associated with eligible activities. Not less than 20 percent of the publicly financed costs associated with eligible activities shall come from State and local sources, which State and local sources may not include funds from any Federal programs. (In determining Federal, state and local shares under this provision, private financial assistance is to be first deducted. Then a Federal ceiling of 50 percent and a state and local floor of 20 percent is applied. The state and local funds must exclude funds made available from any Federal program. The remaining 30 percent of the non-privately financed portion of the project may be paid for using funds made available to the applicant from other Federal programs).

Criteria for Funding

Eligible participants are encouraged to submit a request for funding which addresses the following criteria:

1. The level of interest in the chosen corridor demonstrated by State, regional, and local governments and elected officials or other interested groups. Interest can be shown by the past and proposed financial commitments and in-kind resources of State and local governments and the private sector.
2. The extent to which the proposed planning focuses on systems which will achieve sustained speeds of 125 mph or greater.
3. The degree of integration of the corridor into metropolitan area and statewide transportation planning.
4. The potential interconnection of the corridor with other parts of the Nation's transportation system, including the interconnection with other countries.
5. The anticipated effect of the corridor on the congestion of other modes of transportation.
6. Whether the work to be funded will aid the efforts of state and local governments to enhance compliance with Federal environmental laws and regulations.
7. The estimated level of ridership and the estimated capital cost of corridor improvements, including the cost of closing, improving, or separating highway-rail grade crossings.
8. Whether a specific route has been selected, specific improvements identified, and capacity studies completed, and whether the corridor has been designated as a high-speed rail corridor under Section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240 (December 18, 1991).

Eligible Participants: Any state government, local government, organization of state and/or local government, or any combination of such entities is eligible to apply for funding.

DOT Electronic Grants Pilot Project

All applicants are eligible and encouraged to participate in the ''DOT Electronic Grants Pilot Project.'' Through this pilot project, grant applicants will be provided with access to specially designed Hypertext Markup Language (HTML) data screens on DOT's World Wide Web (WWW) homepage. The screens and related system components will enable customers to submit grant applications electronically including the Application for Federal Assistance, SF–424. Applicants will also be provided the capability to submit proposals as text document attachments to the electronic application.

Future enhancements will provide for electronic submission of grant reports and payment requests.

To participate or for more information, please contact Brad Smith, Federal Railroad Administration, via e-mail at: bradley.smith@fra.dot.gov or tel.: (202) 632–3276.

Deadline For Requests for Grant Applications: Eligible participants desiring to apply for this funding should notify FRA by letter, and FRA will respond initially be providing a standard grant application package. For priority consideration, FRA requests that the completed grant application packages be returned to the below address by March 3, 1997.

ADDRESSES: Applications should be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN; RDV–11, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: John F. Cikota at (202) 632–3264.

Issued in Washington, D.C. on December 2, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–31351 Filed 12–9–96; 8:45 am]

BILLING CODE 4910–06–M

Surface Transportation Board

[STB Finance Docket No. 33294]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant limited overhead trackage rights to Grand Trunk Western Railroad Incorporated (GTW) between the Conrail/GTW connection on Conrail's North Yard Branch at CP-Vinewood (MP 3.1+), Detroit, MI, and the connection with GTW's existing rights over Conrail (pursuant to an agreement between the parties dated September 27, 1984), at the connection between Conrail and the Ann Arbor Railroad on Conrail's Detroit Line, at Alexis, OH (MP 50.3+).

The transaction was scheduled to be consummated on or after the November 28, 1996 effective date of the exemption.

The purpose of the trackage rights is to attract to rail service certain automotive parts traffic moving between Detroit and Toledo by improving service and transit time.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 33294, 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 Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 16th Street, N.W., Washington, DC 20006.

Decided: December 2, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–31330 Filed 12–9–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32984]

Hastings Industrial Link Railroad—Construction and Operation Exemption—Hastings, NE

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Hastings Industrial Link Railroad of a 1-mile line of railroad, in Adams County, NE.

DATES: The exemption will not become effective until the environmental process is completed. Then, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by Decmeber 30, 1996.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 32984, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Andrew P. Goldstein, Suite 1105, 1750 Pennsylvania Avenue, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC Data & News, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 2, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–31331 Filed 12–09–96; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval for revisions and a three-year extension of an information collection entitled ''Certificate of eligibility for Exchange Visitor Status (J–1 Visa)'', under OMB control number 3116–0008 which expires January 31, 1996. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public La2 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual and Educational and Cultural Exchange Act of 1961, Title 22 Code of Federal Regulations (CFR), Section 514, Exchange Visitor Program, Final Rule; and Title 8, Section 101(a)(15) of the Immigration and Nationality Act.

DATE: Comments are due on or before January 9, 1997.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: 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 Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on October 10, 1996 (vol. 61, no. 198). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0008) is estimated to average 15 minutes per response. Respondents are required to respond only one time, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Current Actions: This information collection has been submitted to OMB for the purpose of requesting a three-year extension and approval of revisions to the form.

Title: ''Certificate of Eligibility for Exchange Visitor Status (J–1 Visa)''.

Form Number: IAP–66.

Abstract: This information collection is used by Exchange Visitor sponsors to appropriately identify an individual

seeking to enter the U.S. as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate (Embassy) to secure an exchange visitor (J–1) visa.

Proposed Frequency of Responses: No. of Respondents—200,000; Recordkeeping Hours—.15; Total Annual Burden—50,000.

Dated: December 4, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96–31306 Filed 12–9–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 15, 1997, at 2:00 p.m.

Wednesday, January 29, 1997, at 2:00 p.m.

Wednesday, February 19, 1997, at 2:00 p.m.

Wednesday, March 26, 1997, at 2:00 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: December 4, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–31402 Filed 12–9–96; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday
December 10, 1996

Part II

Environmental Protection Agency

Environmental Education Grants Program, Fiscal Year 1997; Solicitation Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5662–4]

Solicitation Notice; Environmental Education Grants Program, Fiscal Year 1997

Section I. Overview and Deadlines

Due Date for Proposals: February 21, 1997

A. What Is the Purpose of This Solicitation Notice?

This notice solicits grant proposals from education institutions, public agencies, and non-profit organizations to support environmental education projects as defined in this notice.

B. What Is the Environmental Education Grants Program? How Much Money Is Available for This Program?

The Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques. This program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (P.L. 101–619). Congress has appropriated approximately $13 million for this grants program over the past five years (between $2.1 and $2.9 million per year from FY 1992 through FY 1996). During this time, EPA headquarters has awarded between $628,000 and $1.5 million in grant funds per year and each of EPA's ten regional offices award between $150,000 to $180,000 per year. EPA anticipates funding of approximately $3 million in FY 1997 and will award grants subject to the availability of funding.

C. What Is Environmental Education?

The goal of environmental education is to increase public awareness and knowledge about environmental issues, and to provide the public with the skills needed to make informed decisions and to take responsible actions. Environmental education enhances critical-thinking, problem-solving, and effective decision-making skills. It also teaches individuals to weigh various sides of an environmental issue to make informed and responsible decisions. Environmental education does not advocate a particular viewpoint or course of action.

D. When Is My Proposal Due to EPA and When Will EPA Announce the Grant Awards?

Proposals, signed by an authorized representative plus two copies, must be mailed to EPA postmarked no later than Friday, February 21, 1997. Proposals which are postmarked after February 21, 1997 will not be considered for funding. EPA expects to announce the 1997 grant awards in the Summer of 1997.

E. Do I Mail My Proposal to EPA Headquarters or an EPA Regional Office? Is There a Difference Between the Type of Projects Funded by Headquarters and Regional Offices?

Proposals requesting between $25,001 and $250,000 in federal environmental education grant funds must be mailed to EPA headquarters in Washington, DC; proposals requesting $25,000 or less must be mailed to the EPA regional office where the project takes place (rather than to the regional office where the applicant is located, if these locations are different). A list of addresses by state is included at the end of this notice. The EPA headquarters and regional grants will be evaluated using the same criteria as defined in this solicitation.

F. Where Do I Get the Information and Forms Needed To Prepare My Proposal?

Please read this solicitation notice carefully; it contains all the information and forms necessary to prepare a proposal. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional forms needed to process your proposal.

G. How Much Money Can I Request for My Grant Project? How Does the Dollar Amount Requested Affect My Chance of Being Funded?

The statute sets a maximum limit of $250,000 in environmental education grant funds for any one project. However, because of limited funds, EPA prefers to issue smaller grants to more recipients with the available funds. Applicants should be aware that EPA receives many more proposals each year than can possibly be funded. In Fiscal Year 1996, over 350 proposals were received at EPA Headquarters, while only nine were funded, the largest for $145,000. Smaller proposals submitted to the EPA Regions have a better chance of being funded, in part because EPA has a legislative requirement, under Section 6(i) of the Act, to award 25% of the total amount of our grant funds for projects which request $5,000 or less. For each EPA region, this means that the largest number of the regional grants each year are for $5,000 or less. In 1996, 2.5% of the proposals for more than $25,000 were funded, 6.1% of the proposals between $5,000 and $25,000 were funded, and 18.6% of the proposals for $5,000 or less were funded. In summary, you will significantly increase your chance of being funded if you request $5,000 or less from a Regional Office or $75,000 or less from headquarters.

Section II. Eligible Applicants and Activities

H. Who Is Eligible To Submit Proposals?

Any local or tribal government education agency, state government education or environmental agency, college or university, not-for-profit organization, or noncommercial educational broadcasting entity may submit a proposal. These terms are defined in Section 3 of the Act and 40 CFR Part 47.105. ''Tribal education agency'' means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native Village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs.

I. May an Organization Submit More Than One Proposal in FY 1997?

Yes, an organization may submit more than one proposal, but only if the proposals are for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year.

J. May I Submit a Proposal for This Fiscal Year Even if I Have Been Awarded Funding Under This Program in Past Years?

Yes, applicants who were awarded funding in the past may submit new proposals to expand a previously funded project or to fund an entirely different one. However, each new proposal will be evaluated based upon the specific criteria set forth in this solicitation and in relation to the other proposals received in this fiscal year. In addition, due to limited resources, EPA does not generally sustain projects beyond the initial grant, unless there are compelling reasons to do so. The program is geared toward providing seed money to initiate new projects or advancing existing projects that are new in some way (e.g. in new locations or with new audiences).

K. May a Teacher, Educator, or Faculty Member Apply?

A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher, educator, or faculty member *cannot*. Only agencies, organizations, and

institutions—not individuals—are eligible to apply for grants.

L. What General Activities Are Eligible for Funding Under This Program?

As specified under the Act, the environmental education activities that are eligible for funding under this program must include, but are not limited to, at least one of the following:

1. Designing, demonstrating, or disseminating environmental curricula (see next paragraph);

2. Designing and demonstrating field methods, practices, and techniques, including assessing environmental and ecological conditions or specific environmental issues or problems;

3. Training or educating teachers, faculty, or related personnel; or

4. Fostering international cooperation in addressing environmental issues and problems in the United States, Canada, and/or Mexico.

Regarding Item (1) above, EPA strongly encourages applicants to demonstrate or disseminate existing environmental curricula rather than designing new curricula because experts indicate that a significant amount of quality curricula have already been developed and are under-utilized. EPA will consider funding new curricula only where the applicant demonstrates that there is a need (e.g., that the new curriculum has not been designed for a certain audience, existing curricula cannot be adapted well to a particular local environmental concern, or existing curricula are not otherwise accessible). The applicant must specify what steps they have taken to determine this need (e.g., you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research or other published document).

M. What Activities Are Not Eligible for Funding Under This Program?

Funds cannot be used for:

1. Construction projects;

2. Technical training of environmental management professionals;

3. Non-educational research and development; and/or

4. Environmental information projects that have no educational component.

Regarding Item (1) above, EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a relatively small percentage of the total amount of federal funds requested.

Regarding Item (4) above, EPA will fund only environmental education projects, not projects that are solely designed to develop or disseminate environmental information. As discussed under Section I(C), environmental education teaches critical-thinking, problem-solving skills, and decision-making skills. By contrast, environmental information provides facts or opinions about environmental issues or problems, but does not enhance critical-thinking, problem-solving, or effective decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education.

N. What Specific Type of Projects Will EPA Fund?

EPA will fund only those proposals which meet the criteria specified below and which meet the definition of environmental education under I(C). Proposals will not be funded if they do not meet both. Apply to EPA Headquarters if you are requesting over $25,000 of Federal funds and to your EPA Regional Office if you are requesting $25,000 or less in Federal funds. The terms used in this Section are defined in Paragraph (3) at the end of the Section.

1. *Basic Criteria:* All proposals must explain how the proposed project:

a. Is new or significantly improved;

b. Has the potential for wide application;

c. Addresses a high priority environmental issue; and

d. Reaches key audiences and advances the environmental education field by addressing one or more of the following:

(1) Building state, local, or tribal capacity to develop and deliver quality environmental education programs;

(2) Utilizing environmental education as a catalyst to advance state, local, or tribal education reform and improvement goals;

(3) Educating teachers, students, parents, community leaders, and the public about human health threats from environmental pollution, especially as it affects children;

(4) Educating teachers, faculty, or nonformal educators about environmental issues to improve their environmental education teaching skills (e.g., through workshops);

(5) Educating students in formal or nonformal settings about environmental issues to encourage environmental careers;

(6) Educating low income and culturally diverse audiences about environmental issues, thereby advancing environmental justice; and/or

(7) Educating the public about environmental issues in their communities through community-based organizations or through print, film, broadcast, or other media.

Note: Headquarters will give preference to the highest ranking proposals which address (1) capacity building, (2) education reform, and/or (3) human health, as described below under Definitions.

2. *Criteria for Final Selections:* EPA will make the final grant selections as follows:

After individual projects are evaluated and scored by reviewers, as described under Section V(W), EPA officials in the regions and at headquarters will select a diverse range of finalists from the highest ranking proposals. In making the final selections, EPA will take into account the following:

a. The effectiveness of collaborative activities and partnerships, as needed to effectively develop or implement the project;

b. The environmental and educational importance of the activity or product;

c. The effectiveness of the delivery mechanism (i.e., workshop, conference, etc.);

d. The cost effectiveness of the proposal; and

e. The geographic distribution of projects.

3. *Definitions:* The above terms are defined as follows:

Building, state, local, or tribal capacity refers to efforts to improve the coordinated delivery of environmental education at the state, local, or tribal level. This should involve a coordinated effort by the major education and environmental education providers from the respective state, locality, or tribe in the planning and implementation of the project (e.g., state education and natural resource departments, local school districts and boards, professional education and environmental education associations or coordinating councils, as well as nonprofit education and environmental education organizations) and may also include other types of organizations and private businesses. Examples of how to build state, local, or tribal capacity include, but are not limited to, the following:

—Identifying and assessing needs and setting priorities;

—Evaluating current programs and links among programs;

—Developing and implementing coordinated strategic plans;

—Identifying funding sources and creating grant programs;
—Identifying existing resources, developing databases of such resources, and disseminating these resources and information;
—Establishing or enhancing on-line communications to facilitate networking among organizations;
—Ensuring sustained professional development activities; and/or
—Holding leadership seminars and other types of training.

Education reform and improvement refers to efforts to improve student academic achievement and to equip students with the necessary knowledge and skills to be lifelong learners. Your proposal should clearly describe what your state, local, or tribal educational reform and improvement needs and goals are as well as how they relate to your environmental education project. Examples of possible reform and improvement strategies to which the proposed environmental education program might be linked include curricular and instructional innovations such as more emphasis on inquiry and problem-solving, learning experiences that have practical application in the real world, project-based learning, team building and group decision-making, and interdisciplinary study. Other examples include the development of new high content and performance standards, the design of corresponding assessment systems, the realignment of curriculum and instructional practice to the high standards and assessment system, the use of technology in promoting learning, the implementation of sustained and intensive professional development activities, and the creation of family and community partnerships.

