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

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

Rules and Regulations

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

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0949]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for creditors offering home-secured loans with total points and fees payable by the consumer at or before loan consummation that exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to annually adjust the $400 amount based on the annual percentage change in the Consumer Price Index as reported on June 1. The Board adjusted the $400 amount to $412 for 1996. The Board has adjusted the dollar amount from $412 to $424 for 1997.

EFFECTIVE DATE: January 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf only, please contact Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601—1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. Generally, creditors are required to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The TILA and § 226.32(a)(1)(ii) of Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. See 15 U.S.C. 1602(aa).

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not ''report'' a CPI change on June 1; adjustments are reported in the middle of each month. The Board believes the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, is the appropriate index to use in any adjustment to the $400 dollar figure.

The adjustment the $400 dollar figure reflects the adjustment reported on May 15 (the rate ''in effect'' on June 1) which states the percentage increase from April 1995 to April 1996. Last year, the Board adjusted the $400 amount to $412, reflecting a 3.1 percent increase in the CPI–U (See 61 FR 3177, January 31, 1996). During the period from April 1995 to April 1996, the CPI-U increased by 2.9 percent. As a result, this increase in the CPI–U would cause an adjustment of the $412 to $423.94. The Board is rounding that number to whole dollars for ease of compliance.

Adjustment

For the reasons set forth in the preamble, for purposes of determining if a mortgage is covered by § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount, effective January 1, 1997, through December 31, 1997, the dollar amount is adjusted from $412 to $424.

By order of the Board of Governors of the Federal Reserve System, December 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31531 Filed 12–11–96; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 263

[Docket No. R–0938]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final rule (Docket No. R–0938), which was published Friday, November 1, 1996 (61 FR 56407). The rule listed increases in the maximum amounts of each civil money penalty under the jurisdiction of the Board of Governors of the Federal Reserve System (Board).

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Alan E. Sorcher, Senior Attorney (202/452–3564), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction amended the Board's Rules of Practice for Hearings to include a section listing increases in the maximum amounts of each civil money penalty under the Board's jurisdiction. The Board was required to enact such regulation by section 31001(s) of the Debt Collection Improvements Act of 1996 (Pub.L. 104–134, 110 Stat. 1321–373) which required agencies to adjust their statutorily based civil money penalties to account for inflation.

Need for Correction

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

Correction of Publication

Accordingly, the publication on November 1, 1996, of the Final Rule (Docket No. R–0938) which was the subject of FR Doc. 96–28017 is corrected as follows:

§ 263.65 [Corrected]

Paragraph 1. On page 56408, in the first column, in § 263.65, in paragraph (b)(2) introductory text, at the end of the second line, the statutory citation ''1972(F)'' is corrected to read ''1972(2)(F)''.

By order of the Board of Governors of the Federal Reserve System, December 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31532 Filed 12–11–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–22]

Amendment of Class E Airspace; Casa Grande, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Casa Grande, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 05/23 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Casa Grande Municipal Airport, Casa Grande, AZ.

EFFECTIVE DATE: 0901 UTC January 30, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Casa Grande. AZ (61 FR 53157). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 05/23 at Casa Grande Municipal Airport, Casa Grande, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Casa Grande, AZ. The development of a GPS SIAP to RWY 05/23 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 05/23 SIAP at Casa Grande Municipal Airport, Casa Grande, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Casa Grande, AZ [Revised]

Casa Grande Municipal Airport, AZ
(lat. 32°57′17″N, long. 111°46′00″W)

That airspace extending upward from 700 feet above the surface beginning at lat. 32°57′05″N, long. 111°52′18″W, thence clockwise via the 5.3-mile radius of the Casa Grande Municipal Airport to lat. 32°52′40″N, long. 111°49′06″W; to lat. 32°50′50″N, long. 111°53′02″W; to lat. 32°55′20″N, long. 111°56′02″W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on November 22, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–31581 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AWP–25]

Amendment of Class E Airspace, Grass Valley, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Grass Valley, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 07 to Nevada County Airpark has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Nevada County Airpark, Grass Valley, CA.

EFFECTIVE DATE: 0901 UTC January 30, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation

Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On November 1, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Grass Valley, CA (61 FR 56479). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 07 at Nevada County Airpark, Grass Valley, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Grass Valley, CA. The development of a GPS SIAP to RWY 07 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 07 SIAP at Nevada County Airpark, Grass Valley, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Grass Valley, CA [Revised]

Nevada County Airpark, CA
(Lat. 39°13′27″N, long. 121°00′11″W)
Marysville VOR/DME
(Lat. 39°05′55″N, long. 121°34′23″W)

* * * * *

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Nevada County Airpark and within 3.5 miles south of the Marysville VOR/DME 074° radial extending from 13.9 miles east of the Marysville VOR/DME to the 4.3-mile radius of the Nevada County Airpark; thence counterclockwise via the 4.3-mile radius of the Nevada County Airpark to lat. 39°17′00″N, long. 121°03′18″W, thence westbound along lat. 37°17′00″N, to a point 13.9 miles northeast of the Marysville VOR/DME, thence clockwise along the 13.9 mile DME of the Marysville VOR/DME, to the point of beginning, excluding the Marysville, CA, Class E airspace area.

Issued in Los Angeles, California, on November 22, 1996.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–31580 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 960606162–6293–02]

RIN 0607–AA21

Collection of Canadian Province of Origin Information on Customs Entry Records

AGENCY: Bureau of the Census, Commerce.

ACTION: Correction to final rule.

SUMMARY: Due to an inadvertent omission in the language of the amendatory instructions, the Bureau of the Census is issuing a correction to the final rule published on November 29, 1996 specifically to clarify those instructions prior to publication in the Code of Federal Regulations (CFR). The Census Bureau is issuing this correction to prevent redundant text from appearing in the CFR. This correction has no impact on the policies, requirements, or effective date of the final rule as published in the Federal Register on November 29, 1996.

EFFECTIVE DATE: This rule will become effective February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to C. Harvey Monk, Jr., Bureau of the Census, Washington, D.C. 20233, by telephone on (301) 457–2255 or by fax on (301) 457–2645.

Accordingly, on page 60532 of the Federal Register, published November 29, 1996, in the third column, the amendatory instruction number 2 is corrected to read as follows: ''2. Section 30.80 is revised to read as follows:'' and the asterisks below the section heading are removed.

Dated: December 6, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96–31542 Filed 12–11–96; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8689]

RIN 1545–AT23

Methods of Signing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the methods of signing returns, statements, or other documents. The final regulations clarify that the IRS may prescribe a method other than pen and ink for signing any return, statement, or other document. This clarification will facilitate the IRS' implementation of paperless filings.

EFFECTIVE DATE: These regulations are effective on December 12, 1996.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) that relate to signing returns, statements, and other documents. Section 6061 provides in part that ''* * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.'' Traditionally, the IRS has accepted pen-to-paper signatures. The IRS will prescribe additional methods of signing to be used for electronically filed returns and other documents.

The final regulations clarify that the IRS may prescribe the specific method of signing any return, statement, or other document. The final regulations also provide that the IRS may require a return preparer to use a method of signing other than a pen-to-paper signature or a facsimile signature stamp when signing a return, statement, or other document.

On July 21, 1995, temporary regulations (TD 8603) relating to the signing of returns, statements, and other documents were published in the Federal Register (60 FR 37589). A notice of proposed rulemaking (IA–10–95) cross-referencing the temporary regulations was published in the Federal Register for the same day (60 FR 37621).

One comment responding to this notice was received. A public hearing was held on November 2, 1995. After consideration of the comment, the proposed regulations under sections 6061 and 6695 are adopted without change by this Treasury decision, and the corresponding temporary regulations are removed. The comment is discussed below.

Summary of Comments

The commentator suggested that the IRS prescribe by regulation any new method of signing any return, statement, or other document to allow the public to comment on the method's feasibility. Also, the commentator suggested that a regulation would constitute substantial authority and would provide broader public exposure.

The final regulations did not adopt the commentator's suggestion. The final regulations retain the full range of options for prescribing new methods of signing: forms, instructions, or other appropriate guidance. The final regulations provide the IRS with the flexibility to address the particular circumstances of any method of signing. The IRS will continue to inform the public about methods of signing.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Celia Gabrysh, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6695–1 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * * (1) Unless the Secretary has prescribed another method of signing pursuant to § 301.6061–1(b) of this chapter on or after July 21, 1995, an individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code (Code) or claim for refund of tax under subtitle A of the Code shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. * * *

* * * * *

§ 1.6695–1T [Removed]

Par. 3. Section 1.6695–1T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 is amended by removing the entry for section 301.6061–1T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6061–1 also issued under 26 U.S.C. 6061; * * *

Par. 5. Section 301.6061–1 is revised to read as follows:

§ 301.6061–1 Signing of returns and other documents.

(a) *In general.* For provisions concerning the signing of returns and other documents, see the regulations relating to the particular tax.

(b) *Method of signing.* The Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

(c) *Effective dates.* The rule in paragraph (a) is effective December 12, 1996. The rule in paragraph (b) is effective on July 21, 1995.

§ 301.6061–1T [Removed]

Par. 6. Section 301.6061–1T is removed.

Approved: November 1, 1996.
Margaret Milner Richardson,
Commissioner of Internal Revenue.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96–31363 Filed 12–11–96; 8:45 am]
BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8688]

RIN 1545–AS14

Certain Elections Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time and manner of making certain elections under the Omnibus Budget Reconciliation Act of 1993. These regulations provide guidance to persons making the elections.

EFFECTIVE DATE: December 12, 1996.

FOR FURTHER INFORMATION CONTACT: George Bradley, 202–622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1421. Responses to these collections of information are required to obtain the benefits of the particular election that is the subject of the collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations relating to elections under the following sections of the Internal Revenue Code of 1986 (Code) and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) (Act):

Act section	Code section
13114	1044(a).
13150	108(c)(3)(C).
13206(d)	163(d)(4)(B)(iii).
13225	6655(e)(2)(C).

On December 27, 1993, the Federal Register published temporary regulations (TD 8509) and a cross-reference notice of proposed rulemaking (IA–62–93), 58 FR 68300 and 58 FR 68336, respectively, relating to these elections. Three written comments responding to the regulations were submitted. Since none of the commentators requested a public hearing, one was not held. After consideration of the comments, the proposed regulations are adopted as final regulations subject to modifications to proposed § 1.108(c)–1, and the corresponding temporary regulations are removed. The comments and a description of the modifications to proposed § 1.108(c)–1 are discussed below.

Summary of Comments and Modifications

All three comments related to the election under section 163(d)(4)(B)(iii), which allows a taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election must be made on Form 4952, Investment Interest Expense Deduction, on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized.

The commentators questioned the authority of the IRS to require a formal election, stated that a formal election will add to the complexity of filing individual income tax returns, and suggested that taxpayers be allowed to freely change the manner in which they treat long-term capital gains, as long as the taxable year is open. These comments were given careful consideration. However, they have not been incorporated into these final regulations. The IRS and the Treasury Department believe that the requirement of a formal election is supported by the language of section 163(d)(4)(B)(iii), is not unduly burdensome, and provides taxpayers with flexibility, since the election is revocable.

The final regulations modify the requirements for making the election for discharge of qualified real property business indebtedness under section 108(c). Under the previous temporary regulations a taxpayer was required to make the election with the taxpayer's income tax return for the taxable year in which the discharge occurred, but was permitted to file an election with an amended return or claim for credit or refund if the taxpayer established reasonable cause for failure to file the election with the original return. The final regulations require the taxpayer to make the election on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible under section 108(a). Therefore, a taxpayer that fails to make the election on that return must request the Commissioner's consent to file a late election under § 301.9100–3T or any regulations that supersede § 301.9100–3T.

Special Analyses

It has been determined that these regulations are not significant rules as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is George Bradley, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.108(c)–1T and by adding an entry in numerical order to read as follows.

Authority: 26 U.S.C. 7805 * * *

Section 1.108(c)–1 also issued under the authority of 26 U.S.C. 108(d)(9); * * *

§ 1.108(c)–1T [Removed

Par. 2. Section 1.108(c)–1T is removed.

§ 1.163(d)–1T [Removed]

Par. 3. Section 1.163(d)–1T is removed.

§ 1.1044(a)–1T [Removed]

Par. 4. Section 1.1044(a)–1T is removed.

§ 1.6655(e)–1T [Removed]

Par. 5. Section 1.6655(e)–1T is removed.

Par. 6. Section 1.108(c)–1 is added to read as follows:

§ 1.108(c)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 108(c)(3)(C), as added by section 13150 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 446), allows certain noncorporate taxpayers to elect to treat certain indebtedness described in section 108(c)(3) that is discharged after December 31, 1992, as qualified real property business indebtedness. This discharged indebtedness is excluded from gross income to the extent allowed by section 108.

(b) *Time and manner for making election.* The election described in this section must be made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under section 108(a). The election is to be made on a completed Form 982, in accordance with that Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 27, 1993.

Par. 7. Section 1.163(d)–1 is added to read as follows.

§ 1.163(d)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 467), allows an electing taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election may be made for net capital gains recognized by noncorporate taxpayers during any taxable year beginning after December 31, 1992.

(b) *Time and manner for making the election.* The election under section 163(d)(4)(B)(iii) must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized. The election is to be made on Form 4952, Investment Interest Expense Deduction, in accordance with the Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

Par. 8. Section 1.1044(a)–1 is added to read as follows.

§ 1.1044(a)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 1044(a), as added by section 13114 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 430), generally allows individuals and C corporations that sell publicly traded securities after August 9, 1993, to elect not to recognize certain gain from the sale if the taxpayer purchases common stock or a partnership interest in a specialized small business investment company (SSBIC) within the 60-day period beginning on the date the publicly traded securities are sold.

(b) *Time and manner for making the election.* The election under section 1044(a) must be made on or before the due date (including extensions) for the income tax return for the year in which the publicly traded securities are sold. The election is to be made by reporting the entire gain from the sale of publicly traded securities on Schedule D of the income tax return in accordance with instructions for Schedule D, and by attaching a statement to Schedule D showing—

(1) How the nonrecognized gain was calculated;

(2) The SSBIC in which common stock or a partnership interest was purchased;

(3) The date the SSBIC stock or partnership interest was purchased; and

(4) The basis of the SSBIC stock or partnership interest.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

Par. 9. Section 1.6655(e)–1 is added to read as follows.

§ 1.6655(e)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 6655(e)(2)(C), as added by section 13225 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 486), allows a corporate taxpayer to make an annual election to use a different annualization period to determine annualized income for purposes of paying any required installment of estimated income tax for a taxable year beginning after December 31, 1993.

(b) *Time and manner for making the election.* An election under section 6655(e)(2)(C) must be made on or before the date required for the payment of the first required installment for the taxable year. For a calendar or fiscal year corporation, Form 8842, Election to Use Different Annualization Periods for Corporate Estimated Tax, must be filed by the 15th day of the 4th month of the taxable year for which the election is to apply. Form 8842 must be filed with the Internal Revenue Service Center where the corporation files its income tax return.

(c) *Revocability of election.* The election described in this section is irrevocable.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (c) is amended as follows:

1. The following entries are removed from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.108(c)–1T	1545–1421
* * * * *	
1.163(d)–1T	1545–1421
* * * * *	
1.1044(a)–1T	1545–1421
* * * * *	
1.6655(e)–1T	1545–1421

2. The following entries are added in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.108(c)–1	1545–1421
* * * * *	
1.163(d)–1	1545–1421
* * * * *	
1.1044(a)–1	1545–1421
* * * * *	
1.6655(e)–1	1545–1421

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 1, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–31362 Filed 12–11–96; 8:45 am]

BILLING CODE 4380–01–U

26 CFR Parts 1 and 602

[TD 8687]

RIN 1545–AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 8687), which were published in the Federal Register on Friday, November 29, 1996 (61 FR 60540) governing the source of income from sales of natural resources or other inventory produced in the United States and sold outside the United States or produced outside the United States and sold in the United States.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne (202) 622–3880, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 863 of the Internal Revenue Code.

Need for Correction

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

Accordingly, the publication of the final regulations (TD 8687), which are the subject of FR Doc. 96–30617, is corrected as follows:

1. On page 60540, column 3, in the preamble, under the caption **DATES**, line 3, the language ''*Applicability*: Taxpayers may apply'' is corrected to read ''*Applicability*: These regulations apply to taxable years beginning after December 30, 1996. However, taxpayers may apply''.

§ 1.863–1 [Corrected]

2. On page 60546, column 3, §1.863–1 (e), is corrected to read as follows:

§ 1.863–1 Allocation of gross income.

* * * * *

(e) *Effective dates.* The rules of paragraphs (a), (b) and (c) of this section will apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see §1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1996).

* * * * *

§ 1.863–2 [Corrected]

3. On page 60547, column 1, § 1.863–2 (c), line 2, the language ''apply to taxable years beginning'' is corrected to read ''apply to taxable years beginning after''.

4. On page 60547, column 2, § 1.863–2 (c), line 2 from the top of the column, the language ''1995, and before December 30, 1996.'' is corrected to read ''1995, and on or before December 30, 1996.''.

§ 1.863–3 [Corrected]

5. On page 60550, column 3, § 1.863–3 (h), is corrected to read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

* * * * *

(h) *Effective dates.* The rules of this section apply to taxable years beginning after December 30, 1996. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see §§ 1.863–3A and 1.863–3AT.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–31717 Filed 12–10–96; 2:21 pm]

BILLING CODE 4830–01–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board issues a final rule modifying its current rules governing misconduct by attorneys and party representatives.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202)273–1940.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) published on May 20, 1996 (61 FR 25158), the Board proposed various

changes to § § 102.44 and 102.66(d) of its rules governing misconduct by attorneys and party representatives at unfair labor practice and representation hearings, respectively. The proposed changes consolidated the current misconduct rules into a single rule, revised the rules to cover misconduct at any and all stages of any Agency proceeding, attempted to clarify the types of misconduct covered by the revised rule by substituting the phrase ''misconduct, including unprofessional or improper behavior'' for the current phrase, ''misconduct of an aggravated character,'' and set forth the procedures for processing allegations of misconduct. In addition, the proposed rule revised § 102.21 of the Board's rules governing the filing of answers to unfair labor practice complaints to make that section's disciplinary provisions applicable to non-attorney party representatives as well as attorneys.

The Board received 11 comments in response to the NPR. Those submitting comments included the NLRA Practice and Procedure Committee of the American Bar Association (ABA) Labor and Employment Law Section (hereafter ABA Practice and Procedure Committee),[1] seven management-side law firms or attorneys, one union-side attorney,[2] and two labor organizations (AFL-CIO and UAW). Many of the comments were extensive and stated a number of objections to the proposed rule changes or offered suggestions as to ways to improve the rule. These objections or suggestions are addressed by subject matter below.

I. Scope of Rule

The Board's current misconduct rules are unlike the misconduct rules adopted by many other Federal agencies in that they apply only to misconduct at hearings. As indicated above, the Board's NPR proposed that the rules be extended to cover misconduct at any and all stages of any Agency proceeding, including the investigative, pre-hearing and/or compliance stages of a representation or unfair labor practice proceeding. As explained in the NPR, the purpose of this change was to provide the Board with the same authority held by other Federal agencies to take appropriate and effective disciplinary action against attorneys or other representatives who have engaged in misconduct occurring outside of hearings. As noted in the NPR, because the current rule lacks such a provision, the Board in the past has been unable to impose such discipline, and instead has been forced to request the applicable state bar to investigate and process such allegations. See, e.g., *Townsend Mfg. Co.,* 317 NLRB 1169 (1995) (Board referred to state bar allegation that attorney suborned perjury during pre-complaint investigation of unfair labor practice charge).

Six of the 11 comments filed in response to the NPR specifically addressed this aspect of the proposed rule. Of these, three (filed by the ABA Practice and Procedure Committee, the AFL–CIO, and the UAW) supported the change, and three (filed by management law firms Seyfarth, Shaw, Fairweather & Geraldson and Semler & Pritzker; and attorney Martin L. Garden) opposed it. The ABA Practice and Procedure Committee, the AFL–CIO, and the UAW all stated that they generally favored extending the rule beyond the hearing stage as proposed, and recommended that this be made even more explicit in the rule. The three management law firms opposing the change, on the other hand, argued that extending the rule to the pre and post-hearing stages, combined with the ''vague'' and ''nebulous'' proposed new language or standard for suspension or disbarment, could lead to attempts to intimidate party representatives during the investigative or preliminary stages of unfair labor practice or representation proceedings and chill aggressive or vigorous representation of clients.

Having carefully considered these comments, we have decided to retain this change in the final rule. In reaching this decision, we have been particularly influenced by the favorable comment submitted by the bipartisan ABA Practice and Procedure Committee. Further, as discussed below, we have decided not to retain the new language or standard for suspension or disbarment proposed in the NPR. Thus, we anticipate that, to the extent that proposed new language or standard was the primary or major source of the concerns expressed by those opposing the proposed extension of the rule, those concerns will be allayed. Finally, as noted above, modifying the Board's misconduct rule in this regard will conform it to the rules issued by numerous other Federal agencies which are not limited to misconduct occurring at hearings. See Federal agency rules discussed, infra.

Accordingly, the proposed extension of the rule is retained in the final rule. As suggested, we have also made this change even more explicit in the rule.

II. Standard for Discipline

As indicated above, the Board's NPR proposed that the phrase, ''misconduct, including unprofessional or improper behavior,'' be substituted for the current phrase, ''misconduct of an aggravated character.'' As indicated in the NPR, the intent of this proposal was to clarify to some extent the current language which had been criticized by some in the past as awkward or confusing. As emphasized in the NPR, the intent was not to make any substantive change in the current standard for imposing suspension or disbarment, and the Board would continue to consider both aggravating and mitigating circumstances in determining the appropriate sanction.

The comments submitted in response to the NPR indicate that the Board's attempt to clarify the rule in this respect was not generally well received, despite the Board's assurances that the clarification was not meant to make any substantive change. Thus, the ABA Practice and Procedure Committee and all of the management-side law firms or attorneys submitting comments strongly opposed the proposal on the ground that the proposed new language was vague and undefined and/or because it appeared to lower the current standard for suspension or disbarment by deleting the phrase ''of an aggravated character.'' The ABA Practice and Procedure Committee therefore urged that the Board retain the current standard, or, at a minimum, more clearly define what the new standard entails.

The AFL–CIO and UAW did not explicitly oppose the proposed new language or urge the retention of the current language, but likewise argued that the proposed new rule needed to be clarified. Thus, for example, the AFL–CIO argued that the Board should alert practitioners that certain conduct would be subject to discipline by including a non-exhaustive, illustrative list of the types of activities that would be subject to the rule.

In addition, both the AFL–CIO and the UAW offered specific suggestions as to what type of conduct should be included. Thus, the UAW argued that the rule should make clear that counseling or actively participating in the commission of an unfair labor practice would be subject to discipline.

[1] The comments of the ABA Practice and Procedure Committee were submitted by James J. Brady and Victor Schachter, the Union and Management Co-Chairs, respectively, of the ABA Practice and Procedure Committee's Subcommittee on Unauthorized Practice.

[2] The comment submitted by the union-side attorney (Victor J. Van Bourg of Van Bourg, Weinberg, Roger & Rosenfeld) did not address the substance of the proposed changes, but simply urged that the changes not be applied retroactively. The provisions set forth in the instant final rule, to the extent they are inconsistent or constitute a change from the current rule and/or practice, will operate prospectively only.

And while the AFL–CIO took no position on whether all unfair labor practices or violations of the Board's rules should be covered, it similarly argued that certain unfair labor practices or violations of the Board's rules should be subject to discipline, including violations of the Act or the Board's rules that relate to and would undermine the integrity of the Board's processes or where the representative's participation in a professional capacity was necessary to carry out the unlawful conduct. Specific examples offered by the AFL–CIO included: counseling parties to resist compliance with a valid subpoena in the absence of any valid objections thereto; aiding or assisting employers in committing violations of Section 8(a)(4) of the Act; aiding or assisting employers in committing certain Sec. 8(a)(1) violations, such as interrogating employees in preparing a defense to a complaint without following the safeguards set forth in *Johnnie's Poultry*, 146 NLRB 770 (1964), and requesting employees to provide copies of statements given to the Board; assisting employers in filing non-meritorious or preempted retaliatory lawsuits against employees or unions and attempting to conduct discovery in such proceedings to obtain information that could not otherwise be obtained in Board proceedings, such as the names of employees who attend organizational meetings, authorization cards, organizing documents, or Board affidavits; and conduct which violates the Board's rules governing the formal election process, including misconduct which protracts the representation hearing and objectionable conduct that necessitates a second election.

In view of the foregoing comments, which as indicated largely opposed the change, we have decided to reconsider the Board's original proposal in this regard. The Board's original proposal was based on two assumptions: (1) That the phrase ''of an aggravated character'' in the current rule sometimes caused confusion as to whether certain conduct was subject to suspension or disbarment, as opposed to lesser discipline such as a reprimand; and (2) that clarification would also be helpful in view of the proposal to extend the rule to cover misconduct occurring outside of hearings. Based on these assumptions, the Board reviewed the various types of misconduct rules issued by other agencies and decided to propose a minor modification to the language in the hope that this would provide some clarification and would be more understandable to practitioners. As indicated above and in the discussion accompanying the proposed rule, there was no intent to make any substantive change to the current standard.

However, as noted, virtually all of the comments expressed opposition to the Board's proposed new language on the ground that it was vague and undefined and appeared to lower the current standard. Moreover, a few also specifically questioned the Board's underlying assumptions. Thus, Jackson, Lewis, Schnitzler & Krupman, one of the management law firms submitting comments, argued that the current language is in fact clearly understood by practitioners and should be retained. As indicated above, the ABA Practice and Procedure Committee also urged the Board to retain the current language.