Human health threats from environmental pollution, as used here is intended to address recommended actions recently stated in EPA's ''National Agenda to Protect Children's Health from Environmental Threats.'' The action reads as follows ''We call on American parents, teachers and community leaders to take personal responsibility for learning about the hazards that environmental problems pose to our children—and provide them with the information they need to help protect children from those risks at home, at school and at play.'' An informed, involved local community does a better job of making environmental decisions than a distant bureaucracy—and never more so than when it comes to our children. Parents, teachers and community leaders can and should play a vital, day-to-day role in learning about the particular environmental hazards their children face in their own communities, and then use that knowledge to make more informed decisions that prevent environmental health problems and protect children. Therefore, through this solicitation, EPA encourages environmental education projects to educate the public about environmental hazards and how to minimize human exposure to preserve good health.

Environmental Justice refers to EPA's goal to encourage applicants to submit proposals that include efforts to target low income and culturally diverse populations, thereby promoting environmental justice. The term environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences that might result from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state, local, and tribal programs and policies. An example would be a project directed at an environmental problem that has a disproportionately high and adverse human health or environmental impact in a low-income or culturally-diverse community.

A *high priority environmental issue* is one that is important to the community, state, or region being targeted by the project; e.g., one community may have significant air pollution problems which makes teaching about human health effects from it and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus making habitat or ecosystem protection a high priority issue.

New or significantly improved pertains to a project that reaches a specific community for the first time, develops a new or improved teaching strategy, or uses a new or improved method of applying existing materials.

Partnerships refers to EPA promotion of effective use of partnerships between organizations or within an organization. The term partnership is the forming of a collaborative working relationship between two or more organizations such as governmental agencies, non-profit organizations, educational institutions, and/or the private sector. It may also refer to intra-organizational unions such as the science and art departments of within a university collaborating on a project.

Wide application pertains to a project that targets a large and diverse audience in terms of numbers or demographics; or that can serve as a model program elsewhere.

Section IV. Requirements for Proposals and Matching Funds

O. What is a Proposal?

The proposal contains three parts which are explained in Section (S) below:

1. The ''Application for Federal Assistance''—Standard Form (SF)–424 (attached);

2. The ''Budget Information: Non-Construction Programs''—Standard Form (SF)–424A (attached); and

3. A work plan with appendices.

To ensure your proposal is completed properly, carefully follow the instructions on the SF–424, SF–424A, and those provided below. The SF–424, SF–424A, and completed work plan contain all the information EPA will use to evaluate the merits of your proposal. Only finalists will be asked to submit additional forms needed to process their proposal.

P. Are Matching Funds Required?

Yes, non-federal matching funds of at least 25% of the total cost of the project are required, although EPA encourages matching funds of greater than 25%. Federal funds to support the project must not exceed 75% of the total cost of the project. The 25% match may be provided by the applicant or any other organization or institution, except that no portion of the 25% match can include federal funds (unless specifically authorized by statute). The 25% match may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. The value of in-kind contributions must be carefully documented. All grants are subject to audit.

The matching non-federal share is a percentage of the *entire cost* of the project. For example, if the 75% federal portion is $5,000, then the entire project should, at a minimum, have a budget of $6,667, with the recipient providing a contribution of $1,667. To assure that your match is sufficient, simply divide the Federally requested amount by three. If your match is larger than one-third of the requested amount, it is sufficient. The amount of non-federal

funds, including in-kind contributions, must be itemized in Block 15 of the SF–424.

Q. Can I Use Federal Funds in Addition to Those Provided by This Program to Support the Same Project?

Yes, you may use federal funds in addition to those provided by this program, but only for different activities. However, you may not use any federal funds to meet all or any part of the required 25% match as stated in paragraph (P) above. If you have already been *awarded* federal funds for a project in which you are seeking additional support from this program, you must indicate in the budget section of the work plan that you have been awarded other federal support for this project. You must also identify the project officer, agency, office, address, phone number, and the amount of the award.

R. Can I Request Funding for Any Budget Category on the SF–424A (i.e., Personnel/Salaries, Fringe Benefits, Travel, Equipment, Supplies, Contractual, and Indirect Charges)?

Yes, you may request funding for any or all of the budget categories identified above with the following exceptions.

1. As indicated under Section II(M)(1), EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

2. You may request funds to pay for salaries and fringe benefits, but only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request *reasonable* amounts of funding for salaries and fringe benefits.

3. You may include a request for indirect costs only if your organization has already negotiated and received an ''indirect cost rate'' from the federal government.

S. What Must be Included in the Proposal?

The proposal must contain an SF–424, SF–424A, and work plan as described below:

1. *Application for Federal Assistance (SF–424) and Budget Information SF–424A):* The SF–424 and SF–424A are required for all federal grants. A completed SF–424 and SF–424A must be submitted as part of your proposal. These forms, along with instructions and samples, are included at the end of this notice. Please carefully review the instructions and the sample. Refer to Paragraph (R) above for information on what types of budget categories can and cannot be funded under this program.

2. *Work Plan:* A work plan describes your proposed project. The total number of points possible for each proposal is 100. These points will be distributed as follows. First, each of the following four sections of the work plan are assigned points which add up to 90. (Certain sections are given more points than others reflecting the relative importance of each section). Second, reviewers will be given the flexibility to provide up to 10 additional points for exceptional projects based upon the overall quality of the proposal and evidence that EPA's priorities, as stated in Section III(N), will be effectively advanced by the proposed project. All criteria used to provide these 10 additional points will be consistent with the criteria established in the solicitation.

All work plans must include and be formatted according to all four sections (a–d) below:

a. *Project Summary:* Provide EPA with an overview of your entire project. The summary must be *no more than one page* and must briefly include *all seven* of the following:

(1) Describe your organization (and your key partners);

(2) State the goals and specific objectives of your project;

(3) Identify what type of project you will focus on as described under Section III(N), e.g., teacher training or community-based education;

(4) Describe the demographics of your target audience (including the total number of direct participants, ethnic composition, and type of individuals reached such as teachers, students, or the general public).

(5) Indicate how you will reach your target audience;

(6) Describe the expected results of your project and how you will evaluate it; *and*

(7) Indicate for which types of activities the EPA funds will be used.

The project summary will be scored on how well you provide an overview of your entire project based upon the seven subsections identified above.

Project Summary Maximum Score: 5 Points

b. *Project Description:* Provide EPA with an explanation of how your proposed project meets #1 and #2 below.

(1) Explain how the proposed project addresses one or more of EPA's priorities and goals as set out under Section III(N).

This subsection will be scored on how clearly and effectively your project: (a) establishes realistic goals and objectives; (b) identifies its target audience and demonstrates an understanding of the needs of that audience; (c) uses an effective means or delivery system for reaching the target audience/implementing the project; and (d) demonstrates that it uses or produces quality educational products or methods which teach critical-thinking, problem-solving, and decision-making skills. Subsection maximum score: 40 points (10 points for each of the four elements identified in this paragraph).

(2) Explain how the proposed project: (a) is new or significantly improved; (b) has wide application; *and* (c) addresses a priority issue as described under Section III(N).

This subsection will be scored on how well you explain how your proposal meets the three elements identified above. Subsection maximum score: 15 points (5 points for each of the three elements identified above).

Project Description Maximum Score: 55 Points

c. *Project Evaluation:* Provide EPA with an explanation of how you will determine or measure whether you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, surveys, observation, or outside consultation.

The project evaluation will be scored on the extent to which: (a) your evaluation plan will measure the project's effectiveness; and (b) your plan to apply data gathered from your evaluation to strengthen your project.

Project Evaluation Maximum Score: 10 Points (5 Points for Each of the Two Elements Identified Above)

d. *Appendices:* Provide EPA with a detailed budget, resumes of key personnel, and letters of commitment. No other appendices or attachments such as video tapes or sample curricula may be submitted.

(1) Budget: Describe how you will use the funds for personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. You must also include a table which lists each major proposed activity as well as the month and year it will be completed and the amount of EPA funds that will be spent on each activity. For smaller grants, your table may list only one or two activities.

This subsection will be scored on: (a) how well the budget information clearly and accurately shows how funds will be used; *and* (b) whether the funding request is reasonable given the activities proposed. Subsection maximum score:

10 points (5 points for each of the two elements identified in this paragraph)

(2) Key Personnel and Letters of Commitment: Attach one or two page resumes for up to three key personnel implementing the project. Also, include one page letters of commitment from partners (if there are partners) with a significant role in the proposed project. Do not include letters of support; they will not be considered in evaluating proposals.

This subsection will be scored based upon whether resumes of key personnel are included and whether the key personnel are qualified to implement the proposed project. In addition, the score will reflect whether letters of commitment are included (if partners are used) and the extent to which a firm commitment is made.

Subsection Maximum Score: 10 Points

Appendices Maximum Score: 20 Points

T. What Are the Page Limits for the Work Plan?

Your work plan may include the following number of pages for requests in federal funds of:

1. *$25,000 or less:* EPA prefers a work plan of 3 pages, but will accept up to 5 pages.

2. *Above $25,000:* a work plan of up to 10 pages.

These page limits apply only to the work plan (i.e., the ''summary,'' ''project description,'' and ''project evaluation''), not the appendices. ''One page'' refers to one side of a single-spaced typed page. The pages must be letter sized (8½×11 inches), with normal type size (10 or 12 cpi) and at least 1 inch margins. To conserve paper, please provide double-sided copies of the proposal.

U. How Must the Proposal Be Submitted?

The applicant must submit one original and two copies of the proposal (a signed SF–424, an SF–424A, and a work plan). Please submit only the SF–424, the SF–424A, and the work plan. Do not include other attachments such as cover letters, tables of contents, or appendices other than those required (budget, resumes, letters of commitment). The SF–424 should be the first page of your proposal and must be signed by a person authorized to receive funds. Blue ink for signatures is preferred to make identification of the original possible. Proposals must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers in the upper right hand corner.

V. What Regulations Must I Comply With in Submitting My Proposal?

The Environmental Education Grant Program Regulations, published in the Federal Register on March 9, 1992, provides some additional information on EPA's administration of this program (57 Federal Register 8390; Title 40 CFR, Part 47 or 40 CFR Part 47). Also, EPA's general assistance regulations at 40 CFR Part 31 applies to state, local, and Indian tribal governments and 40 CFR Part 30 applies to all other applicants such as nonprofit organizations.

Section V. Review and Selection Process

W. How Will Proposals be Reviewed and Who Will Conduct the Reviews?

Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to determine whether they meet the basic requirements of this notice, especially as described under Sections II and III. Only those proposals which meet all of the basic requirements will enter the evaluation phase of the review process. During the evaluation phase, proposals will be evaluated based upon the quality of their work plans, especially the degree to which the work plan meets the requirements set forth in Section III(N)(1–3). Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score each applicant's work plan based upon the scoring system identified in Section IV(S)(2).

X. Who Will Make the Final Selections?

EPA Regional Administrators will select grant recipients for projects with federal environmental education grant funding of $25,000 or less, taking into account the recommendations of the regional environmental education coordinators who will base their recommendations on the factors discussed above. The Associate Administrator for Communications, Education, and Public Affairs at EPA headquarters will select the grant recipients for projects with federal environmental education grant funding of more than $25,000, taking into account the recommendations of the Environmental Education Division Director who will base the recommendations on the factors discussed above.

Y. How and When Will I be Notified About the Status of My Proposal?

Applicants will receive a confirmation that EPA has received their proposal once EPA has received all proposals and entered them into a computerized data base, usually within two months of receipt. EPA will notify applicants again after awards have been announced. To the extent possible, this notification will include feedback on both the proposals that were screened out of the process early and on the proposals that were fully evaluated and ranked by reviewers. The degree to which EPA can provide such feedback will vary among EPA offices depending upon the availability of resources to conduct these activities.

Section VI. Grantees Responsibilities

AA. When Can I Begin Incurring Costs?

Grant recipients may begin incurring costs on the start date identified in your EPA grant agreement.

BB. May an Applicant Request Funds for a Project That Extends Beyond a One-year Budget Period?

Proposals submitted to EPA regional offices for up to $5,000 may request funds for only a one-year budget period. Proposals submitted to EPA regional offices or headquarters requesting funds of more than $5,000 may request funds for up to a two-year budget period, although EPA strongly encourages applicants to request funds for only a one-year budget period.

CC. Who Will Perform Projects and Activities?

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All proposals must identify any person other than the applicant that will assist in carrying out the project.

DD. What Reports and Work Products Must Grant Recipients Submit to EPA and When Are They Due?

All grant recipients must submit two copies of their final report and two copies of all work products to the EPA project officer within 30 days after the expiration of the budget period. This report will be accepted as the final report unless the EPA project officer notifies you that changes must be made. Grant recipients with projects that have a two-year budget period must also submit a progress report at the end of the first year. Grant recipients with a federal environmental education grant share greater than $5,000 may also be required to submit a semi-annual progress report. Specific report

requirements will be identified in the EPA award agreement.

EE. What Does EPA Plan to Do With the Grant Recipients' Final Reports and Final Work Products?

EPA will assemble a central library of all final reports and work products at headquarters in Washington, D.C. EPA plans to evaluate these final reports and work products and may disseminate them to others to serve as model programs.

Section VII. Other Information and Mailing List

FF. Where Can I Get Additional Information on Preparing My Proposal and on Other Sources of Funding?

EPA strongly encourages applicants to carefully read the solicitation notice. Many questions, such as when is the deadline for submitting proposals and what activities can be funded under this program, are answered in this solicitation. Applicants who need more information about this grant program or clarification about specific requirements in this solicitation notice, may contact the EPA Environmental Education Division in Washington, D.C. for grant requests of more than $25,000 or your EPA regional office for grant requests of $25,000 or less. A list of the names and telephone numbers of EPA representatives are listed at the end of this notice. If you receive this solicitation electronically and you wish to apply for funding, you may call your regional office as listed for the application forms that are mentioned in the solicitation.

Information about the grants program is also available on the Internet. You can view and download this solicitation notice, a list of EPA environmental education contacts, and descriptions of past projects funded under this program and information on other education resource materials from:

World Wide Web: ''http://eelink.umich.edu''

World Wide Web: ''http://www.nceet.snre.umich.edu/grant.html''

The large number of proposals EPA received in past years demonstrates the strong demand for funding environmental education projects. Unfortunately, EPA alone cannot meet this demand. In cooperation with EPA, the North American Association for Environmental Education (NAAEE) has developed a publication called ''Grant Funding For Your Environmental Education Program'' which provides strategies for identifying potential sources of funding. This publication can be purchased for a $5.00 fee by writing to NAAEE, Publications and Member Services, P.O. Box 400, Troy, Ohio, 45373.

GG. How Can I Get Information on the Fiscal Year 1998 EPA Environmental Education Grants Program?

EPA develops an entirely new mailing list for the grants program each year. The Fiscal Year 1998 mailing list will include all applicants who submitted proposals for Fiscal Year 1997 as well as anyone else who specifically requests to be placed on the mailing list. If you do not submit a proposal for Fiscal Year 1997 and you wish to be added to our mailing list to receive information on the Fiscal Year 1998 Environmental Education Grants Program, you must mail your request—please do not telephone—along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Environmental Education Division (1707), Environmental Education Grants Program (FY 1998), 401 M Street, S.W., Washington, D.C. 20460.

Dated: December 9, 1996.

Denise Graveline,

Acting Associate Administrator, Office of Communications, Education, and Public Affairs.

U.S. EPA Representatives and Mailing Addresses

U.S. EPA Headquarters—For Proposals Requesting More Than $25,000

Mail proposals to:
U.S. EPA, Env Ed Grants, Environmental Education Division (1707), Office of Communications, Education, and Public Affairs, 401 M Street, SW., Washington, DC 20460
Information:
George Walker, Environmental Education Specialist, 202–260–8619

U.S. EPA Regional Offices—For Proposals Requesting $25,000 or Less

EPA Region I—CT, ME, MA, NH, RI, VT

Mail proposals to:
U.S. EPA, Region I, Env Ed Grants, Grants Management Office, JFK Federal Building (MGM), Boston, MA 02203
Hand-deliver to:
One Congress Street, 11th Floor Mail Room, Boston, MA (M–F 8 am–4 pm)
Information:
Maria Pirie, EE Coordinator, 617–565–9447

EPA Region II—NJ, NY, PR, VI

Mail proposals to:
U.S. EPA, Region II, Env Ed Grants, Grants and Contracts Management Branch, 290 Broadway, 27th Floor, New York, NY 10007–1866
Information:
Teresa Ippolito, EE Coordinator, 212–637–3671

EPA Region III—DC, DE, MD, PA, VA, WV

Mail proposals to:
U.S. EPA, Region III, Env Ed Grants, Grants Management Section (3PM70), 841 Chestnut Street, Philadelphia, PA 19107
Information:
Bonnie Smith, EE Coordinator, 215–566–5543

EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN

Mail proposals to:
U.S. EPA, Region IV, Env Ed Grants, Office of Public Affairs (E2), 100 Alabama Street, SW., Atlanta, GA 30303
Information:
Fred Thornburg, Environmental Education Office, 404–562–8317

EPA Region V—IL, IN, MI, MN, OH, WI

Mail proposals to:
U.S. EPA, Region V, Env Ed Grants, Grants Management Section (MC–10J), 77 West Jackson Boulevard, Chicago, IL 60604
Information:
Suzanne Saric, EE Coordinator, 312–353–3209

Region VI—AR, LA, NM, OK, TX

Mail proposals to:
U.S. EPA, Region VI, Env Ed Grants, Environmental Education Coordinator (6XA), 1445 Ross Avenue, Dallas, TX 75202
Information:
Jo Taylor, EE Coordinator, 214–665–2204

Region VII—IA, KS, MO, NE

Mail proposal to:
U.S. EPA, Region VII, Env Ed Grants, Grants Administration Division, 726 Minnesota Avenue, Kansas City, KS 66101
Information:
Rowena Michaels, EE Coordinator, 913–551–7003

Region VIII—CO, MT, ND, SD, UT, WY

Mail proposals to:
U.S. EPA, Region VIII, Env Ed Grants, 999 18th Street (80EA), Denver, CO 80202–2466
Information:
Cece Forget, EE Coordinator, 303–312–6605

Region IX—AZ, CA, HI, NV, American Samoa, Guam, Northern Marianas

Mail proposals to:
U.S. EPA, Region IX, Env Ed Grants, Office of Communications and Government Relations (CGR–3), 75 Hawthorne Street, San Francisco, CA 94105

Information:
Matt Gaffney, Office of Communications and Government Relations (OCGR), 415–744–1582

Region X—AK, ID, OR, WA

Mail proposals to:
U.S. EPA, Region X, Env Ed Grants, Public Information Center, 1200 Sixth Avenue (EXA–142A), Seattle, WA 98101

Information:
Sally Hanft, EE Coordinator, 1–800–424–4EPA, 206–553–1207

BILLING CODE 6560–50–P

Instructions for the SF–424

This is a standard form used by applicants as a required factsheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue to revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Additional Instructions for the SF–424

Block #6: You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.

Block #14: If your project covers many areas, several congressional districts will be listed. If it covers the entire state, simply put in statewide. If your are not sure about the congressional district, call the County Voter Registration Department.

Block #15: Line a is for the amount of money you are requesting from EPA. Lines b–e are for the amounts either you or another organization are providing for this project. Line f is for any program income which you expect will be generated by this project. Program income can be fees for services performed, income generated from the sale of a brochure which was produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines b–e must be at least 25% of line g, as this grant has a match requirement of 25% of the TOTAL ALLOWABLE PROJECT COSTS.

Block #16: Check b, (NO) since your application does not have to be sent through the state clearinghouse for review.

Block #18: The authorized representative is the person who is able to contact or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.)

Instructions for the SF–424A

Do not fill in Section A—Budget Summary.

Section B Budget Categories

All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B. Include both Federal and non-Federal (matching) funds combined.

For each major program, function or activity, fill in the total requirements for funds by object class categories. Most applications will only have one program, function, or activity.

Line 6I—Show the totals of lines.6a through 6h in each column.

Line 6j—Show the amount of indirect cost (if applicable).

Line 6k—Enter the total of amounts on Lines 6i and 6j.

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income.

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

SAMPLE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED: 2-10-97	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: Green High School	Organizational Unit: Office of Teacher Development
Address (give city, county, state, and zip code): 100 Green Street Belle View, VA 12345	Name and telephone number of the person to be contacted on matters involving this application (give area code): Willie Doitt (123)456-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7. TYPE OF APPLICANT: (enter appropriate letter in box) B

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: U.S. Environmental Protection Agency

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66.951

TITLE: Environmental Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
"Greening Green County"
Teacher Training Environmental Workshop: Problem Solving Techniques and the Environment.

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Green and Surrounding Counties

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project
10-01-98	9-30-99	02	1, 02, 03

15. ESTIMATED FUNDING:

a. Federal	$ 5,000	.00
b. Applicant	$ 1,667	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$ 6,667	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
Pat Doe	Superintendent of Schools	(123)456-0987
d. Signature of Authorized Representative: Pat Doe		e. Date Signed: 2-10-97

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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SAMPLE

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

Section A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B — BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Federal Funds	(2) Non-Federal Match	(3)	(4)	
a. Personnel	$ 2,300	$ 800	$	$	$ 3,100
b. Fringe Benefits	250	100			350
c. Travel	250				250
d. Equipment					
e. Supplies	2,200	767			2,967
f. Contractual					
g. Construction	XXXXXXXXXXX	XXXXXXXXXXX			XXXXXXXXXXX
h. Other					
i. Total Direct Charges (sum of 6a - 6h)	5,000	1,667			6,667
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$ 5,000	$1,667	$	$	$ 6,667
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Non-Profit
O. Other(Specify)_____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

US Environmental Protection Agency

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 • 5 9 1

TITLE: Environmental Education Grant

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

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a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

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Prescribed by OMB Circular A-102

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

Section A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B — BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Federal Funds	(2) Non-Federal Match	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction	XXXXXXXXXXX	XXXXXXXXXXX			XXXXXXXXXXX
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

[FR Doc. 96-31358 Filed 12-9-96; 8:45 am]
BILLING CODE 6560-50-C

Federal Register

Tuesday
December 10, 1996

Part III

Nuclear Regulatory Commission

10 CFR Part 20

Clean Air Act: Radioactive Materials Airborne Effluents Dual Regulation Resolution; Final Rule and Radiation Protection Programs Enforcement Actions Policy and Procedure; Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF31

Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to establish a constraint of 10 mrem (0.1 mSv) per year total effective dose equivalent (TEDE) for dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. This action is necessary to: Provide assurance to the Environmental Protection Agency (EPA) that future emissions from NRC licensees will not exceed dose levels that EPA has determined will provide an ample margin of safety; and to provide EPA a basis upon which to rescind its Clean Air Act (CAA) regulations as defined in 40 CFR Part 61 for NRC licensed facilities (other than power reactors) and Agreement State licensees, thereby relieving these licensees from unnecessary dual regulations.

EFFECTIVE DATE: This rule will become effective January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6223.

SUPPLEMENTARY INFORMATION:

Background

The EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides on October 31, 1989. Under 40 CFR Part 61, Subpart I, emissions of radionuclides must be limited so that no member of the public would receive an effective dose equivalent greater than 10 mrem (0.1 mSv) per year.[1] Subpart I of 40 CFR Part 61 was promulgated to implement the CAA and limit doses to members of the public from air emissions of radionuclides (other than Radon-222) from all NRC licensees other than licensees possessing only sealed sources, high-level waste repositories, and uranium mill tailings piles that have been disposed of in accordance with 40 CFR Part 192. Radon-222 emissions from tailings were covered by 40 CFR Part 61, Subparts T (addressing non-operational uranium mill tailings piles) and W (addressing operating mill tailings piles). EPA rescinded Subpart T for NRC licensees after Appendix A to 10 CFR Part 40 was amended by the Commission to conform to changes EPA issued to 40 CFR Part 192. Subpart W still applies to NRC licensees. Because Radon-222 is adequately addressed in 10 CFR Part 40, Appendix A, and other provisions of 10 CFR Part 20, it is not covered in this final rulemaking.

In 1990, Congress enacted amendments to the CAA. Section 112(d)(9) of these amendments to the CAA (the Simpson amendment) states:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect public health.

Upon issuance, the effectiveness of Subpart I for all NRC licensees was immediately stayed by EPA pending further evaluation. During the stay period, EPA conducted two studies of the air emissions from NRC and Agreement State materials licensees. The first was a survey of 367 randomly selected nuclear materials licensees. EPA determined that the highest estimated dose to a member of the public from air emissions from these facilities was 8 mrem (0.08 mSv) per year, based on very conservative modeling. In addition, 98 percent of the facilities surveyed were found to have doses to members of the public resulting from air emissions less than 1 mrem (0.01 mSv) per year. The second study evaluated doses from air emissions at 45 additional facilities that were selected because of their potential for air emissions resulting in significant public exposures. EPA found that 75 percent of these licensees had air emissions resulting in an estimated maximum public dose less than 1 mrem (0.01 mSv) per year. For the licensees evaluated, none exceeded 10 mrem (0.1 mSv) per year.

In its initial proposal to rescind Subpart I for NRC licensees other than power reactors, EPA stated that:

> Based on the results of the survey undertaken by EPA and the commitments made by NRC in the MOU, EPA has made an initial determination that the NRC program under the Atomic Energy Act provides an ample margin of safety to protect public health (57 FR 56880; December 1, 1992).

However, EPA continued to express concern regarding the adequacy of the measures to assure that future emissions from NRC licensees will not exceed levels that will provide an ample margin of safety. The stay on Subpart I expired on November 15, 1992, and Subpart I became effective on November 16, 1992. Subsequently, in July of 1993, the EPA Administrator determined that there was insufficient basis at that time to rescind Subpart I. Consequently, NRC and Agreement State licensed facilities were subject to dual regulation of airborne effluents of radionuclides under both the AEA and the CAA, including regulatory oversight by EPA (or authorized State) and NRC (or Agreement State).

NRC licensees subject to EPA's Subpart I are also subject to NRC dose limits for members of the public contained in 10 CFR Part 20, Subpart D, entitled ''Radiation Dose Limits for Individual Members of the Public'' (Subpart D). Under Subpart D, licensees shall ensure that doses to members of the public are less than 100 mrem (1.0 mSv) per year from all pathways (including airborne effluents) and all sources associated with the licensee's operation. In addition, under Subpart B, entitled ''Radiation Protection Programs,'' licensees must ensure that doses to members of the public be kept as low as is reasonably achievable (ALARA). Based on the studies conducted by EPA and licensee reporting of doses to members of the public from airborne effluents to EPA, it is evident that less than 10 mrem(0.1 mSv) per year to the maximally exposed member of the public from airborne radioactive effluents to the environment is reasonably achievable.

NRC power reactor licensees subject to 10 CFR 50.34a must keep doses to members of the public from airborne effluents consistent with the numerical guidelines in Appendix I to 10 CFR Part 50. These licensees have reported estimated doses to members of the public from air emissions well below the Subpart I value for many years. Based on the combination of a continuing regulatory basis for reduced air emissions and documented proof of the effectiveness of the NRC program for these licensees, EPA rescinded Subpart I for power reactors licensed by NRC (60 FR 37196; September 5, 1995).

Amendments

The amendments proposed on December 13, 1995 (60 FR 63984), and

[1] 1 Subpart I expresses dose in effective dose equivalent (EDE). NRC expresses dose in total effective dose equivalent (TEDE). These terms are essentially equivalent.

finalized in this rule establish a constraint of 10 mrem (0.1 mSv) per year TEDE to members of the public from airborne radioactive effluents to the environment from NRC-licensed facilities, other than power reactors, as a part of its program to maintain doses ALARA. These amendments codify numerical values for NRC's application of ALARA guidelines for radioactive air emissions from its licensees, other than power reactors. For power reactors, ALARA guidelines have already been established within 10 CFR Part 50 and existing facility licensing conditions. These final amendments ensure that air emissions are maintained at very low levels and, taking into consideration the elimination of dual regulation, at some reduced cost to licensees. This action brings consistency between the EPA's dose standard and the NRC's ALARA application, and is expected to be the final step in providing EPA with the basis to rescind Subpart I as it applies to NRC-licensed facilities other than power reactors. NRC has been working cooperatively with EPA to achieve rescission of EPA's standards in 40 CFR Part 61, Subpart I, under Section 112(d)(9) of the CAA. EPA published a proposed rescission of 40 CFR Part 61, Subpart I, on December 1, 1992 (57 FR 56877). On September 28, 1995, EPA published a notice in the Federal Register reopening the comment period on rescission of Subpart I (60 FR 50161). The objective of this effort is to eliminate duplicative regulations that provide no incremental benefit in terms of public and environmental protection.

The regulatory framework that NRC is providing as a basis for rescission of EPA's Subpart I consists of the requirement in 10 CFR Part 20 to limit doses to members of the public to 100 mrem (1.0 mSv) per year, and the requirement to constrain doses to members of the public from airborne effluents of radioactive materials to the environment from a single licensed operation to 10 mrem (0.1 mSv) per year.

Currently, under § 20.1501 licensees are required to make or cause to be made surveys that may be necessary to comply with the regulations in 10 CFR Part 20. This data would be made available to inspectors upon request. If the licensee estimates or measures a dose to the nearest resident from air emissions greater than 10 mrem (0.1 mSv) per year, the licensee would be required to report the dose to NRC in writing within 30 days, which would include the circumstances that led to the greater than 10 mrem (0.1 mSv) per year dose, a description of the corrective steps the licensee had taken or proposed to take to ensure that the constraint is not again exceeded, a timetable for implementing the corrective steps, and the expected results. Records of the results of measurements and calculations needed to evaluate the release of radioactive effluents to the environment will still be required pursuant to 10 CFR 20.2103(b)(4).

Exceeding this constraint will not result in a Notice of Violation (NOV) as would be the case if a limit needed for adequate protection of public health and safety were exceeded. In the case of the constraint rule, an NOV will be issued only if and when (1) a licensee fails to report an actual or estimated dose from airborne effluent releases from a facility that has exceeded the constraint value; or (2) if a licensee fails to institute agreed upon corrective measures intended to prevent further airborne effluents in excess of those which would result in doses exceeding the constraint level.

The rule applies to airborne effluents of radioactive materials to the environment, other than Radon-222 and daughters, from all NRC licensees except power reactors. Power reactors are exempt from this rule because they are already required, under 10 CFR 50.34a, to identify design objectives and the means to be employed for keeping doses to members of the public from air effluents ALARA in their license application. Appendix I to 10 CFR Part 50 contains the numerical guidelines to meet this requirement.

Response to Comments

Fifty-seven individuals and organizations provided written comments on the proposed rule and Draft Regulatory Guide DG–8016. Among the 57 commenters, 24 were licensees, seven were professional organizations, five were States, 16 were members of the public, and five were environmental organizations. Because many letters commenting on the Draft Regulatory Guide DG–8016 also included comments on the rule, these comments were also considered in developing the final rule.