Having carefully considered these comments, we conclude that the proposed new language, ''misconduct, including unprofessional or improper behavior,'' rather than bringing greater clarity, would, at least in the short run, actually cause more confusion among practitioners. Although the Board took pains to emphasize in the discussion accompanying the proposed rule that it was not attempting to make any change in the standard by substituting this language for ''misconduct of an aggravated character,'' and that it would continue to consider both aggravating and mitigating circumstances in imposing discipline, it is obvious from the comments received that deletion of the phrase ''of an aggravated character'' from the rule is unlikely to gain widespread public understanding, acceptance or approval. Accordingly, we have decided not to adopt that proposal in the final rule. Further, as it appears that the current language is understood and accepted by practitioners, we have decided to retain the current language as urged by the ABA Practice and Procedure Committee.

However, for the reasons set forth in the NPR, and particularly in light of the other changes that are being proposed to extend the scope of the rules to cover misconduct outside hearings, we continue to believe that some clarification of the current rule would be helpful in order to provide guidance in future cases arising under the newly revised rule.

The question therefore remains as to the best way to clarify the rule. A review of the disciplinary rules issued by other agencies indicates that there are essentially three different alternatives available to the Board. The first alternative, and the one adopted by the Board in the NPR, is to attempt to define ''misconduct'' by the use of certain familiar adjectives. This approach has been adopted by the Securities and Exchange Commission (SEC) and the Commodity Futures Training Commission (CFTC). See 17 CFR 201.102(e)(providing that SEC may suspend or disbar any person found to have engaged in ''unethical or improper professional conduct''); and 17 CFR 10.11(b)(providing that CFTC may suspend or disbar any person found to have engaged in ''unethical or improper unprofessional conduct either in the course of an adjudicatory, investigative, rulemaking or other proceeding before the Commission or otherwise'').

A second alternative is to reference the standards of ethical conduct applied by the bars and/or courts, and require practitioners to conform to those standards.[3] This alternative, either by itself or in conjunction with the first alternative, has been adopted by the Federal Communications Commission (FCC), Federal Trade Commission (FTC), Federal Energy Regulatory Commission (FERC), and Department of Transportation (DOT). See 47 CFR Sec. 1.24 (providing the FCC may suspend or disbar any person who has ''failed to conform to standards of ethical conduct required of practitioners at the bar of any court of which he is a member;'' and/or displays conduct which if displayed toward any court of the United States would be cause for such discipline); 16 CFR 4.1(e)(providing that ''all attorneys practicing before the [FTC] shall conform to the standards of ethical conduct required by the bars of which the attorneys are members'' and that the Commission may suspend or disbar any attorney who ''is not conforming to such standards, or * * * has been otherwise guilty of conduct warranting disciplinary action''); 18 CFR 385.2012 (providing that any person appearing before FERC ''must conform to the standards of ethical conduct required of practitioners before the Courts of the United States,'' and that the Commission may suspend or disbar any person found to have engaged in ''unethical or improper professional conduct''); and 14 CFR 300.1, 300.6 and 300.20 (providing that ''every person representing a client in matters before DOT and in all contacts with DOT employees shall strictly observe the standards of professional conduct,'' that the rules of conduct set forth by DOT ''are to be interpreted in light of those standards,'' and that DOT may temporarily or permanently suspend from practice before it any person found to have engaged in ''unethical or improper professional conduct'').

The third alternative is to include an illustrative list of activities or conduct

that would warrant discipline. This alternative, which is essentially the alternative suggested by the AFL–CIO, has been adopted by the Immigration and Naturalization Service (INS), and the Internal Revenue Service (IRS). See 8 CFR 292.3 (INS); 31 CFR 10.51 (IRS).

As indicated above, in light of the comments received in response to the NPR, we have decided to abandon the first alternative. Although we do not believe that that alternative is an unreasonable or invalid one,[4] given the negative reaction to the Board's original proposal, we will no longer pursue that alternative and will turn to the other two alternatives.

In our view, the second alternative is the better of the two remaining approaches. Although the third alternative has the obvious advantage of providing clear notice that the conduct included in the list would be subject to discipline, it also has obvious disadvantages. For example, because such a list is non-exhaustive, it may lead practitioners to conclude that conduct that is not included in the list is not subject to discipline. In such circumstances, if a case subsequently arose involving conduct that was not included in the list, the attorney or other representative could argue that the Board had failed to provide sufficient notice that the conduct was subject to discipline, and indeed had suggested that the conduct was not considered inappropriate or sufficiently serious to warrant discipline by failing to mention it in the list.

Moreover, in our view the advantages of the second alternative outweigh the advantages of the third. Clearly, the standards of ethical conduct adopted by the bars and courts are standards with which attorneys are familiar. Further, they are standards which have guided the Board in past cases arising under the current rule involving hearing misconduct. See, e.g., *Joel Keiler*, 316 NLRB 763, 765–767 (1995) (citing ABA Model Rules for Lawyer Disciplinary Enforcement and cases applying ABA Model Code of Professional Responsibility and state rules of professional conduct); Sargent Karch, 314 NLRB 482, 486–487 (1994) (citing ABA Standards for Imposing Lawyer Sanctions); and Roy T. Rhodes, 152 NLRB 912, 917 (1965) (citing ABA Canons of Professional Ethics). See also *Rowland Trucking Co.*, 270 NLRB 247 n.1 (1984) (Board cited ABA Model Code of Professional Responsibility in condemning conduct of respondent's counsel). Thus, by referring to such standards in the new rule, it would be made clear in the rule that the Board intends to continue following those standards in future cases involving misconduct occurring outside as well as inside hearings.

We recognize that there are those who believe that some aspects of such standards of ethical conduct are themselves too vague. Indeed, for this reason, Haynsworth, Baldwin, Johnson and Greaves (hereafter ''Haynsworth, Baldwin''), one of the management law firms submitting comments, specifically urged the Board not to adopt Rule 8.4(d) of the Model Rules of Professional Conduct or DR1–102(A)(5) of the Model Code of Professional Responsibility, which state that it is professional misconduct for an attorney to ''engage in conduct that is prejudicial to the administration of justice.''

Further, as indicated in the NPR, unlike the courts, the Board does not require that all those who appear as party representatives before the Board be attorneys. See Secs. 102.38 and 102.66 of the Board's Rules and Regulations. Non-attorneys, of course, may not be as familiar with such ethical standards as attorneys. Thus, it could be argued that nonattorney party representatives should not be held to the same ethical standards applicable to attorneys.

However, neither of these arguments carries substantial weight in our view. The standards of ethical conduct applicable to attorneys have been well defined over the years in a wealth of caselaw applying those standards to a wide variety of situations. This is true not only with respect to the more specific provisions of such rules, but also with respect to broader provisions such as those prohibiting lawyers from engaging in conduct that is ''prejudicial to the administration of justice.'' Although such provisions are frequently criticized and have not been adopted by a few jurisdictions such as New Hampshire on the ground that they are too vague and/or overbroad, as indicated above such a provision was included in the Model Rules of Professional Conduct adopted by the ABA House of Delegates in 1983. Further, such provisions have generally been upheld by the courts. See ABA/BNA Lawyers' Manual on Professional Conduct (1996)(hereinafter ''Lawyers' Manual'') at 101:501, and cases cited there. See also *Howell* v. *State Bar*, 843 F.2d 205, 208 (5th Cir.), cert denied 488 U.S. 982 (1988)(holding that the phrase ''prejudicial to the administration of justice'' is neither overbroad nor vague on its face as case law, court rules, and the ''lore of the profession'' provide sufficient guidance).

Nor do we believe it unfair or unjust to hold nonattorney party representatives to the same standards as attorneys who appear and practice before the Agency. Indeed, the Board currently does so under its current ''aggravated'' misconduct standard, and has previously disciplined nonattorney representatives under that standard. See, e.g., *Herbert J. Nichol*, 111 NLRB 447 (1955)(suspending union's representative for six months for threatening decertification petitioner during recess in hearing). Although as noted above nonattorney representatives may not be as familiar with the standards of ethical conduct applied to attorneys by the bars and courts, we do not believe that this warrants the application of a different standard to such representatives. The primary purpose of disciplinary rules is to protect the integrity of the adjudicatory and administrative process, including the rights of parties, witnesses, and other participants. Were we to permit nonattorney party representatives to engage in conduct which would be prohibited if engaged in by attorneys, we would, in effect, be sanctioning conduct that undermines that process and may also prejudice or otherwise harm the parties and other participants. Like other agencies, we therefore have little hesitancy in requiring nonattorney party representatives to familiarize themselves with the standards of conduct applicable to attorneys and to comply with those standards. Cf. 18 CFR 385.2101 (requiring any person who appears before the FERC, which may include attorneys and other qualified representatives, to conform to the standards of ethical conduct required of practitioners before the courts).[5]

Accordingly, for all the foregoing reasons, we decline to adopt the third

[4] Indeed, we note that the SEC's rule, which as indicated above the proposed new language was largely modeled after, has been in existence for over half a century and has never been held invalid by any court. See *Sheldon* v. *SEC*, 45 F.3d 1515 (11th Cir. 1995); *Davy* v. *SEC*, 792 F.2d 1418, 1421–1422 (9th Cir. 1986); and *Touche Ross & Co.*, v. *SEC*, 609 F.2d 570, 578 (2d Cir. 1979).

[5] In so finding, we do not mean to suggest that there may never be any circumstances where a nonattorney representative's lack of understanding of or experience with such standards might appropriately be taken into account as a mitigating factor in determining the appropriate discipline. However, as a general matter, we believe it appropriate to apply the same standards to nonattorney representatives as we do to attorneys. Indeed, it is for this reason that the Board also proposed in the NPR to revise Sec. 102.21 of the Board's rules to subject nonattorney's to the same requirement and sanctions as attorneys with respect to the filing of answers. As discussed, infra, we have decided to also adopt that proposed change in the final rule.

approach suggested by the AFL–CIO,[6] and instead adopt the second approach followed by such agencies as the FCC, FTC, FERC and DOT by adding a provision at the beginning of the rule referencing the standards of ethical and/or professional conduct applicable to practitioners before the courts.

As indicated above and in the rule, the purpose of adding this provision is to codify the practice under the current rule and thereby make clear that the Board will continue to be guided by such standards of ethical and/or professional conduct in applying the new, revised rule. As in past cases arising under the current rule, such ''standards'' may include the ABA Model Rules of Professional Conduct (and/or any other standards adopted by the ABA in the future),[7] applicable state bar rules, and court decisions applying such rules. See cases cited, supra.

As with the Board's original proposal, we emphasize that the purpose of adding this provision is *not* to change the standard for imposing discipline. Indeed, as indicated above, we have decided to retain the current language which states that only ''misconduct of an aggravated character'' will subject an attorney or representative to suspension or disbarment. Nor is it the Board's intent in adding this provision to thereby suggest or imply that the Agency will take disciplinary action with respect to any and all alleged violations of each and every provision of such professional or ethical standards. Obviously, in determining whether to take disciplinary action in a particular case the Agency will take into consideration the alleged misconduct's actual or potential adverse impact on the administrative process. In those circumstances where the alleged conduct has little or no such impact, rather than take action under the Board's own misconduct rules, the Agency may refer the allegations to the appropriate state bar association for disciplinary action. See NLRB Notice of establishment of a Privacy Act system of records for Agency Disciplinary Case Files, 58 FR 57633 (Oct. 26, 1993), as amended 61 FR 13884 (March 28, 1996) (providing that Agency may refer misconduct files to a bar association or similar Federal, state, or local licensing authority where the record or information indicates a violation or potential violation of the standards of professional conduct established or adopted by the licensing authority).[8]

Accordingly, under the final rule which we have adopted, the first four paragraphs of the revised rule will read as follows:

(a) Any attorney or other representative appearing or practicing before the Agency shall conform to the standards of ethical and professional conduct required of practitioners before the courts, and the Agency will be guided by those standards in interpreting and applying the provisions of this section.

(b) Misconduct by any person at any hearing before an administrative law judge, hearing officer, or the Board shall be grounds for summary exclusion from the hearing. Notwithstanding the procedures set forth below for handling allegations of misconduct, the administrative law judge, hearing officer, or Board shall also have the authority in the proceeding in which the misconduct occurred to admonish or reprimand, after due notice, any person who engages in misconduct at a hearing.

(c) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be grounds for striking all testimony previously given by such witness on related matters.

(d) Misconduct by an attorney or other representative at any stage of any Agency proceeding, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct of an aggravated character shall be grounds for suspension and/or disbarment from practice before the Agency and/or other sanctions.

III. Procedures

Several of the comments also addressed the procedures the Board proposed in the NPR for processing allegations of misconduct. The issues raised by those comments are addressed below.

A. General Counsel's Prosecutorial Authority

In its original proposal, the Board proposed to delegate to the General Counsel the unreviewable authority to decide whether to initiate disciplinary proceedings against an attorney or other representative by issuing a disciplinary complaint. Two of the comments (filed by management law firm Semler & Pritzker and attorney Ronald L. Mason of Emens, Kegler, Brown, Hill & Ritter) objected to this proposal on the ground that giving the General Counsel such authority would enable the General Counsel to intimidate a respondent's counsel by threatening disciplinary prosecution.