Issue 1—Proposed Rule Approach

Comments: A total of thirty-one individuals and organizations commented on the basis for the rule. Five commenters agreed with the approach and need for the constraint. Four commented that the rule should not be finalized and that EPA's Subpart I should remain in effect. Twenty-two commenters stated that existing NRC programs provided an ample margin of safety and that the constraint was not needed. However, of these, seven agreed that the constraint was preferable to dual regulation or Subpart I alone.

Those commenting that existing NRC programs are adequate to protect the public cited the two EPA studies on doses from air emissions. Two-thirds of these commenters were opposed to going forward with the constraint because they believed it was not needed and that licensee and regulator costs could not be justified given the expectation that risk to public health and safety would not be reduced. These commenters encouraged NRC to continue working with EPA to provide sufficient basis for rescission of Subpart I without the imposition of an equally unnecessary regulation. A few commenters stated that the risk was considerably less than estimated because excessively conservative calculational methods were used by EPA. A few commenters compared the 10 mrem (0.1 mSv) per year constraint to variability in background or doses from commercial air traffic as evidence that the dose and the risk is trivial. Seven commenters cited burden reduction and single-agency oversight as the reasons for agreeing that the constraint was preferable to dual regulation or EPA's Subpart I alone.

Commenters opposed to the constraint as a less protective standard, stated that the constraint was based upon a voluntary program (ALARA) and, as such, was not adequate to protect the public. One commenter stated that NRC does not perform confirmatory measurements and therefore, NRC jurisdiction was not adequate.

Response: NRC and EPA have been working to develop a basis upon which dual regulation could be eliminated. EPA has stated that there are two necessary components to any finding that NRC's program is sufficient to protect the health and safety of the public. The first is evidence that doses from air emissions are below 10 mrem (0.1 mSv) per year to a member of the public. This has been demonstrated through the two studies by EPA and by licensee reporting of actual air emissions. The second component is a program to ensure that doses remain at this level. In the absence of rulemaking requiring licensees to maintain doses to levels of no more than 10 mrem (0.1 mSv) per year, EPA would not rescind Subpart I and dual regulation would continue.

The Federal Radiation Council (FRC) was formed in 1959, to provide recommendations to the President for Federal policy regarding radiation matters that affect health. In May 1960, FRC set forth basic principles for

protection of both workers and the public. The council was abolished in 1970 when its functions were transferred to the EPA Administrator. In 1981, EPA published proposed recommendations for new Federal guidance for occupational exposure. In 1987, President Reagan approved recommendations by the EPA Administrator for new ''Radiation Protection Guidance to Federal agencies for Occupational Exposure.'' EPA has not yet issued recommendations on limits for the public. A working group comprised of representatives from affected Federal agencies and experts on radiological health matters has been developing these recommendations for several years and expects to provide them during the next year.

In 1977, the International Council on Radiological Protection (ICRP) issued its Report No. 26 ''Recommendations of the International Council on Radiological Protection'' in 1977. These recommendations concluded that the average doses to members of the public should not exceed 100 mrem (1.0 mSv) per year with a limit of 500 mrem (5.0 mSv) per year to any individual.

The National Council on Radiation Protection and Measurements (NCRP) is required by Congress to recommend limits for exposure to ionizing radiation. In June 1987, NCRP issued its Report No. 91, ''Recommendations on Limits for Exposure to Ionizing Radiation.'' This report contains recommendations on exposure limits for both occupationally exposed individuals and individual members of the public. The report recommended that doses to individual members of the public be limited to 100 mrem (1.0 mSv) per year averaged over a lifetime, not to exceed 500 mrem (5.0 mSv) in 1 year.

In 1991, NRC revised 10 CFR Part 20 ''Standards for Protection Against Radiation.'' This revision included new limits for individual members of the public. Though both the ICRP and the NCRP recommended limits of 500 mrem (5.0 mSv) in any one year, the NRC established a limit of 100 mrem (1.0 mSv) per year because it was impractical to control dose in terms of lifetime average without keeping track of individual exposures. In addition, 10 CFR Part 20 requires that licensees use procedures and engineering controls to maintain doses ALARA.

Both the NRC and EPA regulatory programs are designed to achieve protection of the public with an ample margin of safety. The approaches of the two agencies differ. NRC limits TEDE, requires that doses are maintained ALARA, and maintains an active inspection program. EPA limits dose from individual pathways of exposure and individual radionuclides to ensure that the total dose does not exceed recommended levels. Both programs achieve similar levels of protection.

NRC agrees that adoption of the constraint in § 20.1101(d) is preferable to dual regulation due to the reduction in burden on licensees as well as State and Federal agencies. Under the provisions of 40 CFR Part 61, licensees with doses to members of the public greater than 1 mrem (0.1 mSv) per year but less than 10 mrem (0.1 mSv) per year must submit reports. However, under 10 CFR 20.1101(d), these licensees will not have to file reports for doses below the constraint level because doses can be evaluated during routine inspections. Under the final rule, the burden of calculating doses should be reduced for most licensees because the proposed guidance for demonstrating compliance with 10 CFR 20.1101(d) allows significantly more flexibility and simpler methods for calculating doses than the model currently used to demonstrate compliance with 40 CFR Part 61. These new methods for calculating doses should result in fewer reporting and corrective actions, as under EPA's Subpart I.

Licensees are required under § 20.2103 to maintain records of surveys required to demonstrate compliance with the public dose limit. Review of licensee records used to demonstrate compliance with the public dose limit is part of the NRC inspection program. Confirmatory measurements would generally not be useful since most licensees in this category do not have routine ongoing effluent releases.

Finally, concerning those commenters that believe NRC's requirements are less safe than Subpart I, Congress enacted legislation comprehensively amending the Clean Air Act (CAA), which included a section addressing the issue of regulatory duplication between EPA and NRC in 1990. The 1990 CAA amendments permit the EPA Administrator to rescind the CAA standards as they apply to radionuclides, at sites licensed by NRC, and the Agreement States, if he or she finds that the NRC regulatory program provides an ample margin of safety to protect public health.

EPA's analysis of the NRC regulatory program focused on two general issues: (1) whether the implementation of the NRC regulatory program results in sufficiently low doses to protect the health and safety of the public with an ample margin of safety; and (2) whether the NRC program is sufficiently comprehensive and thorough, and administered in a manner that will continue to protect public health in the future. EPA undertook studies to determine the level of protection provided by the existing regulatory program and found that doses were sufficiently low to protect the health and safety of the public with an ample margin of safety. The implementation of this rule will ensure that doses to members of the public from air effluents will continue to remain below 10 mrem (0.1 mSv) per year and provide evidence to EPA that the current level of protection will continue.

The purpose of this rulemaking is not to reduce doses, because it has already been demonstrated that doses are sufficiently low. The purpose is to ensure that doses are maintained at the low level currently achieved by NRC licensees, eliminate unnecessary dual regulation, and reduce costs associated with the current level of protection, by providing a basis upon which EPA can find that doses will not increase as a result of rescission of Subpart I.

Issue 2—Promulgation of the Constraint as ALARA

Comments: There were a number of commenters who objected to the ALARA basis for the proposed constraint rule. Some commenters objected on the ground that ALARA is a matter of operating philosophy, good radiation protection practice and licensee judgment, and cannot be translated into an enforceable dose number. Other commenters objected on the basis that ALARA is inherently site specific and cannot be defined generically or that the proposed dose constraint cannot be ALARA but must be a limit because the constraint contemplates some enforcement actions for exceedance even if the licensee has followed all good radiation protection practices. Some commenters argued that the rule cannot be ALARA because it adds costs with no safety benefit. Other commenters stated that the constraint is inconsistent with a prior NRC decision in 10 CFR Part 20 (56 FR 23360) on the use of ''reference levels.''

Response: The Commission has retained an ALARA basis for the rule but recognizes that its use of the term in this rule may have led to some confusion. The Commission acknowledges that the ALARA concept in 10 CFR 20.1003 is an operating philosophy which requires good radiation protection practice and the exercise of expert licensee judgement. The ALARA concept is site specific in that some of the factors to be considered may vary from case to case, as the court so found in *York Committee for a Safe Environment* v. *NRC*, 527 F. 2d 812

(D.C. Cir. 1975). The Commission has presumed, without deciding, that the ALARA concept in § 20.1003 can be enforced in a particular case so as to require a specific radiation protection practice, but it is clear that the existing regulation does not translate readily into a generic dose number, which, if exceeded, will lead to enforcement action.

The NRC intended the constraint rule to be a somewhat broader concept found in the governing statute, the Atomic Energy Act of 1954, as amended (Act). The Act, as construed by both the Commission (e.g., 10 CFR 50.109) and the courts (*Union of Concerned Scientists* v. *NRC*, 824 F.2d 108 (D.C. Cir. 1987)), contemplates two distinct approaches to radiological regulation. First, a level of ''adequate protection'' must be defined and enforced without regard to economic cost. Second, risk may be reduced to a level below that associated with ''adequate protection'' to ''minimize danger to life or property'' with economic cost and other factors as permissible balancing considerations. See ''Revision of Backfitting Process for Power Reactors,'' (53 FR 20603; June 6, 1988). It is important to note that Section 161b of the Act authorizes the Commission to adopt and enforce generic requirements using either approach. Many recent NRC regulations (e.g., 10 CFR 50.63) have been directed at incremental risk reduction under the second approach based on a generic regulatory or backfit analysis which considered and balanced economic and other costs and safety backfits. These ''minimize danger'' regulations provide ''limits'' because they establish generic requirements directly enforceable against licensees. However, in a broad sense they are also ALARA regulations because cost, feasibility, and other relevant factors identified in 10 CFR 20.1003 are evaluated.

Viewed in its larger statutory context, the use of ALARA in 10 CFR 20.1003 is one means to implement the second approach to radiological regulation. However, other similar requirements can also be part of this second approach. While the ALARA concept in 10 CFR 20.1003 may not be consistent with a generic enforceable dose requirement, other concepts of ALARA premised on generic considerations are appropriate. This concept of ALARA as a broadly applicable dose requirement based on a generic weighing and balancing of health and safety, feasibility, and other factors is the basis for the longstanding limits on nuclear power reactor emissions in 10 CFR Part 50, Appendix I, and is the basis for the constraint rule. The ALARA rule imposes a limit in the sense that exceedance will lead to corrective action, but it is not a limit in the sense that exceedance per se would constitute a violation of any regulatory requirement. A violation occurs only when a licensee fails to report an exceedance or fails to take appropriate corrective actions. A limit would be appropriate if compliance were needed to ensure adequate protection of public health and safety. In this case, the constraint is needed only to ensure that currently afforded levels of protection are not reduced. This will provide the basis for rescission of 40 CFR Part 61, Subpart I by EPA.

Thus, to say that the constraint rule cannot be based on ALARA because it is in effect a ''limit,'' interchanges a narrow concept of ''ALARA'' with a broad concept of ''limit.'' If a broad definition is used, the constraint rule withstands scrutiny as both ALARA and a limit. In the statutory context of the Atomic Energy Act and general principles of administrative law, the constraint rule is a limit based on generic ALARA considerations. The constraint rule is not a limit needed for adequate protection and the constraint rule is something more than a narrow translation of the particular ALARA concept contained in 10 CFR 20.1003. The term ''constraint'' was used for the rule to avoid confusion with the narrow concepts of ALARA and the limit employed in radiation protection discussion.

Three matters must be addressed:

(1) The comment that the rule cannot be based on ALARA because it will result in increased cost with no safety benefit;

(2) The problem of the licensee who cannot meet the dose constraint despite using all good radiation protection practices; and

(3) The allegedly inconsistent Commission discussion of reference levels in a recent revision to 10 CFR Part 20.

The Commission disagrees with the premise of the first comment. There was no disagreement with the Commission's conclusion that all of the licensees affected by the rule are achieving a level of control such that doses are below the 10 mrem (0.1 mSv) per year level and so there is no factual dispute over whether this level of radiation protection is readily achievable. The final rule and EPA's rescission of its Clean Air Act emission limits and related requirements will result in a significant net cost savings to licensees. The NRC acknowledges that the positive direct health effects are likely to be small and possibly nonexistent in the near future, given the current level of controls. However, the rule can be said to offer a small, but positive, net health and safety benefit in that it will prevent a decrease in the level of protection afforded the public if Subpart I were rescinded in the absence of a rule like the constraint. Under the ALARA concept, it is appropriate to base a requirement on a small positive health and safety benefit when cost savings are also likely.

The NRC does not expect that any licensee subject to the rule will be unable to demonstrate that doses to members of the public from releases of airborne radioactive materials to the environment are less than 10 mrem (0.1 mSv) per year. In the unlikely case that this dose is exceeded or is projected to be exceeded, due to some temporary circumstances or lapse in controls, the NRC expects the licensee to take whatever corrective actions are necessary (if any) to protect public health and safety, to report the dose, to recommend further corrective actions if necessary, and take those corrective actions agreed upon with NRC. NRC staff will review and approve corrective actions to ensure that they are appropriate to reduce airborne emissions sufficiently to comply with the constraint in the future. In the unlikely case that a licensee is unable to take adequate corrective actions, because of limits in technology or cost constraints, these issues can be addressed in the future on a case-by-case basis.

The application of the ALARA principle used in this rule is not the same as the concept of reference level which was rejected by the Commission when 10 CFR Part 20 was recently revised. Commenters on the 1991 revision to 10 CFR Part 20 objected to the use of reference levels because they were implemented exactly the same as adequate protection limits. For that reason, the Commission did not adopt reference levels in the 1991 revision. Implementation of the constraint is different than such a limit because exceeding the constraint is not a violation, and only requires the licensee to report the dose and take corrective actions to reduce future doses.

Issue 3—Whether the Constraint Is Actually a Limit

Comments: Nine comments were received on whether the constraint is or should be a limit. Two commenters believed that the constraint was no different than a limit. One commenter agreed with the term constraint. Three commenters expressed concern that the constraint was an inappropriate relaxation of requirements.

Those commenting that the constraint was a de facto limit interpreted the requirements to indicate that a second exceedance of the constraint would result in enforcement action and therefore the constraint is a limit. Three commenters indicated that the rule should be a strict limit. They expressed concern that the constraint was less protective than EPA requirements.

Response: If a licensee exceeds a limit that is needed to protect health and safety, the NRC may take immediate enforcement action. If a licensee exceeds a constraint, the licensee will be required to notify NRC, take any actions that may be necessary to protect public health and safety, and implement any further corrective actions that NRC staff agrees are adequate to prevent further doses in excess of the constraint. However, if the licensee failed to report a measured or calculated dose in excess of the constraint to NRC or failed to implement appropriate corrective actions as agreed upon, enforcement action would be expected. This is because, unlike an adequate protection limit, the constraint is not needed to provide adequate protection of public health and safety.

The NRC does not agree that the constraint is less protective than current EPA requirements. Both EPA's Subpart I and the NRC constraint require licensees to take actions to ensure that doses to members of the public do not exceed 10 mrem (0.1 mSv) per year from ambient air emissions. NRC routinely inspects licensed facilities to ensure that air effluents do not result in doses to members of the public that exceed the requirements in 10 CFR Part 20. The inspection and enforcement program will be amended as a result of this final rule to review licensee records used to demonstrate compliance with the constraint.

Issue 4—Citizen Suits

Comments: Three commenters opposed finalization of the constraint on the basis that it forfeits citizen rights to sue a licensee who exceeds the constraint.

Response: The Commission's regulations in 10 CFR 2.206 provide the public with the right to petition the NRC to take enforcement action against a licensee for a violation of the Commission's regulations. This would include the final constraint rule.

Issue 5—Agreement State Compatibility

Comments: Four commenters addressed the proposal that the constraint be a Division 2 matter of compatibility. Under Division 2, States could adopt similar or more stringent requirements. Three commenters agreed that this rule should not be codified as a Division 2 requirement, but rather as a Division 1 matter of compatibility. Under Division 1, the States would be required to adopt regulations that were essentially identical. These commenters believed that if stricter standards were permitted, reactor and non-reactor licensees would be under different requirements and certain practices, such as nuclear medicine, could be jeopardized. One commenter noted that because this is really a limit, it should be under 10 CFR 20.1301 and would be a Division 1 matter of compatibility. Another commenter stated that NRC should have provided a greater opportunity for State involvement in this rulemaking, and that as a division 2 rule, Agreement States would have to spend scarce resources to develop a compatible rule.

Response: Section 116 of the Clean Air Act specifies that nothing precludes States from imposing air emission requirements that are more stringent than those developed by EPA. Section 116(d)(9), which contains the provisions related to EPA's margin of safety determination for NRC or Agreement State licenses, specifies that: ''Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under Section 7411 of this title or this section.'' The Commission believes that this provision clarifies that EPA's determination regarding NRC and Agreement State licensees has no effect on the existing authority of States to impose air emission standards that are more stringent than those of EPA.

With regard to the comment concerning involvement of the Agreement States in the development of this rule, NRC has routinely reported its progress on providing an adequate basis upon which EPA could rescind Subpart I to both the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) at each of their annual meetings. The Agreement States were consulted extensively on this issue over the last several years. There were extensive discussions of the concept with the individual States and with the Executive Board of the OAS.

Issue 6—Demographic Information Contained in Required Reports

Comments: Seven commenters addressed the application of the requirement contained in 10 CFR 20.2203(b)(2) to the constraint. This section requires reports to contain demographic information on the exposed individual. These commenters expressed concern that a member of the public would be under no obligation to provide demographic information to licensees and that licensees would not always be able to comply with the requirement.

Response: NRC agrees that members of the public may choose to withhold the demographic information from licensees. Such information is only needed for occupationally exposed individuals to ensure that lifetime exposure records are accurate. Section 20.2203 has been changed to only require such information on occupationally exposed individuals.

Issue 7—Effective Date

Comment: One commenter requested that an effective date be added to the final rule to coincide with EPA's rescission of Subpart I. Response: The NRC and EPA will, to the extent possible, publish both final rules so that they become effective concurrently.

Issue 8—Enforcement

Comments: Five commenters stated that NRC should establish a limit rather than a constraint. They believed that if the limit has been exceeded, a notice of violation and civil penalties should always result. One commenter expressed concern that ''self-reporting and confession'' is not adequate. Another stated that because ALARA is only guidance, it is not enforceable.

Response: ALARA is not guidance. As stated previously, the 1991 revision to 10 CFR Part 20 codified ALARA as a required part of the licensee's radiation protection program. A limit often implies that doses must be controlled below that level in order to provide adequate protection of health and safety of the public and workers. To meet ALARA requirements licensees are currently controlling effluents to levels below that which would be required under the constraint. If a licensee exceeds the constraint, the rule requires that this be reported and that corrective actions be promptly taken. If a licensee does not comply with the obligation to report and take corrective actions, enforcement action will result. In NRC's judgment, as a matter of enforcement policy, it is not necessary to issue a notice of violation or civil penalties upon exceedence of the constraint level; it is sufficient that this be reported and that prompt corrective action is taken.

Issue 9—Exemptions

Comments: Five commenters stated that the rule should only apply to members of the public offsite. They cited the EPA's Subpart I requirement to calculate dose to the nearest resident or offsite individual likely to receive the highest dose. Under Subpart I, licensees would not calculate doses from air emissions to visitors in hospitals, workers that are not radiation workers within the facility, or other members of the public within the facility.

Response: The language in the rule has been changed to reflect that it is intended to apply to radioactive airborne effluents to the environment. The Draft Regulatory Guide DG–8016 will be revised to indicate that the dose limit is to be calculated or measured at the nearest resident or individual offsite likely to receive the highest dose. The final regulatory guide will be available when the rule becomes effective.

Comments: Two commenters stated that air emissions from adjacent nearby exempt uranium mills should not be included in the calculation of dose. One commenter stated that materials from unlicensed portions of the facility such as ore stockpiles should not be considered in the calculation of dose.

Response: Subpart I does not apply to disposal at facilities regulated under 40 CFR Part 191, Subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR Part 192. The constraint applies to airborne effluents of only licensed materials to the environment. Draft Regulatory Guide DG–8016 will be changed to clarify that windblown particulates from other licensed facilities or unlicensed materials do not need to be considered in the calculation of doses used to demonstrate compliance with the constraint.

Comments: Four commenters stated that air emissions from patients should be exempted from this rule.

Response: The regulatory impact analysis (NUREG–1492) for a recent NRC rulemaking analyzed potential doses from exposure to patients who were released after administration of radiopharmaceuticals. This analysis concluded that internal doses from inhalation of radioactive materials in the exhaled air of a released patient are trivial. For licensees using an inventory approach to demonstrating compliance with the rule, such as the COMPLY computer code, there is no need to account specifically for the materials that might be released to the air through respiration or transpiration by patients. The Regulatory Guide will make it clear that dose from air emissions from patients do not need to be specifically addressed in the calculation of dose used to demonstrate compliance with the constraint.

Comments: Four commenters stated that in addition to Rn–222, all daughters produced after release should also be excluded.

Response: EPA's Subpart I exempts both Rn–222 and any daughters produced after release of Rn–222 because these types of releases are normally not attributable to licensed activities. The proposed rule was not intended to be more stringent than Subpart I. The rule language has been changed to reflect this exemption.

Comments: Two commenters recommended that in addition to Rn–222, Rn–220 and its daughters should also be exempted. One commenter stated that it was an EPA oversight that led to this erroneous omission from the final Subpart I.

Response: Rn–220 is normally attributable to licensed activities. EPA does not exempt Rn–220 or its daughters from consideration in the dose calculations in support of demonstrating compliance with Subpart I. The commenter's suggestion that an oversight led to the erroneous omission of this exemption from Subpart I is incorrect, and Rn–220 should not be excluded from the calculations that are used to demonstrate compliance with the constraint.

Comments: Six commenters requested that in addition to sealed sources, sealed containers should also be excluded from the rule.

Response: Paragraph 2(a) of Appendix D to 40 CFR Part 61 states: Radioactive materials in sealed packages that remain unopened, and have not leaked during the assessment period should not be included in the calculations.'' Subpart I exempts sealed packages, because any package that has remained sealed cannot contribute to airborne effluents. When a total inventory of licensed materials possessed during the year is used to model potential doses, it is unnecessary to include materials that could not have contributed to airborne effluents. The Regulatory Guide will provide further guidance on this issue.

Issue 10—Measurability of 10 mrem (0.1 mSv) Per Year

Comments: Three commenters stated that 10 mrem (0.1 mSv) per year was not measurable. One commenter stated that although 10 mrem (0.1 mSv) per year might be easily achievable, it is not easily measurable. Another stated that the exposure rate corresponds to 1 microR (0.01 micro-Sv) per hour and cannot be measured accurately.

Response: Draft Regulatory Guide DG–8016 provides several methods for demonstrating compliance with the constraint, and only one of the methods described would require direct measurement at the receptor location. If this method is not practical due to the emission characteristics of the radionuclide releases, there are other options cited in Draft Regulatory Guide DG–8016 that do not require a direct measurement to demonstrate compliance with the constraint.

Issue 11—Scope of the Rule

Comments: One commenter stated that if there must be a constraint, it should apply to all licensees, including power reactor licensees.

Response: Although this rule only applies to licensees other than power reactor licensees, the Commission's existing regulations in 10 CFR Part 50, Appendix I, already establish a similar regulatory framework for power reactors. Appendix I includes separate requirements to develop design objectives and operational levels sufficient to demonstrate compliance with EPA's Subpart I. In addition, reactor licensees must annually report quantities of radioactive materials released into the environment, as well as the resulting doses.

Issue 12—Location of Constraint in NRC Regulations

The Commission requested specific comment on the question of whether the 10 mrem (0.1 mSv) per year constraint should be established in 10 CFR Part 20 as proposed or whether it should be established separately in each appropriate part of Title 10 instead.

Comments: Two comments were received in response to this issue. One commenter stated that the constraint should be in 10 CFR Part 20. The other commenter stated that the constraint should be in each appropriate part. Two other commenters stated that it should be in § 20.1301 with the dose limits.

Response: While the constraint could just as easily be included under other parts of the regulations, including it in 10 CFR Part 20 provides uniformity. Because 10 CFR Part 20 is the designated area for radiation protection standards and related requirements, it is the appropriate location for the constraint. The rule will be codified under § 20.1101 to make it clear that although the constraint is not the same as a limit, licensees are expected to develop radiation programs to ensure that doses from air emissions are below 10 mrem (0.1 mSv) per year.

Agreement State Compatibility

The Commission believes that the Division 2 compatibility designation for the rule is consistent with state authority in this area as described in the Clean Air Act. The Division 2 designation means that Agreement States must address these rules in their regulations but may adopt requirements more restrictive than those of NRC. Accordingly, the authority of the Agreement States to impose air emissions standards under their Atomic Energy Act authority after the effective date of this rule will be consistent with their existing authority. Under Section 274 of the Atomic Energy Act the Commission reviews Agreement State programs to ensure that adequacy and compatibility of the State Program is maintained. The Commission has also approved procedures to suspend or terminate programs that are not adequate or compatible.

Summary of Changes in the Final Rule

Based on the responses to comments, a few changes were made in the final rule. Otherwise, the provisions of the final rule are the same as those presented in the proposed amendments. Specific changes to the final rule are summarized as follows:

(1) Section 20.2203(b)(2) has been changed to require the name, social security number, and date of birth only for occupationally overexposed individuals and not for members of the public who have received doses in excess of the public limits, including the constraint.

(2) The language of the rule has been changed to indicate that Rn–222 and all daughters produced after the release of the radon are categorically excluded from this rule.

(3) The language of the rule has been changed to indicate that the constraint applies only to release of airborne radioactive effluents to the environment and, thus, dose to the nearest resident, offsite business or school, is to be constrained.

In addition, the following changes will be made to Draft Regulatory Guide DG–8016:

(1) An inventory of radioactive materials used to model a potential dose to a member of the public need not include radioactive materials in sealed containers that have remained sealed throughout the compliance period.

(2) Airborne emissions of radioactive materials from patients does not need to be considered if the materials have already been included in the site inventory.

The Regulatory Guide was issued in draft for public comment concurrent with the proposed rule. The final regulatory guide will be available by the effective date of this rule.

Conforming Amendments To NRC's Enforcement Policy

By separate notice in the Federal Register, the Commission is modifying its ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), to address the new regulation, and to provide an example Severity Level IV violation of the constraint. This change will also be reflected when the Enforcement Policy is reprinted in its entirety in the next revision of NUREG–1600.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This action is not expected to have any significant environmental impact because the programs will provide equivalent protection. Also, airborne effluents of radioactive materials to the environment are not expected to increase. The changes to the final rule are to the procedural methods for demonstrating compliance as well as licensing and inspection procedures. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and photocopying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0014.

The public reporting burden for this collection of information is estimated to average 80 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. Send comments on any aspect of this collection of information, including suggestions for further reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to bsj1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0014), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. In the response to comments, the NRC concluded that only some minor changes to the draft regulatory analysis were necessary, corresponding to some minor procedural changes in the final rule. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower level), Washington, DC 20555–0001. Single copies of the analysis may be obtained from Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6223.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule only impacts NRC licensees with emissions of significant quantities of radioactive material who would be required to report the exceedance to the NRC. It will relieve licensees from the unnecessary burden of dual regulation. The level of air emissions from NRC-licensed facilities has historically been well below the NRC dose limit and except for a few unusual cases, readily met the EPA standard.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because it does not apply to power reactor licensees, and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects In 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f); secs. 201, as amended, 202, 206, 88 stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003, the definition of *Constraint* is added to read as follows:

§ 20.1003 Definitions.

* * * * *

Constraint (dose constraint) means a value above which specified licensee actions are required.

* * * * *

3. In § 20.1101, paragraph (d) is added to read as follows:

§ 20.1101 Radiation Protection Programs.

* * * * *

(d) To implement the ALARA requirements of § 20.1101 (b), and notwithstanding the requirements in § 20.1301 of this part, a constraint on air emissions of radioactive material to the environment, excluding Radon-222 and its daughters, shall be established by licensees other than those subject to § 50.34a, such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 mrem (0.1 mSv) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in § 20.2203 and promptly take appropriate corrective action to ensure against recurrence.

4. In § 20.2203 the section heading is revised, a new paragraph (a)(2)(vi) is added, and paragraphs (b)(1)(iv) and (b)(2) are revised to read as follows:

§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

(a) * * *

(2) * * *

(vi) The ALARA constraints for air emissions established under § 20.1101(d); or

(b) * * *

(1) * * *

(iv) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

(2) Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed [7] individual: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report.

* * * * *

Dated at Rockville, Maryland, this 3rd day of December, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–31221 Filed 12–9–96; 8:45 am]

BILLING CODE 7590–01–P

[7] With respect to the limit for the embryo-fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Radiation Protection Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions'' to add an example for categorizing the significance of failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d), or failure to take corrective action for such an exceedance. By a separate action published in this issue of the Federal Register, the Commission has issued a final rule amending 10 CFR Part 20 to add § 20.1101(d), which establishes the requirements for reporting and taking corrective action. This modification to the Enforcement Policy reflects that amendment.

DATES: This action is effective on the day that the addition of § 20.1101(d) to 10 CFR Part 20 becomes effective. Comments are due on or before January 9, 1997.

ADDRESSES: *Send written comments to:* The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–2741.

SUPPLEMENTARY INFORMATION: The Commission's ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG–1600. The Policy recognizes that violations have differing degrees of safety significance. As reflected in the severity levels, safety significance includes actual safety consequence, potential safety consequence, and regulatory significance.

The rulemaking to add § 20.1101(d) establishes a dose constraint for radiation dose to members of the public from air emissions of radionuclides from NRC licensed facilities other than power reactors. As noted in the Statements of Consideration for that rulemaking, the dose constraint is not a dose limit, but is a limit in the sense that exceedance triggers requirements to make a report to NRC and promptly take corrective action to ensure against a recurrence. Consistent with this rulemaking, the Commission has determined that a failure to make the required report or promptly take corrective action as required should be categorized at Severity Level IV. As defined in the Enforcement Policy, Severity Level IV violations are of less than significant regulatory concern but more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

Therefore, ''Supplement IV—Health Physics (10 CFR Part 20)'' of the Policy is being modified. Example D.8. is renumbered as Example D.9., and a new Example D.8. is added to provide an example of a violation categorized at Severity Level IV involving failure to report an exceedance of the dose constraint established in § 20.1101(d), or failure to take corrective action for an exceedance.

Electronic Access

Comments may be submitted electronically in either ASCII text or WordPerfect format (version 5.1 or later) by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the related rulemaking also are available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet: fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take the user to the NRC online main menu. The NRC online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If NRC is accessed from FedWorld's main menu, the user may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC online main menu. However, if NRC is accessed at FedWorld by using NRC's toll-free number, the user will have full access to all NRC systems, but will not have access to the main FedWorld system.

If FedWorld is contacted using Telnet, the user will see the NRC area and menus, including the Rules Menu. Although the user will be able to download documents and leave messages, he or she will not be able to write comments or upload files (comments). If FedWorld is contacted using FTP, all files can be accessed and downloaded, but uploads are not allowed. Only a list of files will be shown without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone 301–415–5780; E-mail AXD3@nrc.gov.