Although we have carefully considered these comments, we have decided to retain the original proposal in the final rule. We recognize that the decision whether to institute disciplinary proceedings (i.e. the decision to issue a notice to show cause why disciplinary sanctions should not be imposed or to order a disciplinary hearing) has in the past rested with the Board rather than the General Counsel, and that the proposal to delegate such unreviewable authority to the General Counsel constitutes a change in that practice. However, we are not persuaded that this change would give birth to the kind of abuse suggested. Certainly nothing in the past history of misconduct cases suggests that such abuse would occur. Indeed, although the Regional Directors and General Counsel have always had the authority to recommend disciplinary action to the Board, they have only infrequently done so. Further, no example is cited, and we are aware of none, where a Regional Director or the General Counsel has in the past recommended disciplinary action to the Board without a substantial basis and/or to intimidate or retaliate against opposing counsel.

Moreover, although the Board in the past has made the decision whether to hold a disciplinary hearing, the General Counsel has normally served as the prosecutor at any such hearing ordered by the Board. See, e.g., *Cherry Hill Textiles, Inc.(Stuart Bochner),* 318 NLRB 396 (1995); *Sargent Karch,* supra; and *Roy T. Rhodes,* supra. Thus, to the extent the objections to the proposal are based on concerns over the General Counsel prosecuting the disciplinary action, this has always been the standard practice.

In addition, we have made clear in the rule that the final determination on whether to institute disciplinary

[6] We therefore also decline to address herein the suggestion made by the AFL–CIO and the UAW that some or all violations of the NLRA by attorneys or other representatives should be subject to disciplinary sanction under the Board's misconduct rules. We note, however, that the Board's misconduct rules have not in the past been used as an enforcement tool under the NLRA, and it was not, and is not, our intent in revising the rule to signal any change in this past practice. By the same token, however, it is also not our intent herein to preclude the Board in some future case from suspending and/or disbarring an attorney or other representative for aggravated misconduct simply because that conduct might also constitute an unfair labor practice. We leave this issue to be decided by the Board on a case-by-case basis. Similarly, by declining to adopt a non-exclusive list of activities or conduct warranting discipline, we do not express a view as to whether the conduct contained in the AFL–CIO's proposed list would justify discipline. These issues are also appropriate for case-by-case resolution.

[7] As indicated above, the ABA replaced the Model Code of Professional Responsibility with the Model Rules of Professional Conduct in 1983. The Model Rules have since been adopted in whole or in part by the vast majority of the states. See Lawyers' Manual at 01:301. See also id. at 01:3 (listing 42 states that have adopted Model Rules as amended).

[8] The Agency, of course, also reserves the right, and indeed has the obligation, to refer cases involving actual or potential violations of federal law to other agencies and the Department of Justice for prosecution where appropriate. See id.

proceedings shall be made by the General Counsel in Washington, D.C., and not by the Regional Director or Regional personnel who may have handled the underlying unfair labor practice or representation proceeding. Thus, to the extent objections to the proposal may question the propriety of Regional personnel having authority to make this determination, this concern is unfounded.

Finally, although the General Counsel will now have the authority under the proposed rule to initiate such disciplinary proceedings, the General Counsel will not have the authority to determine the appropriate sanction. As in the past, although the General Counsel may recommend the appropriate sanction, the administrative law judge and/or the Board will continue to make the determination as to what sanction, if any, is appropriate.

Accordingly, for all the foregoing reasons, and taking into account that no objection to this aspect of the proposal was made by the ABA Practice and Procedure Committee or in the other eight comments, we have decided to adopt the proposed provision delegating to the General Counsel the authority to initiate formal disciplinary proceedings in the final rule.

B. Investigatory Powers and Procedures

Three of the comments also recommended certain changes to the proposed rule with respect to the disciplinary investigation. Thus, the ABA Practice and Procedure Committee and the UAW recommended that a provision be added to the proposed rule to make clear that the General Counsel shall have the usual powers of investigation under Section 11 of the Act. In addition, the ABA Practice and Procedure Committee and one of the management law firms (Haynsworth, Baldwin) recommended that a provision be added that the subject attorney or other representative shall be given notice and an opportunity to respond prior to the General Counsel's issuance of any disciplinary complaint.

Having carefully considered these comments, we have decided to adopt both recommendations. With respect to the first, it could be argued that such a provision is unnecessary given that the Board's original proposal already includes a provision stating that §§ 102.24 to 102.51 of the Board's rules governing unfair labor practice proceedings will apply to disciplinary proceedings to the extent consistent, and thus already effectively incorporates § 102.31 of the Board's rules regarding issuance of subpoenas both prior to and during the hearing. However, in order to avoid any later uncertainty in this regard, we have decided to include an additional provision as recommended by the ABA Practice and Procedure Committee and the UAW clearly stating that the General Counsel will have the usual investigatory powers under Section 11 of the Act.

With respect to the second recommendation, we note that pre-complaint notice and opportunity to respond is a routine part of the General Counsel's investigative process. Moreover, it appears that such notice is provided by Rule 11.B(2) of the ABA Model Rules for Lawyer Disciplinary Enforcement (see Lawyers' Manual at 01:611), by either rule or practice in most jurisdictions (See id. at 101:2101–2104), and by at least one other Federal agency (see IRS Rules and Regulations, 31 CFR 10.54). Thus, while it may be unnecessary to specifically include it, we have decided to include such a provision in the proposed rule, as recommended in the comments.

Accordingly, based on the recommendations of the ABA Practice and Procedure Committee and other comments, and for all the reasons set forth above, we have added provisions to the final rule providing that the General Counsel will have the usual powers of investigation under Section 11 of the Act, and that the subject attorney or representative shall be given notice and an opportunity to respond to the allegations prior to issuance of any disciplinary complaint.

C. Statute of Limitations

No limitations period was set forth in the Board's original proposal for bringing the allegations of misconduct. In its comments on the Board's NPR, one of the management law firms (Haynsworth, Baldwin) suggested that some limitations period be fixed for such proceedings in the rule, as the passage of time could affect the fundamental fairness of the proceedings.

Although we have carefully considered this recommendation, we decline to adopt it. There is no contention, nor could there be, that the six-month limitations period established in Section 10(b) of the Act applies to the Agency's disciplinary proceedings, since that section is applicable by its terms only to unfair labor practice proceedings. See Annotation, Delay in Disciplinary Proceedings, 93 ALR3d 1057 (1979)(statute of limitations is inapplicable to disciplinary proceedings unless it is specifically made applicable to such proceedings by its terms). Further, inasmuch as the purpose of such disciplinary proceedings is to protect the Agency's processes and the public, we find, in agreement with Rule 32 of the ABA Model Rules for Lawyer Disciplinary Enforcement and most jurisdictions, that no statute of limitations should apply. See Lawyers' Manual at 01:628 and 101:2113.[9]

Accordingly, as in the original proposal, we have not included a limitations period in the final rule.

D. Standard of Proof

In its original proposal, the Board provided that the General Counsel must establish the alleged misconduct by a ''preponderance of the evidence.'' In its comments, one of the management law firms (Haynsworth, Baldwin) objected to this proposal, and recommended that the Board instead adopt the ''clear and convincing evidence'' standard.

Although we have carefully considered this recommendation, we decline to adopt it. We recognize that the ''clear and convincing evidence'' standard has been adopted in Rule 18.D of the ABA Model Rules for Lawyer Disciplinary Enforcement and by a majority of jurisdictions. See Lawyers' Manual at 01:616 and 101:2112. However, the Board has never applied that standard to its disciplinary proceedings in the past, and indeed has at least implicitly applied the ''preponderance of the evidence'' standard by directing that the rules governing unfair labor practice proceedings shall apply to such proceedings. See, e.g., *Cherry Hill Textiles, Inc.(Stuart Bochner),* supra; Sargent Karch, supra, and 309 NLRB 78, 88 (1992); and Roy T. Rhodes, supra.[10] Further, unlike the courts, the Board is governed by the Administrative Procedure Act, which effectively establishes the traditional ''preponderance of the evidence'' standard in Federal administrative adjudicatory proceedings, including disciplinary proceedings. See *Steadman* v. *SEC*, 450 U.S. 91 (1981). See also *Checkosky* v. *SEC*, 23 F.3d 452, 475 (D.C. Cir. 1994) (per curiam) (opinion of Circuit Judge Randolph).[11] Finally,

[9] This is not to suggest, however, that there would never be any circumstances where significant delay would be considered by the Board as a defense or mitigating factor in determining the appropriate discipline. See Lawyers' Manual at 101:2113. We simply find, in agreement with the ABA Model Rules and most jurisdictions, that there should be no absolute time limitation in all cases.

[10] The ''preponderance of the evidence'' standard is the standard of proof specifically established in Section 10(c) of the National Labor Relations Act for unfair labor practice proceedings.

[11] Although it appears that a few agencies, such as the INS and the Patent and Trademark Office, apply the ''clear and convincing'' standard in their disciplinary proceedings, they appear to be in the minority. In any event, it seems clear, based on the

there is no contention or evidence cited in any of the comments that the Board's past application of the traditional ''preponderance of the evidence'' standard has worked an injustice. Indeed, as indicated above, no objection whatsoever was made to the application of this standard by the ABA Practice and Procedure Committee or in any of the other nine comments.

Accordingly, we have retained the ''preponderance of the evidence'' standard in the final rule.

E. Public Hearing

In its original proposal, the Board included a provision that the disciplinary hearing shall be public unless otherwise ordered by the Board or the administrative law judge. The ABA Practice and Procedure Committee and one of the management law firms submitting comments (Haynsworth, Baldwin) objected to this proposal and recommended that such hearings be private on the ground that allegations of misconduct can ruin an attorney's career regardless of whether the allegations are ultimately sustained.

Although we have carefully considered these comments, we believe the provision should be retained for several reasons. First, the provision merely codifies what is the current and past practice in disciplinary proceedings, and is identical to similar provisions contained in Sections 102.34 and 102.64 of the Board's rules governing unfair labor practice and representation proceedings. Second, such a provision is consistent with Rule 16.B of the ABA Model Rules for Lawyer Disciplinary Enforcement, which provides for such public proceedings following the filing and service of formal charges (see Lawyers' Manual at 01:615), and with the disciplinary rules adopted by other agencies such as the SEC (see 17 CFR 201.102(e)(7)). Third, although we recognize that any public proceeding may cause injury to the reputation of the respondent, in agreement with other agencies that have considered the issue, we believe that such concerns are clearly outweighed by the benefits of public proceedings. See, e.g., SEC Final Rule Amendment, 53 FR 26427 (July 13, 1988) (finding, in adopting amendment to SEC rules to provide for public hearings in disciplinary proceedings against professionals, that conducting open proceedings will avoid the appearance that the Agency is more concerned about the reputations of respondent attorneys and representatives than of other respondents in other proceedings; remove an incentive for respondents to delay the proceeding; provide professionals and the public with knowledge of conduct that the agency determines warrants issuance of a disciplinary complaint; and permit legitimate public oversight of the Agency's proceedings).

Accordingly, we have retained the provision for public hearings in the final rule.

F. Role of Complainant

The Board's original proposal also addressed the role of the person bringing the allegations of misconduct or petitioning for disciplinary proceedings against the respondent attorney or representative.[12] The proposal provided that any such person shall be permitted to participate in the disciplinary hearing to a limited extent by examining and cross-examining witnesses called by the General Counsel and the respondent, but shall not be a party to the proceeding or afforded the rights of a party to call witnesses or introduce evidence, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision. The Board explained that such provisions would allow such interested persons the opportunity to participate to some extent in the proceeding while ensuring that the responsibility for prosecuting the disciplinary complaint will at all times remain with the General Counsel and that the disciplinary proceeding would not be transformed into an adversary proceeding between the complaining person and the respondent. The Board noted in this regard that courts have long held that attorney disciplinary proceedings are in the nature of internal investigations concerning the protection and integrity of the adjudicatory process rather than adversarial disputes involving the conflicting rights or obligations of private parties, and, accordingly, have refused to grant party status or a right to appeal to the complaining person or individual in such proceedings, even if that person or individual was a party or party representative in the case where the alleged misconduct occurred and/or was permitted to participate in the disciplinary hearing. See *Ramos Colon* v. *U.S. Attorney for the District of Puerto Rico*, 576 F.2d 1 (1st Cir. 1978); *Application of Phillips*, 510 F.2d 126 (2d Cir. 1975); *In re Echeles*, 430 F.2d 347 (7th Cir. 1970); and *Mattice* v. *Meyer*, 353 F.2d 316 (8th Cir. 1965). See also *Matter of Doe*, 801 F. Supp. 478 (D. N.M. 1992).

Two of the comments (filed by the ABA Practice and Procedure Committee and the UAW) addressed this aspect of the Board's proposed rule. The ABA Practice and Procedure Committee commented that it generally agreed with allowing the complainant a limited role, but argued that the complainant should not be permitted to examine or cross-examine the respondent attorney or representative at the hearing. In addition, both the ABA Practice and Procedure Committee and the UAW recommended that the rule be amended or clarified to permit the complainant to appeal any settlement entered into by the General Counsel and the respondent attorney or representative or approved by an administrative law judge.