Paperwork Reduction Act Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget,

approval number 3150–0011. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

In Supplement IV, paragraph D(8) is renumbered as paragraph D(9) and a new paragraph D(8) is added to read as follows:

Supplement IV—Health Physics (10 CFR Part 20)

D. Severity Level IV—Violations involving for example:

* * * * *

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

* * * * *

Dated at Rockville, Maryland, this 3rd day of December 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–31220 Filed 12–9–96; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Tuesday
December 10, 1996

Part IV

Department of Justice

Office of Justice Programs

28 CFR Part 31

Formula Grants; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 31

[OJP (OJJDP) No. 1106]

RIN 1121–AA43

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

This final regulation is a further clarification and modification of the regulations issued in March and April of 1995. It offers greater flexibility to States and local units of government in carrying out the Formula Grants Program requirements of the JJDP Act, while reinforcing the importance of complying with those underlying legal requirements and the policy objectives from which they stem.

The Department of Justice remains firmly committed to the core requirements of the JJDP Act, such as the obligation to maintain sight and sound separation between juveniles and adults. With that in mind, this regulation is expected to assist jurisdictions that are working diligently to comply with statutory and regulatory obligations by expressly providing such flexibility as State authorized transfers of delinquents who have reached the age of full criminal responsibility to the criminal justice system and by recognizing certain real-world factors which can make ''perfect'' compliance unrealistic. These regulatory changes are in no way intended to evidence any lessening of the Department's commitment to the core requirements.

EFFECTIVE DATE: This regulation is effective December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION:

Description of Major Changes

Contact With Incarcerated Adults

The revised regulation provides definitions of sight and sound contact to assist in understanding the level of separation that is required under section 223(a)(13) of the JJDP Act (section 223(a)(13)). Sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders in a secure institution. Sound contact is defined in the regulation as direct oral communication between incarcerated adults and juveniles in secure institutions. While separation must be provided through architectural or procedural means, the revised regulation provides that sight or sound contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

Placement of Delinquents in Adult Facilities

State laws are increasingly providing for the mandatory or permissible transfer (or placement) of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility under State law. The revised regulation expressly provides that the section 223(a)(13) separation requirement is not violated as a result of contact between an adjudicated delinquent and adult criminal offenders in a secure institution once the adjudicated delinquent has reached the age of full criminal responsibility established by State law, provided that the transfer (or placement) of the adjudicated delinquent is required or authorized under State law.

Expansion of 6-Hour Hold Exception to Pre and Post Court Appearances

The revised regulation builds upon the existing authority to place an alleged or adjudicated delinquent juvenile in an adult jail or lockup for up to 6 hours by providing a 6 hour time period immediately before and/or after a court appearance, subject to the section 223(a)(13) separation requirement, during the time the delinquent juvenile is in a secure custody status in the adult jail or lockup.

Collocated Facilities

The revised regulation removes the requirement that a needs-based analysis precede a jurisdiction's request for State approval of a juvenile holding facility that is collocated with an adult jail or lockup to qualify as a separate juvenile detention facility. OJJDP concurrence with a State agency's decision to approve a collocated facility will no longer be required. On-site reviews by the State to determine compliance, coupled with OJJDP's statutorily required review of the adequacy of state monitoring systems, will be used to insure that each collocated juvenile detention facility meets and continues to meet the collocated juvenile detention facility criteria.

The revised regulation permits the sharing of common use nonresidential areas of collocated adult and juvenile facilities on a time-phased basis that prevents contact between juveniles and adults. Secure juvenile detention facilities around the country are routinely overcrowded. OJJDP's objective is to encourage the development and use of separately located juvenile facilities whenever possible. Still, it is recognized that expecting every jurisdiction to create wholly separate juvenile facilities, including the duplication of costly infrastructure elements like gymnasiums, cafeterias, and classrooms, may result in those jurisdictions being unable to provide any secure juvenile detention capacity. The revised regulation makes it possible for more jurisdictions to provide juvenile facilities by removing the requirement that collocated facilities not share program space between juvenile and adult populations. Utilization of time-phasing will allow both juveniles and adults access to available educational, vocational, and recreational areas of collocated facilities. Time-phased use is explicitly limited to nonresidential areas of collocated facilities and requires the use of written procedures to ensure that no contact occurs between detained juveniles and incarcerated adults.

Deinstitutionalization of Status Offenders

The revised regulation expressly provides, formalizing existing OJJDP policy, that it is permissible to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and up to 24 hours, exclusive of weekends and legal

holidays, immediately following an initial court appearance.

Valid Court Order

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multi-disciplinary review teams to prepare and submit a written report to a judge who is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a valid court order pursuant to the valid court order exception to section 223(a)(12)(A). Although a multi-disciplinary team is still an appropriate option, and is encouraged when practical, this suggestion led to some confusion and, therefore, the example was unnecessary.

Removal Exception

The revised regulation eliminates the requirement for States to document and describe, in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ground transportation and weather exceptions to the section 223(a)(14) jail and lockup removal requirement.

Compliance With Separation Requirement

The revised regulation modifies the compliance standard that penalized States that have not enacted laws, rules, and regulations, or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of the section 223(a)(13) separation requirement. These States were not eligible for a finding of compliance if any instances of noncompliance were sanctioned by state law, rule or regulation, or policy. Instead, the revised regulation establishes a single standard applicable to all States regardless of whether a law, rule or regulation, or policy exists that prohibits the detention or confinement of juveniles with incarcerated adults in circumstances that would be in violation of section 223(a)(13), providing that compliance can be established under circumstances in which:

(1) the instances of noncompliance do not indicate a pattern or practice; and either (2) adequate enforcement mechanisms exist; or (3) an acceptable plan has been developed to eliminate the noncompliant incidents.

Minority Detention and Confinement

The revised regulation specifically provides that the purpose of the section 223(a)(23) Disproportionate Minority Confinement core requirement is to encourage States to programmatically address any features of its justice system that may account for the disproportionate detention or confinement of minority juveniles. The regulation is revised to clearly state that the Disproportionate Minority Confinement core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the Federal Register on July 3, 1996 (61 FR 34770), for public comment. Written comments were received from thirty-six respondents on ten issues addressed by the proposed regulation. The respondents represent a diverse group including child advocacy organizations, state agencies responsible for carrying out the JJDP Act, and public interest groups. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses from OJJDP:

1. Comment: Several respondents raised concern over the proposed clarification of the Section 223(a)(13) prohibition against contact between incarcerated adults and juveniles who are in close proximity but not at such distances as ''several hundred feet.'' These respondents contended that this statement in the commentary section of the proposed regulation appears to conflict with the later statement in the commentary section concerning the prohibition against systematic contact. These respondents suggested that the ''several hundred feet'' standard would create monitoring difficulties and, consequently, it should be clarified that ''several hundred feet'' was intended only as an example and that the ability for a juvenile and adult to communicate is the key. These respondents felt that it should be made clear that ''systematic, procedural, and condoned contact is always prohibited.''

Response: The Section 223(a)(13) separation requirement is designed to protect juveniles who are at risk from contact with adult offenders while under the delinquency jurisdiction of the juvenile justice system. OJJDP agrees with the comment that ''systematic, procedural, and condoned contact is always prohibited.'' The ''several hundred feet'' example was intended to illustrate a common sense approach to determining if visual ''contact'' or oral ''communication'' is possible. This is not an issue of systematic, procedural, or condoned contact, but one of the potential for harm to juveniles. OJJDP does not believe that a juvenile who is able to see an adult from a significant distance is in danger of being harmed. Simultaneous use of secure areas of adult facilities continues to be prohibited and, under the revised regulation, time-phased use of common use areas to achieve separation is permitted in both collocated facilities and adult jails, lockups, or other adult institutions. For collocated facilities, this revision is designed to allow both juveniles and adults access to available educational, vocational, and recreational areas common to the two facilities.

2. Comment: A number of respondents opined that the ''brief and inadvertent'' contact language of the proposed regulation essentially changes the Section 223(a)(13) prohibition from ''no contact'' back to ''no regular contact'' for nonresidential areas of institutions. Relaxing the no contact standard, it is argued, would permit more violations because violations are already occurring under current regulations. Several respondents believe this proposed regulation would ''muddy the waters'' and may ''expose children to needless risks'' by lowering the standards to which states must adhere. They assert that national policy should set the separation standard at the highest possible level.

Response: The revised regulation seeks to clarify with particularity the prohibition of systematic, procedural, or condoned contact between incarcerated adults and juveniles. It is not the intent of OJJDP, through the revised regulation, to in any way encourage or tolerate increased contact between incarcerated juveniles and adults, or to expose juveniles to greater risk. However, common sense and practicality suggested that the regulatory definitions of both sight and sound contact needed to be clarified, so that appropriate and reasonable parameters would guide State and local policy and practice.

In considering the respondent comments concerning this proposed regulatory clarification, it is important to note that the obligation of local jurisdictions housing juveniles to maintain sight and sound separation by architectural means or by established policies and procedures remains firmly in place. This obligation, coupled with the maintenance of policies, practices and facilities designed to maximize separation, is designed to maintain strict adherence to the ''no contact'' statutory prohibition between juveniles and adults in secure custody.

OJJDP also believes, however, that strict adherence to the ''no contact''

prohibition is not inconsistent, in view of the lack of a statutory definition of the word ''contact'', with a recognition that brief and inadvertent or accidental sight or sound contact may occur, upon occasion, in nonresidential areas of a secure institution, without being considered a reportable violation of the separation requirement. OJJDP believes it would be unfair to penalize jurisdictions working consistently and genuinely to maintain sight and sound separation through policies, practices, and facilities architecture if brief and inadvertent or accidental contact between a juvenile and adult occurs in common use areas. This recognition should in no way be interpreted to indicate acceptance or tolerance of such impermissible contacts, but only as a recognition that in such environments, even the very best intentioned facility administrators may not prevent all short-term, accidental contact between juveniles and adults in a portion of the facility used at different times by both juveniles and adults.

Nonetheless, based on the concern expressed in the comment, OJJDP has expanded the regulatory language to prohibit contact in any secure areas of an institution that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas. OJJDP recognizes that in many jurisdictions, especially jurisdictions in rural areas, there may be periods of time when no juveniles are detained in an adult jail or lockup facility. During these periods, jurisdictions use all areas of the facility, including those areas dedicated to use by juveniles when juveniles are present, for incarcerated adults because no contact between incarcerated adults and juveniles is possible when juveniles are not present in the facility.

This revision, coupled with the requirement that facilities establish separation by architectural means or by establishing policies and procedures for time-phased use of common use areas within the secure perimeter of an adult jail, lockup, or penal facility, or within a juvenile detention facility that is collocated with any adult jail or lockup, helps to insure the safety of detained and confined juveniles.

OJJDP hopes that this explanation will assist those concerned with the proposed regulation to see that it is in no way intended to evidence a change in view or policy regarding the importance of maintaining the sight and sound separation of juveniles from adults in secure facilities at all times.

3(a). Comment: Several respondents asserted that an adjudicated delinquent should only be subject to transfer to an adult facility, such as a prison, once he (or she) reaches the age of full criminal responsibility, as provided by State law, in circumstances where the delinquent has been afforded the full due process rights available to a criminal offender in a criminal court proceeding (e.g. bail, trial by jury, etc.).

Response: The JJDP Act separation requirement expressly applies to juveniles who are alleged to be or found to be delinquent. An individual who has reached the age of full criminal responsibility is no longer considered a juvenile under the law of a State unless expressly so provided and would not, therefore, fall under the protection of the JJDP Act separation requirement. States have a compelling interest in striking a balance between the goal of achieving an adjudicated delinquent's well-being through treatment and physical security and the goals of punishment and protection of the public by lengthening the period of confinement in appropriate circumstances. The State of Texas, for example, has instituted a determinate sentencing system for certain violent offenders which initially places a juvenile adjudicated delinquent under the jurisdiction of the Texas Youth Commission and requires the committing court to re-evaluate the delinquent's placement status when he/she reaches the age of 18. At that time, the court can transfer the individual, who is now an adult, to an adult penal institution if warranted. Alternatively, the delinquent can be retained under the custody of the Texas Youth Commission to age 21, at which time transfer is mandatory if he/she is not released. Our review indicates that the caselaw is not definitive on the issue of whether a failure to provide a juvenile with all the due process rights of a criminal defendant in a delinquency proceeding would prohibit such a transfer, on due process or other grounds, to an adult jail or prison. The regulation continues to prohibit the pro forma administrative transfer of an adjudicated delinquent who has reached the age of full criminal responsibility to an adult jail or prison. However, we believe it is consistent with the JJDP Act and principles of federalism to allow States to authorize or require the transfer of such delinquents under State law. While the due process issue is appropriately a matter of State law and practice, those jurisdictions contemplating passage of a law to authorize such transfers should consider whether delinquents subject to incarceration in the criminal justice system upon reaching the age of full criminal responsibility should be afforded the same due process rights in the original delinquency adjudication to which an adult in a criminal court proceeding is entitled.

3(b). Comment: One respondent opined that where an adjudicated delinquent is subject to transfer to an adult institution on or after reaching the age of full criminal responsibility pursuant to State law, assurances should be required that age-appropriate needs, such as health, mental health, recreation, and education services will be made available.

Response: Meeting the basic needs of transferred adjudicated delinquents should be a priority for any jurisdiction's correctional system. It is the responsibility of the State to provide for basic needs and services for all prisoners, including juveniles and young adults.

3(c). Comment: Several respondents felt that the transfer of adjudicated delinquents to adult facilities once they reach the age of full criminal responsibility defeats the purpose of a delinquency adjudication.

Response: It is important to note that persons eligible for such a transfer are limited to those who are no longer considered juveniles under State law. With States increasingly focusing on the transfer of serious and violent juvenile offenders to criminal court for prosecution, this type of transfer scheme may result in fewer transfers of juveniles to the criminal justice system through judicial waiver, prosecutorial direct-file, and statutory exclusion of certain offenses from the jurisdiction of the juvenile court. This will help to assure that appropriate treatment services are provided by the juvenile justice system while the individual is a juvenile and may serve to protect juvenile offenders from older delinquents who pose a threat or whose treatment needs cannot be met by the juvenile correctional system.

3(d). Comment: Several respondents stated that the transfer of adjudicated delinquents to adult facilities is not sound policy because the influences of adult facilities are extremely negative and harmful to young adults. These respondents further asserted that the risk of assaults and violence in juvenile facilities increase when wards know that they are going to be transferred to adult correctional facilities. This ''split'' disposition has a destabilizing influence on juvenile programs, according to one respondent. Several respondents stated that any advances made by juveniles in

the juvenile justice system through available educational, vocational, and therapeutic programs will be destroyed as a result of the transfer to an adult facility.

Response: OJJDP strongly recommends that States enacting a transfer law provide the transferred adjudicated delinquent with age appropriate programs. However, this Office is neither aware of any studies supporting the alleged harm from such transfers nor believes that a juvenile who is able to remain in a juvenile correctional setting at least until the age of full criminal responsibility is worse off than the juvenile who is transferred to the criminal justice system for felony prosecution and, upon conviction, is incarcerated in the criminal justice system.

3(e). Comment: One respondent suggested that OJJDP recommend that States provide separate facilities for delinquent offenders who have reached the age of full criminal responsibility.

Response: OJJDP agrees that this option merits State consideration. Such a system has been adopted in Colorado, where older serious and violent delinquent offenders who have reached the age of full criminal responsibility and juveniles transferred to criminal court pursuant to State transfer laws, are placed in secure treatment facilities designed and operated for youthful offenders.

3(f). Comment: One respondent suggested that the proposed regulatory change is of great assistance to individual States looking for appropriate methods to deal with the rising levels of violent juvenile crime.