Having carefully considered these comments, we have in essence decided to adopt the former recommendation (and indeed to eliminate the complainant's right to examine or cross-examine *any* witnesses), but not to adopt the latter recommendation. With respect to the provision in the original proposal permitting the complainant to examine or cross-examine witnesses at the disciplinary hearing, we do not necessarily agree with the ABA Practice and Procedure Committee that the original proposal would have denied the respondent attorney or representative due process to the extent it permitted the complainant to examine or cross-examine the respondent.[13] However,

cited cases, that agencies are not required to apply that standard to their disciplinary proceedings under the Administrative Procedure Act.

[12] The NPR provided that allegations of misconduct may be brought by ''any person,'' and we have retained this provision in the final rule. The provision essentially codifies the current practice which permits any person, including but not limited to the participants in the underlying unfair labor practice or representation proceeding, to request disciplinary action against an attorney or representative. No special form is required to make such allegations. As in the past, a party may simply write to the Agency requesting such action, or an ALJ may recommend in his/her decision that the Board refer the matter to the General Counsel for such action under the rule. As under the current rule, the Board itself may also refer a matter to the General Counsel for investigation and appropriate action, either sua sponte or in response to a request or recommendation. As discussed, supra, however, under the new rule the General Counsel will have the final authority to decide whether to issue a disciplinary complaint.

[13] In its comments on this provision, the ABA Practice and Procedure Committee suggested that such a provision would deny the respondent attorney or representative due process because he/she would not be able to examine or cross-examine the complainant. However, the Board's new rule specifically provides that the rules applicable to unfair labor practice proceedings shall apply to the extent they are not contrary to the provisions of the new rule, and § 102.38 of those rules provides that a respondent shall have the right to call, examine, and cross-examine witnesses. See also Rule 611(c) of the Federal Rules of Civil Procedure regarding examination of hostile witnesses. Thus, the respondent attorney or representative will in fact

Continued

essentially for the reasons set forth by the Board in the NPR for denying party status to complainant, and consistent with the past practice,[14] on further consideration we believe that the rights of the respondent attorney or representative and the integrity of the disciplinary process would be better protected by limiting participation at the hearing, other than as a witness, to the General Counsel and the respondent attorney or representative or his/her counsel. Accordingly, we have deleted the provision in the original proposal which allowed complainants to examine or cross-examine witnesses at the hearing.

For similar reasons, we also decline to afford the complainant the right to appeal from a settlement reached by the General Counsel and the respondent. The Board did not include such a provision in the original proposal because the Board believed that to do so would be inconsistent with the Board's determination to deny party status to the complainant, and we adhere to that view. Cf. *NLRB* v. *Food & Commercial Workers Union, Local 23,* 484 U.S. 112 (1987) (discussing charging party's right to appeal settlements in unfair labor practice cases). Accordingly, we have not added such a provision to the final rule.

G. Judicial Review

In its original proposal, the Board included a provision stating that any person found to have engaged in misconduct warranting disciplinary sanctions may seek judicial review of the administrative determination. In its comments on the Board's original proposal, management law firm Haynsworth, Baldwin recommended that the Board outline the exact procedure for seeking judicial review, suggesting that the Board provide for judicial review in a federal district where the respondent attorney or representative resides or has a principal place of business.

Although we have carefully considered this recommendation, we have decided not to adopt it. The Board included a provision in the original proposal generally referencing the right to seek judicial review of final Board orders imposing discipline because the NLRA itself only specifically provides for judicial review of final Board orders in unfair labor practice proceedings. Thus, the Board's intent was simply to make clear that a respondent attorney or representative aggrieved by such an order may seek judicial review thereof. See the Administrative Procedure Act (APA), 5 U.S.C. 702.

Further, it appears to remain somewhat unsettled as to whether the district courts or the courts of appeals have jurisdiction over such appeals. There have been only two cases to our knowledge where a disciplined attorney or representative has sought judicial review of the Board's disciplinary order: *John L. Camp,* 96 NLRB 51 (1954); and *Joel Keiler, supra.* In the first, although review was sought in the district court, which vacated the Board's order, the jurisdictional issue was not specifically addressed by the court in its opinion. See *Camp v. Herzog,* 104 F.Supp. 134 (D.D.C. 1952). In the second, which is still pending, the Agency recently took the position before the U.S. Court of Appeals for the D.C. Circuit, relying in part on the *Camp* v. *Herzog* case, that the district court rather than the court of appeals had jurisdiction over Keiler's appeal, and the court of appeals, in apparent agreement with the Agency, issued an order on January 23, 1996 (per curiam) transferring the case to the district court. The court's order was unpublished, however, and thus is not considered binding precedent under the Circuit's rules. See Circuit Rule 28(b).

Finally, even assuming arguendo that the foregoing cases do substantially settle the jurisdictional issue, we do not believe it is our place to dictate in our rules in which court or venue a party may seek judicial review. As indicated by the litigation in the *Keiler* case, such issues are for the courts themselves to determine applying law and precedent. See, e.g., 28 U.S.C. Sec. 1391(e) (providing for proper district court venue where Federal agency is a defendant).

Accordingly, we have retained the original provision in the final rule without substantial change.

H. Public Disclosure of Discipline

In their separate comments on the Board's NPR, the ABA Practice and Procedure Committee and the AFL-CIO recommended that the Board make available to the public the final determination or disposition of any disciplinary complaint or hearing, be it the result of a settlement or decision, to assure the bar and public that the Board is acting in an even-handed manner and to provide guidance to practitioners.

We generally agree with this recommendation, and, as in the past, the Agency will continue to make public any such final dispositions or determinations consistent with the Agency's obligations under the Freedom of Information Act (FOIA), 5 U.S.C. 552 *et seq.*, absent special circumstances warranting or justifying withholding all or part of such a disposition.[15] However, neither the ABA Practice and Procedure Committee nor the AFL–CIO specifically recommended that a provision be included in the rule to this effect, and we see no need to do so since, as indicated, the matter is essentially governed by FOIA. Accordingly, we have not added such a provision to the final rule.

I. Notification to State Bar

In their separate comments on the Board's original proposal, the ABA Practice and Procedure Committee, the AFL–CIO, and the UAW also recommended that the Board automatically or routinely notify the appropriate state bar(s) where it has imposed a disciplinary sanction on an attorney. Further, the UAW specifically recommended that a provision providing for such automatic referral be included in the rule.

We generally agree that the appropriate state bar(s) should be notified of any disciplinary sanctions imposed on an attorney and, as with public disclosure of such sanctions, it is

have the opportunity under appropriate circumstances to call, examine, and/or cross-examine the complainant and other witnesses at the disciplinary hearing.

[14] A review of past cases where a disciplinary hearing has been held indicates that only the General Counsel and the respondent attorney or representative participated in the disciplinary hearing. *See John L. Camp,* 96 NLRB 51 (1951), vacated on other grounds 104 F. Supp. 134 (D.D.C. 1952); *Roy T. Rhodes,* supra; *Sargent Karch,* supra; and *Stuart Bochner,* JD (NY)–10–96 (Feb. 20, 1996) (currently pending before the Board on exceptions). Further, in its original (unpublished) order directing a disciplinary hearing in *In re Attorney,* supra, the Board specifically indicated that the opposing counsel in the underlying representation case was not entitled to participate in the hearing other than as a witness.

[15] Such special circumstances may include where certain identifying information is redacted pursuant to the settlement agreement. See, e.g., *In re An Attorney,* 307 NLRB 913 (1992) (Board agreed to redact attorney's name from published decision and not to seek further discipline against attorney by referring matter to state bar as part of settlement agreement which provided for immediate six-month suspension of attorney). The Agency in the past has taken the position in such circumstances that the redacted information may properly be withheld from public disclosure pursuant to Exemptions 7(A) and (C) of FOIA, 5 U.S.C. 552(b)(7) (A) and (C), which authorize the withholding of information compiled for law enforcement purposes to the extent disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy. Although we agree that disclosure is preferable to non-disclosure/redaction, we recognize that there may be situations where the Agency may find such redaction to be a relatively small price to pay for an immediate consent order suspending an errant attorney or representative from further practice before the Agency. Redaction of certain identifying information from a settlement in no way deprives the public of information necessary to obtain guidance concerning the Board's policies on misconduct and discipline.

our policy to do so absent special circumstances.[16] Moreover, pursuant to a May 18, 1995, request from the ABA Standing Committee on Professional Discipline, it is also our policy and intention to report such disciplinary actions to the ABA National Lawyer Regulatory Data Bank, which collects reports of public sanctions imposed against lawyers from all 50 states and the District of Columbia, as well as a number of federal courts and agencies.

However, as such notification of a public disciplinary action does not itself constitute discipline or create any rights or impose any obligations on the respondent attorney, we see no need to include a provision to this effect in the rule as suggested by the UAW. We will, however, consider adding such a provision to the Agency's Casehandling Manual.

IV. Answers Filed by Non-Attorneys

In its original proposal, the Board also proposed to revise Section 102.21 of its rules governing the filing of answers to unfair labor practice complaints. As discussed in the NPR, the current rule provides that the answer of a party represented by counsel shall be signed by at least one attorney of record; that the attorney's signature constitutes a certificate by the attorney that he/she has read the answer, there is good ground to support it to the best of his/her knowledge, information and belief, and it is not interposed for delay; and that the attorney may be subjected to appropriate disciplinary action for willful violations of the rule or if scandalous or indecent matter is inserted.

As indicated above and in the NPR, however, it is not required under the Board's rules that a party representative be an attorney. Further, it is not infrequent that a party will be represented by a non-attorney and that the nonattorney party representative will sign the answer on behalf of the party. Accordingly, the Board proposed to revise Section 102.21 to make the foregoing provisions of that section applicable to nonattorney party representatives as well as attorneys.

Only two of the comments addressed this aspect of the proposal. One, filed by management law firm Seyfarth, Shaw, Fairweather & Geraldson, supported the proposal. The other, filed by attorney Ronald L. Mason, argued that the proposal encourages the use of nonlawyer labor consultants.

Having considered these comments, we continue to believe that the proposed change is warranted. Contrary to the assertion by attorney Mason, we do not believe that the proposal either encourages or discourages the use of nonlawyer labor consultants, but merely subjects such representatives to the same requirements and sanctions as attorneys with respect to the filing of answers. Accordingly, we have retained this provision in the final rule.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely require attorneys and other representatives who appear and practice before the Agency to conform their conduct to the standards of ethical and professional conduct applicable to practitioners before the courts in order to protect the integrity of the administrative process and the rights of the parties and other participants in that process.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.21 is revised to read as follows:

§ 102.21 Where to file; service upon the parties; form.

An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§ 102.44 [Removed]

3. Section 102.44 is removed.

§ 102.66 [Removed and amended]

4. Paragraph (d) of § 102.66 is removed, and paragraphs (e), (f), and (g) are redesignated paragraphs (d), (e), and (f), respectively.

5. The following new Subpart W—Misconduct By Attorneys or Party Representatives, consisting of new section 102.177, is added to read as follows:

Subpart W—Misconduct by Attorneys or Party Representatives

§ 102.177 Exclusion from hearings; Refusal of witness to answer questions; Misconduct by attorneys and party representatives before the Agency; Procedures for processing misconduct allegations.

(a) Any attorney or other representative appearing or practicing before the Agency shall conform to the standards of ethical and professional conduct required of practitioners before the courts, and the Agency will be guided by those standards in interpreting and applying the provisions of this section.

(b) Misconduct by any person at any hearing before an administrative law judge, hearing officer, or the Board shall be grounds for summary exclusion from the hearing. Notwithstanding the procedures set forth in paragraph (e) of this section for handling allegations of misconduct, the administrative law judge, hearing officer, or Board shall also have the authority in the proceeding in which the misconduct occurred to admonish or reprimand,

[16] As with public disclosure, such special circumstances may include where the Board agrees not to do so pursuant to a settlement agreement. See *In re An Attorney*, supra. Even in such circumstances, however, other persons (including any person who is not a party to such a settlement) would be free to refer the matter to the appropriate state bar(s).

after due notice, any person who engages in misconduct at a hearing.

(c) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be grounds for striking all testimony previously given by such witness on related matters.

(d) Misconduct by an attorney or other representative at any stage of any Agency proceeding, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct of an aggravated character shall be grounds for suspension and/or disbarment from practice before the Agency and/or other sanctions.

(e) All allegations of misconduct pursuant to paragraph (d) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate and shall have the usual powers of investigation provided in Section 11 of the Act. Following the investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. The General Counsel's authority to make this determination shall not be delegable to the Regional Director or other personnel in the Regional Office. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or mitigation; and an explanation of the method by which a hearing may be requested. Such a complaint shall not be issued until the Respondent has been notified of the allegations in writing and has been afforded a reasonable opportunity to respond.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall file an answer admitting or denying the allegations, and may request a hearing. If no answer is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no answer is filed, then the allegations shall be deemed admitted.

(5) Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to disciplinary proceedings under this section to the extent that they are not contrary to the provisions of this section.