Response: The intent of this regulatory change is to provide States with appropriate flexibility in dealing with serious and violent delinquent offenders who require sentences that extend into adulthood.

4(a). Comment: Three questions were asked by one respondent concerning the ''6 hour rule'' that allows an alleged delinquent to be held in a secure custody status in an adult jail or lockup for up to 6 hours for purposes of processing (while maintaining sight and sound separation from adult offenders). The proposed regulation would apply the six hour hold exception to include a six hour period before and/or after a court appearance (both pre and post adjudication).

(a) Is the 6 hour rule cumulative (i.e. before and after inclusive of the 6 hours) or is it a separate 6 hours for before and after a court appearance?

(b) Is the time limit affected by the status of the jail site, i.e. MSA or nonMSA?

(c) Would the 24 hour rural exception continue to be permitted?

Response: (a) The 6 hour rule is not cumulative. A juvenile may be held up to 6 hours before a court appearance and up to 6 hours after a court appearance in an adult jail or lockup.

(b) The time limit is not affected by the status of the jail site;

(c) The 24-hour rural exception is not changed by the regulation. The 24-hour rural (MSA) exception is a statutory exception that applies to initial law enforcement custody, which may or may not result in an initial court appearance. The new six-hour hold exception would apply in either an MSA or nonMSA jurisdiction both before and/or after a court appearance.

4(b). Comment: Several respondents suggested that the 6-hour rule following a court appearance be expanded to 24 hours for rural jurisdictions because of the expense of identifying and traveling to an appropriate facility or of constructing a separate detention facility in a small rural county or group of counties.

Response: The nonMSA, or rural exception, provides a 24-hour period, exclusive of nonjudicial days (Saturdays, Sundays and holidays), to detain an alleged delinquent, pending an initial court appearance, if State law requires such an appearance within the 24-hour period. Long distance and weather may extend this exception. The 6-hour hold exception has historically applied when police are holding a juvenile for investigation or processing a juvenile for purposes of notifying parents, arranging release, or transporting to a juvenile facility. Expansion of the 6-hour hold for pre- and post-court appearances is designed to facilitate court appearances of juveniles that require transportation. The statutory 24-hour nonMSA exception for initial court appearances is premised on the need for time to plan the placement/release of the juvenile. Subsequent court appearances can be planned in advance, negating the need for an extended placement of the juvenile in an adult jail or lockup.

4(c). Comment: One respondent found that the 6-hour exception was too inflexible where no reasonable alternative juvenile placement was available following arrest. The respondent suggested that a workable ''good faith'' rule be established.

Response: The six-hour exception gives law enforcement officials in nonMSA jurisdictions the opportunity to make decisions about investigating, processing, and/or transporting juveniles. States and local units of government have found the 6-hour exception to be sufficient where mechanisms are put in place to expedite the handling of alleged delinquents who need to be detained for investigation or processing in secure custody in an adult jail or lockup.

4(d). Comment: One respondent organization cited the Institute for Judicial Administration/American Bar Association (IJA/ABA) Standards which state that ''The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited.'' In support of its opposition to the proposed regulation, this respondent noted that under conditions where juveniles are held with adults prior to adjudication, ABA standards recommend a blanket prohibition against the detention of juveniles with adult inmates prior to adjudication under any circumstances.

Response: Congress considered the secure confinement of accused delinquent juveniles for up to 6 hours in an urban jail or lockup to be a reasonable outside time limit for processing purposes. This period of time was considered to reflect a ''rule of reason'', as stated in the House Committee report on the 1980 JJDP Act reauthorization. OJJDP is not establishing any new policy by this regulation, but rather is codifying in the regulation what has been the Office's monitoring policy for 16 years, and extending it to pre- and post-court appearance holds.

5(a). Comment: One respondent, while supporting the time-phasing of common use areas of collocated facilities, requested clarification on whether ''professional treatment staff'' can be ''shared'' between juvenile and adult populations.

Response: In collocated facilities, professional care staff such as medical, counseling, or education services continue to be permitted to serve both adult and juvenile residents, although not at the same time.

5(b) Comment: One respondent asserted that elimination of the requirement for OJJDP's concurrence in State-approved collocated facilities weakens the Office's enforcement capabilities.

Response: States will continue to have the responsibility to approve and monitor these facilities. OJJDP will continue to review the monitoring practices of States, as well as provide training and technical assistance. Further, the criteria for the establishment of such facilities are clearly set forth in § 31.303(e)(3) of the regulation.

5(c). Comment: Another respondent felt that the regulation should more

clearly reflect that collocated facilities are not prohibited and that these facilities are permissible if established in accordance with the regulatory criteria set forth to establish that a collocated facility is a separate and distinct facility from the adult jail or lockup with which it is collocated.

Response: OJJDP's proposal to eliminate the requirement for its concurrence in State approval of a collocated facility, and the elimination of a needs-based analysis, should make it clear that the establishment of collocated facilities is not prohibited. States may approve collocated facilities in accordance with State law and policy as long as each such facility meets the criteria set forth in § 31.303(e)(3) of the regulation.

5(d). Comment: Another respondent opined that the needs-based analysis and prohibition of time-phased use should not be eliminated.

Response: A properly constructed and operated collocated facility that meets the criteria set forth in § 31.303(e)(3) does not create conditions where the health and safety of juveniles would be jeopardized. Time-phased use of nonresidential areas allows for efficient use of these resources which, otherwise, might not be available to the juvenile population. Time-phased use, if properly implemented, would not result in any contact between juveniles and adults. Further, States are encouraged to conduct their own needs-based analysis. OJJDP technical assistance will remain available, upon State request, for this purpose.

6(a). Comment: One commentor, in response to the 24 hour detention exception for status and nonoffenders, stated that nonoffenders should not be placed in detention facilities. Limited exceptions should be permitted in the event of a well documented need. In this way, detention of nonoffenders will not become a pattern or practice.

Response: OJJDP agrees that the detention of nonoffenders, such as dependent, neglected, or abused children, should not become a pattern or practice. This authority should be used to meet emergency needs only. States are encouraged to provide for the return of nonoffenders to their families or to appropriate shelter care as soon as possible.

6(b). Comment: Another respondent considers the placement of nonoffenders in secure detention to be a retrenchment of longstanding national policy in opposition to such a placement.

Response: OJJDP Formula Grants program policy and regulation have authorized the limited and temporary placement of nonoffenders in secure detention facilities since 1975. When either status offenders or nonoffenders are placed in such facilities, Section 223(a)(12)(B) encourages States to place the status offender or nonoffender in facilities which are the least restrictive alternative appropriate to the needs of the child and the community. The provision does not change established policy and is intended to provide adequate time to arrange for appropriate placement prior to or following an initial court appearance. Because the current statutory definition of ''secure detention facility'' includes dedicated facilities for nonoffenders, removal of the 24 hour hold exception's applicability to nonoffenders would also prohibit the secure holding of nonoffender juveniles in dedicated facilities. This issue needs to be addressed statutorily before OJJDP can propose a change to the 24 hour hold exception's applicability to nonoffenders.

6(c). Comment: One respondent believes that placement of status offenders with children accused of delinquency can stigmatize them as delinquent and that the proposed regulation dilutes OJJDP's strong regulatory support for the deinstitutionalization of status offender and nonoffender juveniles. This respondent supports the placement of status offenders in secure residential facilities for up to six hours and only when law enforcement is unable to contact a parent, custodian, or relative, unreasonable distance exists, the juvenile refuses to be taken home, or law enforcement is otherwise unable to make arrangements for the safe release of the juvenile.

Response: OJJDP has, since 1975, authorized the secure short-term detention of status offenders and nonoffenders in juvenile detention facilities. While blanket use of this authority without regard to the facts and circumstances of each juvenile taken into custody would be a poor policy, State and local governments should determine the specific law and policy that will govern the use of this authority.

7(a). Comment: Two respondents commented regarding revision of § 31.303(f)(3)(vi), authorizing the use of multi-disciplinary teams to make recommendations on the use of secure confinement for a valid court order violator, contending that such teams are an important tool for the valid court order process and that the language should not be deleted. Another commented that language should be added to clarify that multi-disciplinary teams are only a suggested way of meeting the requirement for an independent review team and that court or law enforcement personnel can still serve on such a team.

Response: Multi-disciplinary teams may still be utilized for the purpose of preparing and submitting a written report to a judge considering an order to place a status offender in a secure facility for violation of a valid court order.

The suggestion of multi-disciplinary teams in the existing regulation was meant to be an example of one mechanism that would fulfill the statutory requirement. However, this apparently created the impression that only multi-disciplinary teams could be utilized. In fact, the review could be conducted by an individual, agency, or team representing a noncourt or law enforcement agency.

7(b). Comment: One comment opposed the deletion of language requiring that secure confinement represent the least restrictive alternative ''appropriate to the needs of the juvenile and the community.'' This respondent felt that removal of this language lessens the judge's overall responsibility to ensure the appropriateness of the disposition in light of other available placement.

Response: Section 103(16)(C)(iii) of the JJDP Act and § 31.303(f)(3)(vi) of the regulation require that a disposition of secure confinement must consider all alternative dispositions (including treatment) to placement in a secure detention or secure correctional facility. Removal of the referenced language does not diminish the responsibility of the court to consider alternatives to secure confinement. However, the referenced nonstatutory language is vague and does not provide meaningful guidance.

7(c). Comment: Another comment requested clarification of why the words ''of a status offender'' were added to the language ''In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must. * * *'' in Section 31.303(f)(3)(vi).

Response: The change was intended to underscore that the valid court order (VCO) provision applies solely to status offenders. A nonoffender may not be placed in secure confinement for any length of time for violation of a court order.

7(d). Comment: One respondent recommended the deletion of the VCO requirement for an independent review and determination of the reasons for the juvenile's behavior. This respondent

insisted that the first was difficult to monitor and the latter impossible to determine, asking ''How can the court ascertain the reasons for the juvenile's behavior?''. Another respondent commented that the VCO provision should be a recommendation rather than a requirement.

Response: The use of the independent review standard under the valid court order exception is statutorily established in Section 223(a)(12)(A) and the term ''valid court order'' is defined in Section 103(16) of the JJDP Act. Therefore, they cannot be deleted or modified by regulation.

8. Comment: Comments were received both in favor of and opposed to the proposal to eliminate the reporting requirement for each use of the ground/distance and weather exceptions to the jail and lockup removal exception. Those opposed to the change are concerned that it will encourage abuses of the rule and lead to more youth in adult jails and lockups, in violation of the statute.

Response: Enforcement of this provision will continue to be a State responsibility that is subject to on'site monitoring and verification by OJJDP during compliance monitoring visits to States utilizing this jail and lockup removal exception. The changes streamline the process and remove an unnecessary administrative burden.

9(a). Comment: Several respondents felt that the ''relaxation'' of State reporting and monitoring requirements related to the separation requirement is ''dangerous'' and could cause States to slide into noncompliance. States might view this as an opportunity to relax their oversight responsibility.

Response: It is not OJJDP's intent to encourage States to weaken their commitment to the core requirements of the JJDP Act. However, OJJDP believes that isolated violations of the separation requirement that do not represent a pattern or practice should not jeopardize a State's ability to access federal funds. OJJDP remains fully committed to the enforcement of Section 223(a)(13) of the JJDP Act requiring the separation of juvenile delinquents from adult offenders.

9(b). Comment: One respondent commented that the existence of state laws, regulations, or court rules is the only mechanism that provides any true assurance that future violations of the separation requirement will not occur in a given jurisdiction. Another felt that eliminating this requirement will mean that States will abandon their efforts to obtain conforming laws, regulations, and court rules in order to enforce the separation core requirement. A third respondent felt that all States should have a policy that mirrors the JJDP Act separation requirement.

Response: OJJDP encourages States to retain existing laws, regulations, and court rules mirroring the separation requirement. OJJDP also encourages States to utilize other effective enforcement tools including: training and technical assistance workshops; on-site training for law enforcement and adult jail and lockup personnel; and development of alternatives to incarceration.

9(c). Comment: One commentor suggested that until such time as OJJDP has unlimited resources, there is no way that the existence of a ''pattern or practice'' of noncompliance can be monitored.

Response: Section 223(a)(15) requires States to ''provide for an adequate system of monitoring jails, detention facilities, and nonsecure facilities to ensure that the requirements of paragraph (12)(A), paragraph (13) and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator; * * *''. It is OJJDP's position that State monitoring systems successfully identify the vast majority of violations and State monitoring reports can be used to identify whether reported violations establish a pattern or practice of separation violations in the State.

9(d). Comment: A single separation standard applicable to all States for measuring compliance based on *de minimis* violations that do not indicate a pattern or practice is a fair standard, according to one respondent. Moreover, it is less cumbersome than the present compliance requirement. Another respondent felt that it is clearly appropriate to find overall compliance within the separation requirement even if individual violations have occurred, as long as no pattern or practice exists.

Response: It is OJJDP's intent to treat all States in a fair and equitable manner. In addressing violations of Section 223(a)(13) of the JJDP Act in terms of a pattern or practice, OJJDP's across the board approach is equitable to the States, providing a substantive *de minimis* standard for the separation requirement.

10(a). Comment: A commentor noted that the addition of the word ''programmatically'' in Section 31.303(j) to clarify that ''the purpose of the statute and regulation is to encourage States to address programmatically.* * *'' the disproportionate minority confinement (DMC) core requirement (Section 223(a)(23)) will limit the focus of the States and move them away from alternative ways to address the over-representation of minorities in secure facilities.

Response: OJJDP notes that the addition of the word ''programmatically'' does not restrict a State's options for addressing DMC. States are encouraged to examine all aspects of DMC and address any features of its juvenile or criminal justice systems that may contribute to DMC as identified by the State.

10(b). Comment: Another respondent stated that the regulation needs to reflect a broader examination of minority over-representation. Since 1992, States have spent considerable time and dollars reviewing their juvenile justice systems in their entirety. The clarification to the DMC core requirement provides that States should address ''programmatically'' any feature of its justice system that accounts for the disproportionate detention or confinement of minority juveniles. However, the entire system should be analyzed, not just juvenile detention or confinement.

Response: The regulation provides for a broad examination of the DMC issue, including all decision points in the juvenile justice system, and encourages States to address ''any feature of its justice system'' that accounts for DMC and not just those that ''may account for the disproportionate detention or confinement.'' The latter language is taken verbatim from the statutory language of Section 223(a)(23) of the JJDP Act.

Executive Order 12866

This final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management of Budget. This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation.

Regulatory Flexibility Act

This final rule, if promulgated, will not have a ''significant'' economic impact on a substantial number of small ''entities'' as defined by the Regulatory Flexibility Act. This action is intended to relieve existing requirements in the Formula Grants program and to clarify other provisions so as to promote compliance with its provisions by States participating in the program.

Paperwork Reduction Act

No collections of information requirements are contained in or affected by this regulation pursuant to the Paperwork Reduction Act, codified at 44 U.S.C. 3504(H).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State ''Single Point of Contact,'' if one exists. The State may take up to 60 days from the application date to comment on the application.

Lists of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 28 CFR Part 31 is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.303 is amended to read as follows:

a. Paragraphs (d)(1)(i) and (d)(1)(v) are revised;

b. Paragraphs (e)(2) and (e)(3) are revised;

c. Paragraphs (f)(2), (f)(3)(vi), (f)(4)(vi), (f)(5)(i)(C), (f)(5)(iii), (f)(5)(iv), (f)(6)(i), and (f)(6)(ii) are revised;

d. Paragraph (f)(4)(iv) is amended by removing ''and'' at the end of the paragraph and paragraph (f)(4)(v) is amended by removing the period at the end of the paragraph and adding ''; and'' in its place; and

e. Paragraph (j) introductory text is amended by adding two sentences following the second sentence.