(6) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent's need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(7) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(8) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call, examine or cross-examine witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision.

(9) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(10) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(11) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order reprimanding, suspending, disbarring or taking other disciplinary action against the respondent, shall be subject to final approval by the Board. In the event any settlement, formal or informal, is reached after opening of the hearing, such settlement must be submitted to the administrative law judge for approval. In the event the administrative law judge rejects the settlement, either the General Counsel or the respondent may appeal such ruling to the Board as provided in § 102.26.

(12) If it is found that the respondent has engaged in misconduct in violation of paragraph (d) of this section, the Board may issue a final order imposing such disciplinary sanctions as it deems appropriate, including, where the misconduct is of an aggravated character, suspension and/or disbarment from practice before the Agency, and/or other sanctions.

(f) Any person found to have engaged in misconduct warranting disciplinary sanctions under paragraph (d) of this section may seek judicial review of the administrative determination.

Dated, Washington, D.C., December 9, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–31571 Filed 12–11–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–067]

RIN 2115–AE46

Special Local Regulations; Continental Airlines Boat Parade; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special Local Regulations are being adopted for the Continental Airlines Boat Parade. The event will be held on December 14, 1996, from 5:20 p.m. EST (Eastern Standard Time) until 9:30 p.m. EST. These regulations are needed for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective at 5 p.m. EST and terminate at 10 p.m. EST, on December 14, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Project officer, Coast Guard Group Miami, Florida at (305) 535–4461.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date. The information regarding this event was received less than three weeks before the date of the event leaving insufficient time to follow normal rulemaking procedures.

Discussion of Regulations

Special Local Regulations are being established for the Continental Airlines Boat Parade. The Continental Airlines Boat Parade is a nighttime parade with approximately 110 pleasure and fishing boats ranging in length from 20 feet to 200 feet decorated with holiday lights. There will be approximately 1000 spectator craft. This concentration of spectator and event participating vessels associated with the Continental Airlines Boat Parade poses a safety concern which is addressed in these regulations. Therefore, these regulations are necessary for the safety of life on navigable waters during the boat parade. The event will be held on December 14, 1996, from 5:20 p.m. EST until 9:30 p.m. EST.

The parade will form in the staging area at the Port Everglades turning basin then proceed north up the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. These regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the Intercoastal Waterway (ICW). The regulated area also includes the assembly area which is that portion of the Intracoastal Waterway extending from the 17th Street Causeway to the Dania Cut-Off Canal. The regulations also establish no anchorage areas in the vicinity of the viewing area which extends from the New River Sound Day Beacon 7 (LLNR42620) to New River Sound Day Beacon 11 (LLNR42630) to the east of the ICW.

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)(3) of that order. It has been exempted from review by the Office of Management and Budget under the 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 5 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, because the regulated area will be in effect for only 5 hours on the day of the event.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation 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, (as revised by 59 FR 38654, July 29, 1994). 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 J. Delgado, Coast Guard Group Miami, Florida, (305) 535–4461. As a condition to the permit, the applicant is 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, 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:

PART 100—[AMENDED]

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

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

2. A temporary § 100.35T–07–067 is added to read as follows:

§ 100.35T–07–067 Continental Airlines Boat Parade; City of Fort Lauderdale, FL.

(a) *Regulated area.* A moving regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) from Port Everglades turning basin, the staging area of the parade, to Lake Santa Barbara, where the parade will disband. A regulated area is established in the viewing area which is located to the east of the Intracoastal Waterway from New River Sound Day Beacon 7 (LLNR 42620) to the New River Sound Day Beacon 11 (LLNR 42630). A regulated area is established in the assembly area which is that portion of the Intracoastal Waterway extending from the 17th Street Causeway to the Dania Cut-Off Canal.

(b) *Special local regulations.* (1) Entry into the moving regulated area is prohibited unless authorized by the Patrol Commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, 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 become effective on December 14, 1996, from 5 p.m. EST and terminate at 10 p.m. that day.

Dated: November 15, 1996.

J.D. Hull,

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

[FR Doc. 96–31576 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5664–6]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of compliance dates.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting by extending by six months the compliance date of the rule and the dates on which existing smelters must submit standard operating procedures (SOP) manuals. This action also sets the deadline for requests for extension of compliance at June 23, 1997. The current rule requires existing smelters to submit SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule by June 23, 1997. The EPA is currently planning to revise portions of the final rule to address comments received in petitions for reconsideration. These revisions, which are scheduled to be published in February 1997, will materially effect the content of the SOP manuals and the air pollution controls needed to comply with the rule. Today's action is being taken to allow affected facilities adequate time to incorporate the revised requirements into their SOP manuals and to have sufficient time to comply with the emission standards in the rule. This revised compliance date remains within the three year period for compliance allowed by section 112 (i)(3)(A) of the Clean Air Act.

DATE(S): *Effective date:* This final action will be effective on December 12, 1996 unless EPA receives adverse public comment on this document by January 13, 1997. In the event that EPA receives adverse public comment, the Agency will withdraw this rule and issue a proposal to extend the effective date to comply with the rule and to submit SOP manuals.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

The NESHAP for secondary lead smelting (40 CFR part 63, subpart X) was proposed in the Federal Register on June 9, 1994 (59 FR 29750). The EPA received 31 letters commenting on the proposed rule and proposed area source listing. After considering fully the comments received, the EPA promulgated this NESHAP in the Federal Register on June 23, 1995 (60 FR 32587).

The final rule establishes emission limits for lead, as a surrogate for all metallic Hazardous Air Pollutants (HAP), from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at secondary lead smelters. The final rule also establishes emission limits for Total Hydrocarbons (THC), as a surrogate for HAP organics, from smelting furnaces. Work practice standards (ie. minimum hood face velocities, and building enclosures) are specified for the capture and control of process fugitive sources including furnace charging equipment and tapping locations, refining kettles, driers, and agglomerating furnace vents and taps. The final rule also requires smelters to develop site specific SOP manuals for fugitive dust control and baghouse operation and maintenance. Minimum SOP requirements are specified in the rule.

The final rule requires existing facilities to submit SOP manuals for baghouses and fugitive dust control within 18 months of publication (that is, by December 23, 1996), and to achieve compliance with the rule within 2 years of publication (namely, by June 23, 1997). The June, 1997 ultimate compliance date is one year earlier than the maximum amount of time—3 years—allowed for compliance with MACT standards. See CAA section 112(i)(3)(A).

The EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the Act from two secondary lead owners/operators, and the Association of Battery Recyclers. The petitioners objected to the introduction of bag leak detection (§ 63.548(e)) and the minimum baghouse SOP requirements (§ 63.548(c)) stating they were not logical extensions of the proposal. In addition, the petitioners requested that EPA reconsider requirements in the final rule dealing with the THC limit for collocated blast and reverberatory furnaces (§ 64.543(c)).

The EPA has determined that several of the objections contained in the petitions are properly founded and is considering amending the rule accordingly, and is planning to publish amendments to the NESHAP in February 1997.

II. Need for This Action

As stated above, the current rule requires existing owners and operators of secondary lead smelters to submit the required SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule no later than June 23, 1997. In addition, 40 CFR 63.6(i) sets the deadline for requests for extension of compliance to one year prior to the

compliance date, in this case June 23, 1996.

Section 112(i)(3)(A) of the Act instructs the EPA to ''provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard.'' At the time of publication of the final rule, EPA believed that a 2 year period would allow facilities adequate time to achieve compliance with the rule, and that an 18 month period would be adequate to prepare and submit the requisite SOP manuals.

As stated, the EPA is currently planning to revise portions of the rule to address comments received in the petitions for reconsideration. These revisions, which are scheduled to be published in February 1997, will materially effect the content of the SOP manuals and the air pollution controls needed to obtain compliance.

Currently, owners and operators will not be able to prepare their SOPs on time, or will have to revise their SOPs once the amendments are published. They will also have less than 4 months to purchase and install control equipment necessary to comply with the final rule. Also, with out this extension, the owners and operators will not have an opportunity to prepare and submit a request for extension of compliance if needed after the amendments are published. The EPA does not believe that this situation is reasonable. Today's action extends the compliance date to December 23, 1997—30 months after the original effective date and so within the time period for compliance allowed by section 112(i)(3)(A)—and extends the SOP submittal date to June 23, 1997, two years after the effective date and again within a permissible compliance period under the Act. This action also sets the submittal date for requests for extension of compliance at June 23, 1997 as provided for under 40 CFR 63.6(i)(3)(B). The EPA believes that these extended dates provide a reasonable amount of time to comply with the rule and that these extended dates will not compromise the rule's ultimate effectiveness, and indeed, will promote sound implementation of the rule by allowing sufficient time for compliance.

III. Rationale for Direct Final Rule and Immediate Effective Date

The EPA is promulgating this extension of the rule's compliance dates as a direct final rule (and therefore without prior notice and opportunity for public comment) because EPA views this as a noncontroversial action which appropriately corrects the rule's compliance dates after EPA received information which will require some changes to the rule and therefore will alter the provisions with which secondary lead smelters must comply. In fact, most of the secondary lead smelting industry has submitted comment to EPA on this issue through the petition for reconsideration process. However, should EPA receive any comment objecting to this notice, the Agency will withdraw this action and issue a proposal to extend the compliance dates (should EPA still consider that action to be appropriate). Objections may be addressed to Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

In addition, pursuant to section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), EPA is finding that this amendment relieves a regulatory restriction and therefore can be made effective less than 30 days from its publication date.

IV. Administrative

A. Executive Order 12866

The Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the E.O. 12866, (58 FR 51735, October 4, 1993). The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have 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 an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of significantly less than $100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Pub. L. 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. This amendment will not result in increased economic impacts to small entities.

E. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 63

Environmental protection, Compliance dates, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: December 9, 1996.

Carol M. Browner,

The Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.546 is amended by revising paragraph (a) to read as follows:

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than December 23, 1997. Existing sources wishing to apply for an extension of compliance pursuant to § 63.6(i) of this part must do so no later than June 23, 1997.

* * * * *

3. Section 63.549 is amended by revising paragraph (b) to read as follows:

§ 63.549 Notification requirements.

* * * * *

(b) The owner or operator of a secondary lead smelter shall submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. Owners or operators of existing secondary lead smelters shall submit this notification no later than June 23, 1997. The owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than June 23, 1995.

[FR Doc. 96–31704 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93–129; CC Docket No. 86–10; FCC 96–392]

800 Data Base Access Tariffs and the 800 Service Management System Tariff; Provision of 800 Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On September 26, 1996, the Commission adopted a Report and Order that concludes and terminates an investigation into tariffs filed by local exchange carriers (LECs) in March 1993, for 800 data base services. This Order requires LECs that filed tariffs for 800 data base services in accordance with the Commission's rules in CC Docket No. 86–10, to recalculate their price cap indexes and resubmit their tariffs. In the Order, we examine terms and conditions of the LECs' tariffs for compliance with various Commission Orders concerning 800 data base service. We also determine the reasonableness of the price cap LECs' restructure of their 800 data base service rates, the reasonableness of certain exogenous costs claimed by those LECs and the allocation of those exogenous costs between the interstate and intrastate jurisdictions.

With regard to the Bell Operating Companies' (BOC) central data base service tariff, we determine the reasonableness of a number of tariff provisions as well as the reasonableness of the costs and cost allocations underlying the BOCs' rates for that service. Finally, in this Order we deny an application for review filed by several LECs seeking reversal of the cost disclosure requirements imposed by the Bureau in this investigation and we grant GTE's revised petition for waiver of the cost disclosure requirements. By issuing this Order, the Commission intended to bring tariffs filed by LECs and BOCs into compliance with the requirements of the Communications Act of 1934, as amended, the Commission's rules and the policies adopted for 800 data base services in CC Docket 86–10.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: John Scott, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1528.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted September 26, 1996, and released October 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

Summary of Report and Order

In CC Docket 86–10, the Commission required all LECs to convert simultaneously on May 1, 1993, to a new ''data base'' system of 800 access. LECs decided to implement this data base system by linking their signalling system 7 (SS7) networks with data bases containing customer information associated with each 800 number, including the inter-exchange carrier (IXC) selected by the 800 subscriber, to deliver calls to that 800 number. There are two types of 800 data base access services that IXCs may purchase from the LECs: ''basic'' query service and ''vertical features.'' The LECs were required to tariff the 800 data base basic query service, which is the access service used to route 800 calls to the customer's chosen IXC. Other 800 data base service capabilities, such as sophisticated routing, were classified as ''vertical features'' that the LECs also had to tariff. The LECs filed 800 data base access service tariffs in March 1993. The Common Carrier Bureau suspended these tariffs for one day, imposed an accounting order, and initiated this investigation.

Terms and Conditions of the LEC 800 Data Base Tariffs

1. Area of Service (AOS) Routing in Basic Query Service

(a). Although we encourage LECs to offer more refined routing, we decline to expand our requirement beyond LATA-wide routing.

(b). We conclude that BellSouth does not clearly state in its tariff that it offers AOS routing at the LATA level. We therefore require BellSouth to file tariff

revisions clearly indicating that it offers AOS routing at the LATA level.

(c). We now clarify that LECs must provide multiple-carrier terminations. We do not, however, require the LECs to provide any additional physical facilities, such as circuits, to provide multiple-carrier terminations. Those LECs that fail to provide for multiple-carrier terminations—US West, Centel, Century, NECA, Rochester, SNET and United—must revise their tariffs to do so.

2. LEC Charges for Data Base Queries When Calls Are Incomplete

(a). The LECs may continue to assess query charges even when the associated call is not delivered to the IXC

(b). LECs with tariffs that vaguely define when a query charge will apply, such as when a query is ''processed,'' ''attempted,'' or ''received,'' must revise their tariffs to replace these terms with language expressly stating that they will assess a charge only for a ''completed'' query and defining that term.

3. Marketing of Vertical Features to End Users

(a). The Commission has established a policy that LECs may not market vertical features to 800 service subscribers, and no one now challenges that ruling. We find no reason why LECs need to modify their tariffs to prohibit such a practice.

4. Responsible Organization (Resporg) Services in the LEC 800 Data Base Tariffs

(a). We conclude that provision of Resporg service is not a common carrier activity, and thus should not be tariffed. We therefore require LECs to remove Resporg service rates from their tariffs.

800 Data Base Access Tariffs for Price Cap Carriers

5. Exogenous Treatment of Overhead Costs

(a). Bell Atlantic, SNET and United sought to recover costs incurred specifically to implement basic 800 data base query service through a general overhead factor, with no justification that these costs met the standard established for exogenous treatment. We will disallow the claims of Bell Atlantic, United and SNET for recovery of overhead costs associated with providing 800 data base basic query service.

(b). We will allow exogenous treatment of the administrative and other costs claimed by the price cap LECs.

6. Jurisdictional Allocations of 800 Data Base Costs

(a). All LECs should use the separations procedures described in Part 36 of the rules to determine the amount of annual 800 data base costs for which they seek exogenous cost treatment in their interstate filings.

(b). US West's assertion that the Constitution requires that it be allowed to recover through interstate service tariffs costs not assigned to the interstate jurisdiction is incorrect. The Commission actions in this Order do not constitute a ''permanent physical occupation authorized by government.''

(c). The Order and Appendix C list the allowable exogenous cost for each LEC. The LECs must recalculate their Price Cap Indices (PCIs) to remove any of their costs that we have disallowed.

7. Adequacy of Ameritech's Cost Support

(a). In its supplemental direct case, filed March 15, 1994, Ameritech states that the revised cost support demonstrates the validity of its original cost support, which was based on CCSCIS. We conclude that we cannot use the figures for exogenous costs that Ameritech claims. We will allow Ameritech exogenous treatment of an amount equal to the average amount of 800 data base costs we allow the BOCs to treat as exogenous in this Order.

8. Exogenous Treatment for Regional Data Base (SCP) Costs

(a). We will allow the LECs exogenous treatment for the portion of their investment in shared regional data bases used exclusively to provide 800 data base service.

(b). United and GTE claim significantly higher exogenous costs for regional data bases than those of any of the other LECs except Bell Atlantic. We will allow exogenous treatment for the full amount of regional data base costs claimed by GTE and for the reduced amount currently requested by United.

(c). We conclude that Bell Atlantic failed to meet its burden of showing that its regional data base costs are reasonable and were incurred specifically for the provision of 800 data base basic service. We find it reasonable, however, for Bell Atlantic to claim exogenous treatment for the average of the amount of regional data base costs that other BOCs have claimed.

9. Exogenous Treatment for Costs of Signalling Links Between the Regional Transfer Points and the Regional Data Bases (RSTP/SCP) and Between the Regional Data Bases and the Central Data Base (SCP/SMS)

(a). We will allow exogenous treatment of the costs, as itemized in a chart in the Order, for the signalling links between the regional data bases and the central data base.

(b). We find that the costs for the data links between the transfer points and the regional data bases, and SNET's costs for technician labor were specifically incurred to provide 800 data base query service and are not unreasonable. The Commission therefore will allow exogenous treatment for these costs, as itemized in the chart in the Order.

(c). We conclude that Bell Atlantic and United have not shown that the costs of ports on their regional transfer points were incurred specifically to provide 800 data base basic query service and are not core SS7 costs. Therefore, we deny exogenous cost treatment for Bell Atlantic's and United's regional transfer point port costs.

10. Exogenous Treatment for Local Signal Transfer Point/Regional Signal Transfer Point Signalling Link Costs

(a). We will not allow exogenous treatment for the signalling links between the local and regional transfer points.

(b). Bell Atlantic and United are claiming transfer point port costs associated with the links between the local and regional transfer points. We deny exogenous cost treatment for Bell Atlantic's and United's ports on their regional and local transfer points.

11. Exogenous Treatment for Service Origination Point (SSP) Costs

(a). We find that the LECs have met their burden with respect to their claims for exogenous treatment for service origination point software, including right-to-use fees. Therefore, we conclude that exogenous treatment is justified for the costs of this software.

(b). Bell Atlantic also has met its burden of demonstrating that the costs for converting its end office switches from six-digit to three-digit screening were reasonable, and were incurred specifically to provide 800 data base service and are not ''core SS7'' costs. We will allow exogenous treatment for these costs.

12. Exogenous Treatment of Tandem Switch Costs

(a). Only Pacific currently seeks exogenous treatment for the costs of upgrading tandem switches to add increased capacity at the tandem and to add service origination point capability at the tandem. We do not find Pacific's claims persuasive since those facilities can be used to provide a wide variety of services.

13. Exogenous Treatment for 800 Service Central Data Base (SMS) Costs

(a). Because the central data base is used solely to provide 800 data base service and does not provide routing for message telephone traffic or support other services, it is clearly not a ''core SS7'' cost. Therefore, we will allow the regional data base operators to treat the costs associated with their central data base contracts as exogenous.

14. Exogenous Treatment of Repair Center Costs

(a). Every LEC has to perform the same customer service functions under the 800 data base access system that it did under the previous NXX access system. The Commission will not allow exogenous treatment for the costs that Bell Atlantic incurs to operate its 800 data base repair center.

15. Exogenous Treatment for Billing System Modification Costs

(a). US West, SNET, Bell Atlantic and GTE, seeking exogenous treatment for billing system changes, have made a sufficient showing that they had to add new technical capabilities to their systems in order to handle billing data for 800 data base traffic. Therefore, we will allow exogenous cost treatment for these expenses.

16. Methodology for Exogenous Cost Adjustment

(a). We conclude that the method used by Bell Atlantic, BellSouth, Pacific and United in calculating the PCIs to restructure services in their traffic sensitive baskets and to include new exogenous costs achieved reasonable results that conform to price cap principles. Because this method does not comply with our rules, however, we grant on our own motion a waiver of § 61.47(a) of the rules for the limited purpose of allowing LECs to use this method.

(b). The method used by Ameritech, NYNEX, SNET, Southwestern and US West complies with our price cap rules.

17. Reasonableness of the Price Cap LECs' Use of Demand To Demonstrate Compliance With the Price Cap Restructure Rules

(a). We direct LECs that, in their ratemaking calculations based their exogenous costs on a one-year base period, to revise their exogenous costs to reflect levelization over five years. Therefore, US West and Pacific must amend their filings to use five-year levelized costs.

(b). BellSouth, Southwestern, Pacific and US West each used a one-year period to determine demand. The use of a one-year base period for the determination of demand is consistent with the Commission's rules and we will not prohibit it.

(c). Ameritech, Bell Atlantic, NYNEX, United and GTE used a five-year period to determine demand. Section 61.3(e) of the Commission's rules specifies a one-year base period to determine demand. Those LECs that used a five-year base period for calculating levelized demand are hereby granted a waiver of § 61.3(e) to allow them to use a five-year base period in this instance.

18. Reasonableness of Price Cap LECs' Ratemaking Methodologies To Develop Vertical Features Rates

(a). We find that, with the exception of Ameritech and US West, the data provided by the LECs to support their vertical features rates comply with the Commission's cost support requirements for new services. We therefore will allow these vertical feature rates to take effect as filed.

(b). We cannot accept the vertical features costs that Ameritech and US West claim. For this reason, we will not allow Ameritech or US West to impose any rates for vertical features that exceed the average rates for the vertical features that we allow the BOCs to charge in this Order. The rates proposed by Ameritech fall below this average and are therefore considered reasonable. US West must revise its rate for the POTS translation feature to an amount not to exceed $0.0006932, which is the average of the rates charged by the other BOCs for that vertical feature.

800 Data Base Access Tariffs for Rate-of-Return Carriers

19. Tariffing When Originating LEC Does Not Have a Service Origination Point (SSP)

(a) The Ordering and Billing Forum (OBF) of the Exchange Carrier Standards Association has adopted a resolution that would resolve which carrier—the originating LEC or the neighboring LEC—may charge an IXC for a query when the originating LEC routes an 800 service call to a neighboring LEC for processing. We will not impose any further requirements on the LECs in this proceeding.

20. Pass-Through of Regional Data Base Operator Rate Reductions

(a) We require that the rate-of-return LECs that purchase query service from regional data base operators file, in accordance with paragraph 321 of this Order, tariff revisions reflecting the flow-through of any basic query rate reductions to their own customers—IXCs that purchase query service from them.

(b) In the future, for any tariffed 800 data base access service they provide, the rate-of-return LECs and Rochester must also flow-through to their customers any further significant reductions in the basic query charges they pay to regional data base operators.

21. Adjustment for Unbillable Queries

(a). The unbillable query rates estimated by some rate-of-return LECs are unsupported by the cost data they provide. We find that a more reasonable and better supported unbillable query rate for carriers to use in their rate calculations is 5 percent—the maximum estimated rate for NECA members. Therefore, all rate-of-return LECs must limit their unbillable query rate adjustment factor to no more than 5 percent.

(b). Any LEC that wishes to apply a higher adjustment factor must justify that factor in a separate tariff filing or in its next rate-of-return represcription proceeding.

800 Service Management System Tariff

22. Liability Provisions

(a). We do not find the patent infringement provisions of the central data base tariff to be unreasonable. Therefore these provisions do not deviate from standard tariff practices and we will not require the BOCs to change them.

(b). We find that the liability insurance requirements, on the other hand, are unreasonable and we will require the BOCs to eliminate them.

23. Incorporation by Reference of the Industry Guidelines for 800 Number Administration

(a). We will require the BOCs to remove the provisions incorporating these guidelines by reference into the central data base tariff.

(b). The central data base tariff contains provisions requiring the Resporg to notify directly and obtain the acceptance of any IXC to which traffic

for a specific 800 number will be routed. We find those provisions to be reasonable and adequate to meet Commission requirements.

24. Changes in Resporg Procedures

(a). We require the BOCs, within sixty days of the date of this Order, to file tariff revisions that include accelerated procedures for accepting Resporg change requests. The tariffs shall include a provision that will require the Number Administration and Service Center (NASC) to make Resporg changes within a specified number of days.

25. Other Central Data Base (SMS) Tariff Terms and Conditions

(a). We find that the provision that grants a pro rata credit to an IXC when the central data base is unavailable for use for an unscheduled period of greater than three hours is not unreasonable.

(b). Of the other issues raised with respect to central data base tariff terms and conditions, we only find unreasonable that provision permitting the central data base to bill Resporgs based on estimated transactions, with vague promises to reconcile the bills at some future date. The BOCs are required to modify these provisions to provide that Resporgs will be billed for actual, rather than estimated, usage.

26. Reasonableness of Costs and Cost Allocations

(a). We find that the BOCs' allocation of computer maintenance costs based on relative lines of code of the software programs to be maintained is reasonable.

(b). We find that the BOCs' allocation of central processor costs based on relative use is reasonable.

(c). We believe that a business should have sufficient working capital to pay its bills in a timely fashion and that holding an amount equal to one month's revenues is a sound business policy. We will therefore not require the BOCs to reduce their central data base costs by an additional $3.56 million.

(d). We have reviewed the BOCs' cost support and find that the information and data provided by the BOCs in their direct case and in the Description and Justification for their rate revisions in Transmittal No. 7 comply with the requirements of Section 61.38. We therefore find that the revisions filed under Transmittal No. 7 do not result in unreasonable rates.

(e). There is no basis for Allnet's claim that rates for services offered to the regional data base operators are unreasonably discriminatory.

(f). Southwestern's decision to reclassify as nonregulated the data processing services provided to the central data base is consistent with our rules.

27. Affiliate Transactions

(a). For purposes of the affiliate transactions rules, we will treat Southwestern's provision of data processing services for the central data base as a transaction between DSMI and Southwestern. Since Southwestern actually provides ''Computer Bureau Service'' to DSMI at a ''negotiated price,'' we require it to revise its cost manual to state this. We require Southwestern to revise its cost manual to state whether it records the services it provides DSMI at fully distributed costs calculated in accordance with Commission rules and, if not, the methodology it uses. If Southwestern has been using a methodology that does not comply with the rules, Southwestern shall also adjust its books to the extent necessary to account correctly for the services Southwestern's Kansas City Data Center has provided DSMI and report any such adjustments to the Commission. Southwestern shall take each of these steps within 30 days of this Order's release.