The additions and revisions read as follows:

§ 31.303 **Substantive requirements.**

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term ''contact'' includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential, which may include dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a reportable violation.

* * * * *

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

* * * * *

(e) * * *

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered ''related'' when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section for the purpose of monitoring compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(*1*) Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(*2*) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(*3*) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(*4*) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

(ii) The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP before December 10, 1996 may be reviewed by the State against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth herein, as the State determines. Facilities approved on or after the effective date of this regulation shall be reviewed against the regulatory criteria set forth herein. All collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C)(*3*) of this section.

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section is being maintained.

* * * * *

(f) * * *

* * * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(3) * * *

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

* * * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty-four hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hour initial court appearance standard required by paragraph (f)(4)(i) of this section.

(5) * * *

(i) * * *

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of Title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is

excepted from the deinstitutionalization of status offenders requirement;

* * * * *

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of State approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;

(F) The total number of juveniles detained in State approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the State, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the ''removal exception'' as set forth in paragraph (f)(4) of this section;

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of six hours prior to or following a court appearance or for any length of time not related to a court appearance;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time;

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the ''removal exception'' as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the ''removal exception'' as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the ''removal exception'' as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the ''removal exception'' as noted in paragraph (f)(4) of this section.

(6) * * *

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (copies are available from the Office of General Counsel, Office of Justice Programs, 633 Indiana Ave., N.W., Washington, D.C. 20531).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) The instances of noncompliance reported in the last submitted monthly report do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*)(*i*) Where all instances of noncompliance reported were in violation of or departure from State law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents.

* * * * *

(j) * * * The purpose of the statute and the regulation in this part is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, that may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails, and lockups. The disproportionate minority confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance.

* * *

* * * * *

Dated: December 5, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–31316 Filed 12–9–96; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Tuesday
December 10, 1996

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Digital Flight Data Recorder Rules Revisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28109; Notice No. 96–7A]

RIN 2120–AF76

Revisions to Digital Flight Data Recorder Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document proposes to revise the Federal Aviation Administration's (FAA's) recent Notice of Proposed Rulemaking entitled ''Revisions to Digital Flight Data Recorder Rules,'' that was published July 16, 1996. In this document, the FAA proposes to modify the previously proposed flight data recorder requirements to make them applicable to those airplanes placed on the operations specifications of a U.S. operator after a certain date. This document also proposes a two-year compliance date for certain aircraft that must be retrofitted with flight data recorder equipment as a result of a change in policy announced in the NPRM. The first revision is being proposed to close an unintended loophole in the current regulation that was repeated in the NPRM. The second change is needed to allow operators time to comply with the rule following the change in policy. The FAA is also soliciting additional comment concerning aircraft that should be exempted from the proposed DFDR upgrade.

DATES: Comments on this proposed revision must be received by December 30, 1996.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28109, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28109. Comments may also be submitted electronically to the following Internet address: nprmcmts@faa.dot.gov. Comments may be examined in Room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9567.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28109.'' The postcard will be date-stamped and mailed to the commenter.

Availability of SNPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948). A modem and suitable communications software are required.

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this SNPRM.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRM's) should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background and Discussion of Proposal

On July 16, 1996, the FAA published an NPRM (Notice No. 96–7, 61 FR 37144) entitled ''Revisions to Digital Flight Data Recorder Rules.'' That document proposed that operators be required to record additional parameters of flight data on certain airplanes, and requested public comment. The comment period closed on August 15; the FAA received 21 comments to the proposed rule. Since the closing of the comment period, some additional issues have come to the FAA's attention that are related to the issues addressed in the NPRM but are outside the scope of that document. Accordingly, the FAA is issuing this Supplemental Notice of Proposed Rulemaking to present the new proposals and allow time for public comment.

Aircraft Registered Outside the United States

Current § 135.152(a) requires that airplanes operated under Part 135 that were brought onto the U.S. register after October 11, 1991, be equipped with digital flight data recorders. The particular language ''brought onto the U.S. register'' was used when the rule was adopted in 1988 as a means to identify those airplanes that would be required to have DFDR's installed. At the time, the FAA had considered whether to require the retrofit of all existing airplanes operating under part 135 with DFDR's or require a retrofit based on a date of manufacture or on some other basis. Based on economic analysis and a recommendation from National Transportation Safety Board personnel, the FAA determined that the ''brought onto the U.S. register'' language would avoid an expensive retrofit of airplanes already operating in the United States. The agency also concluded that the ''brought onto the U.S. register'' language would deter the importation of older non-DFDR equipped airplanes into the United States.

This same language was included in Notice 96–7 as proposed § 121.344a(a) in order to maintain the same applicability for airplanes that will be

operated under part 121 as of March 20, 1997, when the ''commuter rule'' takes effect.

In reviewing Notice 96–7, however, the FAA discovered that it had overlooked one possible effect of the 1988 language—that Part 135 operators would acquire non-DFDR equipped airplanes that were registered outside the United States and decide not to place them on the U.S. register. These aircraft could be operated as foreign-registered airplanes in accordance with § 135.25, but would not be subject to the DFDR requirements of § 135.152. The FAA has determined that there is no justification for excluding these aircraft from the DFDR requirements, considering the agency's policy, as detailed in Notice 96–7, concerning the necessity of upgrading flight data recorders.

Accordingly, the FAA is proposing to change the requirement in current § 135.152(a) and in proposed § 121.344a(a), by describing the group of airplanes that must be equipped with DFDR's as those that are either brought onto the U.S. register after October 11, 1991, or are foreign-registered and were added to an operator's U.S. operations specifications after October 11, 1991.

This change would have a limited effect on carriers operating under part 135 and those that will operate under part 121. Information available to the FAA indicates that there are no operators currently taking advantage of this rule language by operating foreign-registered airplanes in the United States under part 135. Accordingly, no costs are expected to result from this change in the rule. The FAA has determined that the change will have only a prospective effect and prevent the domestic operation of foreign-registered airplanes that are not equipped with digital flight data recorders.

Since there are no airplanes currently operating that would be affected by this change in the rule, the FAA has no basis to estimate whether there are airplanes that, in the future, would have been brought into the U.S. for operation under part 135 while maintaining foreign registration. Accordingly, it would be speculative for the FAA to presume a specific number of airplanes and estimate a cost of DFDR retrofit for them because the rule would no longer allow operation without a DFDR.

The FAA solicits comment on the impact of this proposal, and particularly needs to know if there are any foreign-registered airplanes that are not equipped with an appropriate flight data recorder and are operating under the provisions of part 135. The FAA specifically requests data concerning the costs involved with bringing such airplanes into compliance with the flight data recorder requirements as proposed.

Compliance Time for Changed Policy

The NPRM also contained a clarification of the meaning of the phrase ''brought onto the U.S. register after October 11, 1991'' language as it applies to part 135 aircraft that were removed from the U.S. register and brought back onto the register after October 11, 1991. As explained in the preamble to the original proposed rule, airplanes that were on the register before October 11, 1991, but were removed from the register and brought back on after October 11, 1991, would have to be retrofitted to be in compliance with § 135.152. A previous FAA interpretation erroneously concluded that these airplanes were somehow ''grandfathered'' (and thus did not have to have flight data recorders installed). This former interpretation was found to be inconsistent with the text of the rule (61 FR at 37154, July 16, 1996).

Several commenters to the NPRM state that because of the previous interpretation, their airplanes that were manufactured before October 11, 1991, did not have to have digital flight data recorders installed, and that to do so now would be expensive. The commenters argue that the date of manufacture should be used in determining applicability, rather than the date the aircraft were brought onto the U.S. register, so that older aircraft will not be required to upgrade to digital flight data recorders.

The FAA disagrees. In drafting the NPRM, the FAA considered whether to change the applicability for aircraft operating under part 135, and determined that it was best to maintain the date brought on the U.S. register as the determining factor for applicability of the rule requiring installation of a DFDR. The FAA recognized that whatever date is used (e.g., manufacture or registration) would present a burden to some operators.

Nor does the FAA agree that some airplanes should be allowed to be removed from the U.S. register and be brought back without complying with the regulations in effect at the time of return, simply because they were manufactured prior to October 11, 1991. Since the adoption of the rule, the FAA has always intended that when airplanes are added to the U.S. register, they meet the standards in existence at the time, and that intent is clear from the language of the regulation. When that regulation was adopted in 1988, the determination was made that date of manufacture would not be used so as not to perpetuate the use (and import) of older aircraft to avoid the installation of digital flight data recorders.

The factors that were discussed in Notice 96–7 concerning the need for flight data information apply to all aircraft. Flight data recorder information is often a critical investigative tool; the current part 135 regulations were issued, and the amendments proposed, to ensure that all aircraft record flight data to the maximum extent feasible. Operators that consider certain aircraft beyond the range of cost-effective retrofit were invited to submit information why those aircraft models should be excluded. As discussed below, such information was received on only one aircraft model.

While the FAA determined that airplanes removed from the U.S. register are not grandfathered and must meet the requirements for flight data recorders, no time for delayed compliance was proposed in Notice 96–7 for aircraft that may have been operating under the old interpretation. To relieve the burden of immediate compliance, the FAA is proposing that operators of these airplanes may take up to two years to install the required flight data recorders. The proposed compliance time of two years may appear inconsistent with the four-year compliance time proposed elsewhere in Notice 96–7, but the four-year compliance time is intended for those airplanes undergoing an upgrade from current requirements. The two-year compliance time proposed here is for certain operators that thought their aircraft were grandfathered to meet the current requirements of part 135, not for installation of an upgrade. The FAA solicits comments that include the number of airplanes that would be affected by this proposed two-year delayed compliance, as well as the appropriateness of a two-year compliance time.

Aircraft Excluded From Upgrade Requirements

Finally, several comments on the NPRM included airplanes that the commenters thought should be excluded from the applicability of the digital flight data recorder upgrades. Except for the DeHavilland DHC–6 (Twin Otter), however, the comments contained little or no support for the exclusion of these airplanes. As the FAA stated in the NPRM, requests that aircraft to be excluded ''should contain a detailed explanation of the reasons why these aircraft should be included on the list [of exclusions], and the number of aircraft that would be

affected'' (61 FR at 37153). The simple statement that an aircraft is out of production is insufficient for the FAA to make a decision on whether exclusion of the airplane is appropriate. Persons who commented on this issue are invited to resubmit their comments with the necessary explanation, number of airplanes affected, and any retrofit cost data that may be available.

The FAA did not propose an exemption paragraph for part 135 similar to that proposed for part 121 because the FAA has no information suggesting that there are specific airplane types that cannot readily comply with the requirements of § 135.152(a). The only aircraft currently under consideration for exclusion from the rule is the DeHavilland DHC–6 using the information provided in the comments referenced above. The FAA has determined that if there is only one airplane type under consideration for exclusion, it would be more appropriate to provide relief under an exemption pursuant to 14 CFR part 11. However, no determination on this will be made until after the close of the comment period for this supplemental notice, since the agency is inviting those persons who submitted other airplane types for exclusion to submit more information in support of their comments.

The FAA is also proposing to revise the language of current §§ 135.152(a) and (d), and Appendices B and C of part 135, to reflect that the industry standard for recorders is a 25-hour recorder, rather than the 8-hour recorder currently required. The FAA is unaware of any 8-hour recorder currently being used and has determined that this change would result in no costs to operators. The FAA requests that commenters submit any information to the contrary concerning usage of 8-hour recorders and any costs associated with the proposed change in the standard.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and Joint Aviation Authority regulations, where they exist. Any differences between those documents and these regulations are of a minor, technical nature, and are deemed insignificant. They would not adversely affect harmonization.

Paperwork Reduction Act

No information collection has been proposed.

Regulatory Evaluation Summary

The FAA does not anticipate that the revisions proposed in this SNPRM would alter the costs as developed in Notice 96–7 and has not altered the cost estimates. The reasons for this are twofold. First, regarding the proposed amendment to §§ 121.244a(a) and 135.152(a) to add the date a foreign-registered aircraft is placed on the operations specifications of a carrier, the FAA does not know of any carriers currently operating foreign-registered airplanes in domestic service. Even if such aircraft are being operated, they would already have been accounted for because the FAA's fleet estimates are derived from domestic air carrier operations specifications. Air carrier data for part 121 operators provided to the FAA by the Air Transport Association accounted for about 80 percent of the domestic fleet; these data were adjusted to reflect the U.S. domestic fleet as estimated by the FAA's Economic Forecast Branch. Similarly, detailed data from the Regional Airline Association (RAA) is presumed to reflect the RAA's fleet estimates based on the operations specification of part 135 operators, and already included any foreign-registered airplanes that may be operated in domestic service.

Second, the cost estimates contained in Notice 96–7 apply only to the upgrade of digital flight data recorders as proposed in that notice. Any costs associated with the installation of the flight data recorders as required under current § 135.152 (and the policy statement discussed) were contained in the original costs estimates generated for that rulemaking in 1988. The policy statement under which some operators did not install flight data recorders was made after that regulation was in place.

Initial Regulatory Flexibility Determination

The FAA has determined that the costs associated with this rule have been considered and discussed in previous rulemaking actions, and therefore has not made a duplicate determination for this SNPRM. Information currently available to the FAA indicates that the revisions proposed in this SNPRM, as described above, do not have any costs associated with them, and seeks any information to the contrary.

International Trade Impact Assessment

The FAA has determined that the proposed amendments pertain to only U.S. operators and will not have an impact on International trade.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this proposed regulation would be a nonsignificant regulatory action under Executive Order 12866, and is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 135

Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121 and 135 of the Federal Aviation Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In § 121.344a, the introductory text of paragraph (a), as proposed in the Federal Register issue of July 16, 1996, (61 FR 37161), is revised to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

(a) No person may operate a turbine-engine-powered airplane having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was either brought onto the U.S. register after or was registered outside the United States and added to an operator's U.S. operations specifications after October 11, 1991, unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. On or before [4 years after the effective date of the final rule], airplanes brought onto the U.S. register or registered outside of the United States and added to an air carrier's operations specifications after October 11, 1991, must comply with either the requirements in this section or the applicable paragraphs in § 135.152 of this chapter. In addition, by [4 years after the effective date of the final rule]—

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. Section 135.152(a) is revised to read as follows:

§ 135.152 Flight recorders.

(a) No person may operate a multi-engine, turbine-engine-powered airplane or rotorcraft having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was either brought onto the U.S. register after or was registered outside the United States and added to the operator's U.S. operations specifications after October 11, 1991, unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. On or before [2 years after the effective date of the final rule], aircraft brought onto the U.S. register or registered outside of the United States and added to an air carrier's operations specifications after October 11, 1991, must record the parameters specified in either Appendix B or C of this part, as applicable. The parameters must be recorded within the range, accuracy, resolution, and recording intervals as specified. The recorder shall retain no less than 25 hours of aircraft operation.

* * * * *

§ 135.152 [Amended]

5. In § 135.152(d), the first sentence is amended by removing the phrase ''8 hours'' and adding the phrase ''25 hours'' in its place.

Appendix B to Part 135—[Amended]

6. In Appendix B to part 135, Airplane Flight Recorder Specifications, in the ''Range'' column, the first entry is amended by removing the phrase ''8 hr minimum'' and adding the phrase ''25 hr minimum'' in its place.

Appendix C to Part 135—[Amended]

7. In Appendix C to part 135, Helicopter Flight Recorder Specifications, in the ''Range'' column, the first entry is amended by removing the phrase ''8 hr minimum'' and adding the phrase ''25 hr minimum'' in its place.

Issued in Washington, DC, on December 5, 1996.

Elizabeth Yoest,

Acting Director, Aircraft Certification Service.

[FR Doc. 96–31446 Filed 12–9–96; 8:45 am]

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