(b). We require Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific and Southwestern to revise their cost manuals to bring their treatment of services received from DSMI into compliance with the affiliate transactions rules. These revisions will also be due 30 days from this Order's release.

(c). The BOCs are disclosing in their cost allocation manuals that they purchase software systems and support from Bellcore at fully-distributed costs. Therefore, these transactions comply with the requirements of § 32.27(d) of the Commission's rules.

28. Allocation to Interstate Jurisdiction

(a). We will allow the BOCs to assign all of the costs of providing the central data base service directly to the interstate jurisdiction, provided that this assignment does not result in the double recovery of costs relating to the central data base service through charges put in place at the state level.

(b). If any state requires the BOCs to file a tariff for the central data base that would result in costs being reassigned to the intrastate jurisdiction, we would require the BOCs to revise their rates to reflect those reductions in their interstate costs.

Joint Application for Review

29. We conclude that the Common Carrier Bureau acted correctly when it required the LECs either to disclose the proprietary cost models they used to develop their 800 data base vertical features rates or to use alternative cost methodologies. We, therefore, deny the joint application for review of the *800 Cost Disclosure Order*. We also deny US West's petition for reconsideration of the *800 Cost Disclosure Order*.

GTE Revised Petition for Waiver

30. We conclude that GTE's provision of its proprietary cost support information under the terms of its non-disclosure agreement was not unreasonable. Accordingly, we grant GTE's revised waiver request.

United and GTE Petitions for Stay and Applications for Review

31. We affirm the Bureau's action in partially suspending GTE and United's 800 data base query rates for a five month period and deny their applications for review of that action.

32. We dismiss as moot the petitions for stay filed by GTE and United because the partial rate suspension for which they seek a stay expired on October 1, 1993.

Ordering Clauses

Accordingly, *It is ordered that*, pursuant to authority contained in sections 1, 4, 201–205 and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205 and 218, that the policies and requirements set forth herein are adopted.

It is further ordered that this Order will be effective January 13, 1997.

It is further ordered, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), that the tariff provisions filed by the Ameritech Operating Companies, the Bell Atlantic Telephone Company, BellSouth Telecommunications, Inc., GTE Telephone Service Company and the GTE Telephone Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company, U S West Communications, Inc. and the United Telephone Companies are unlawful to the extent indicated herein.

It is further ordered that the Bell Atlantic Telephone Company, GTE Telephone Service Company, the GTE Telephone Operating Companies, Southern New England Telephone Company, the NYNEX Telephone Companies, Pacific Telephone Company, Southwestern Bell Telephone Company, U S West Communications, Inc. and the United Telephone Companies shall adjust their PCIs to reflect the disallowances ordered in

paragraph 86 and Appendix C of the Order.

It is further ordered that the costs of the Ameritech Companies that exceed the average of the allowed exogenous costs for the other Bell Operating Companies, as specified in paragraph 90 of the Order are disallowed.

It is further ordered that Bell Atlantic shall adjust its PCI to reflect the disallowances required in paragraphs 57, 102, 110, 115, 116 and 136 of the Order.

It is further ordered that BellSouth shall modify its tariff as required in paragraph 26 of the Order, and adjust its PCI to reflect the disallowance in paragraph 115 of the Order.

It is further ordered that Southern New England Telephone Company shall adjust its PCI to reflect the disallowance in paragraph 57 of the Order.

It is further ordered that the New York and the NYNEX Telephone Company shall adjust its PCI to reflect the disallowance in paragraph 115 of the Order.

It is further ordered that the Pacific Bell Telephone Company shall adjust its PCI to reflect the disallowance in paragraph 125 of the Order and shall modify its tariff as required in paragraph 174 of the Order.

It is further ordered that U S West Communications, Inc. shall modify its tariff as required in paragraphs 27, 174 and 195 of the Order.

It is further ordered that the United Telephone Company shall adjust its PCI to reflect the disallowances in paragraphs 57, 110, 115 and 116 of the Order, and modify its tariff as required in paragraph 27 of the Order.

It is further ordered that, any local exchange carrier that filed tariffs subject to §§ 61.41 through 61.49 of the Commission's rules, 47 CFR 61.41 through 61.49, shall recalculate the relevant indexes pursuant to the adjustments ordered in paragraphs 307 through 315 of the Order. The local exchange carriers shall file the revised indexes no later than 30 days after the release of this order by letter addressed to the Secretary, FCC.

It is further ordered that any local exchange carrier that filed tariffs subject to §§ 61.41 through 61.49 of the Commission's rules, 47 CFR 61.41 through 61.49, and, after the adjustments ordered in paragraphs 307 through 315 of the Order, has an API that exceeds its PCI shall file tariff revisions that will reduce the API to a level below the PCI. These tariff revisions shall be filed no later than 30 days after the release of this Order to be effective on not less than 15 days' notice.

It is further ordered that the Commission delegates authority to the Bureau to take action necessary to ensure that the Local Exchange Carriers properly adjust their relevant Price Cap Indices to reflect the requirements of this order.

It is further ordered that Bell Atlantic, BellSouth, Pacific and United are granted a waiver of § 61.47(a) of the Commission's rules, 47 CFR 61.47(a), as discussed in paragraph 164 of the Order.

It is further ordered that Ameritech, Bell Atlantic, GTE, NYNEX and United are granted a waiver of § 61.3(e) of the Commission's rules, 47 CFR 61.3(e), as discussed in paragraph 176 of the Order.

It is further ordered that any local exchange carrier that offers a tariffed 800 data base query service through the use of a regional data base not owned by that local exchange carrier shall file revisions concerning the application of the per-query charge, as specified in paragraph 204 of the Order.

It is further ordered that any local exchange carrier that filed tariffs subject to § 61.38 of the Commission's rules, 47 CFR 61.38, and uses a rate adjustment factor for unbillable queries exceeding 5 percent, shall make the filings required by paragraph 210 of the Order.

It is further ordered that Central Telephone Company, Century Telephone of Ohio, Inc., National Exchange Carrier Association, Rochester Telephone Company and Southern New England Telephone Company shall file the tariff amendments ordered in paragraph 27 of the Order.

It is further ordered that the Bell Operating Companies shall amend BOC Tariff F.C.C. No. 1, as required by paragraphs 218, 223, 228 and 234 of the Order.

It is further ordered that local exchange carriers shall file tariff revisions removing Resporg service from their interstate Access Tariffs pursuant to paragraph 47 of the Order. These revisions shall be filed no later than 90 days from the release of this order to be effective on not less than 15 days' notice. Carriers should reference this order as the authority for these filings.

It is further ordered that local exchange carriers shall reclassify their Resporg assets and related expenses to nonregulated status no later than the scheduled effective date of the tariff revisions removing the Resporg service from the Interstate Access Tariff.

It is further ordered that local exchange carriers required to file a cost allocation manual pursuant to § 64.903 of the Commission's rules or by Commission order shall file revisions to their manuals implementing the reclassification required herein no later than 30 days after the release of this order, to be effective 60 days after the filing date.

It is further ordered that any local exchange carrier whose tariff is a subject of this investigation shall take any other action required by this Order but not otherwise specifically enumerated in these ordering clauses.

Accordingly, *It is further ordered* that the motions to accept late filed pleadings, filed by the Pacific and Nevada Bell Telephone Companies and the Ameritech Operating Companies, are granted.

It is further ordered that the petition for clarification filed by MCI Telecommunications Corporation, is denied.

It is further ordered that the petition for reconsideration filed by US West Communications, Inc., is denied.

It is further ordered that the petitions for review filed by the GTE Service Corporation and the United Telephone Company, are denied.

It is further ordered that the petitions for stay filed by the GTE Service Corporation and the United Telephone Company, are dismissed.

It is further ordered that the joint application for review, filed by the Ameritech Operating Companies, Bell Atlantic Telephone Company, Pacific Bell Telephone Company, the NYNEX Telephone Companies and U S West Communications, Inc., of the *800 Cost Disclosure Order*, is denied.

It is further ordered that the request for non-disclosure submitted in GTE's Revised Petition for Waiver of the cost support requirements in 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation is granted to the extent provided herein.

It is further ordered that for the purposes of filing tariff revisions pursuant to this Order, § 61.58 of the Commission's rules, 47 CFR 61.58, is waived. Local exchange carriers shall reference the ''FCC'' number of this Order as the authority for these filings.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and record-keeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31486 Filed 12–11–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 64, 68 and 69

[CC Docket 96–128; FCC No. 96–439]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule: order on reconsideration.

SUMMARY: On September 20, 1996, Federal Communications Commission (''Commission'') adopted a Report and Order in CC Docket No. 96–128, FCC 96–388 (61 FR 52307, October 7, 1996) implementing section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). In its Order on Reconsideration in this proceeding, the Commission affirms the essential features of the policies established in the Report and Order. Additionally, the Commission modifies: The requirements for LEC tariffing of payphone services and unbundled network functionalities; and the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. The Commission also clarifies various issues addressed in the Report and Order. The Order on Reconsideration is issued to implement the provisions of section 276 of the 1996 Act.

EFFECTIVE DATES: January 13, 1997.

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

SUPPLEMENTARY INFORMATION: On June 4, 1996, the Commission adopted a Notice of Proposed Rulemaking (''NPRM'') [61 FR 33074, June 4, 1996] to implement section 276 of the Telecommunications Act of 1996. On September 20, 1996, the Commission adopted and released a Report and Order in CC Docket No. 96–128, FCC 96–388 [61 FR 52307, October 7, 1996]. The Commission subsequently released an Errata, making certain technical corrections to the Report and Order [61 FR 54344; October 18, 1996]. The Commission received 28 Motions requesting reconsideration and/or clarification of the Report and Order. This is a summary of the Commission's Order on Reconsideration in CC Docket No. 96–128, adopted and released on November 8, 1996. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of the Order on Reconsideration may also be purchased from the Commission's duplicating contractor, international Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Paperwork Reduction Act

The Order on Reconsideration contains new or modified information collections. It has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (PRA). The Commission has updated its September 1996 paperwork submission made for the collections contained in the Report and Order in this proceeding to OMB to reflect the new and/or modified collections in the Order on Reconsideration. OMB is asked to approve the following changes in addition to any requirements in the original submission under the rules promulgated in the Report and Order, LECs had to file tariffs with both the Commission and the state. Under the Order on Reconsideration, LECs only have to file these tariffs with the state, except for tariffs for unbundled features, which must be filed with both the Commission and the state. The Report and Order specified a certain method for calculating CCL charges. The Order on Reconsideration modifies that method. The Order on Reconsideration also requires that LECs supply to carrier-payors, on demand, a list of emergency numbers.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the following information collections contained in the Order on Reconsideration as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Written comments by the public on the proposed and/or modified information collections are due 20 days after date of publication in the Federal Register. OMB notification of action is due on December 19, 1996. Comments should address: (a) Whether the proposed or modified information collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: State, local or tribal government; business or other for-profit, including small businesses.

Section/title	No. of respondents	Est. time per response (hours)	Total annual burden (hours)
a. LEC Tariff Filings	400	100	40,000
b. Reclassification of LEC-Owned Payphones	400	100	40,000
c. LEC Provision of List of Emergency Numbers	400	1	400

Total Annual Burden: 80,400 hours. No change is anticipated for the burden estimates reported in our September 1996 filing for the LEC Tariff Flings and Reclassification of LEC-Owned Payphone collections.

Estimated Costs per Respondent: $0.

Needs and Uses: The rules adopted in CC Docket 96–128: (1) Establish a plan to ensure fair competition for each and every completed intrastate and interstate call using a payphone; (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company payphones; (4) permit the BOCs to negotiate with the payphone location provider about a payphone's presubscribed interLATA carrier; (5) permit all payphone providers to negotiate with the location provider abut a payphone's presubscribed intraLATA carrier; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. The new and modified collections in this Order on Reconsideration are necessary to implement the provisions of section 276 of the Telecommunications Act of 1996.

Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory

Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128) [61 FR 33074]. The Commission sought written public comment on the proposals in the NPRM including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[1] The discussion below constitutes the FRFA for both the Report and Order and the Order on Reconsideration in this proceeding.

Report and Order

A. Need for and Objectives of the Report and Order and the Rules Adopted

The Commission, in compliance with section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the 1996 Act), promulgates the rules in the Report and Order to promptly implement section 276 of the 1996 Act, which directs the Commission, among other things, to adopt rules that: (1) Establish a plan to ensure fair compensation for ''each and every completed intrastate and interstate call using [a] payphone[;]'' (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (BOC) payphones; (4) permit the BOCs to negotiate with the payphone location providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; (5) permit all payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone[.]''

The objective of the rules adopted in the Report and Order is ''to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.''

[1] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (''SBREFA''), codified at 5 U.S.C. 601 *et seq.*

B. Analysis of Significant Issues Raised in Response to the IRFA

Summary of the Initial Regulatory Flexibility Analysis (IRFA). In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small business as defined by section 601(3) of the RFA. The IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in the Report and Order. Frontier commented generally that the compensation scheme advanced in the NPRM was ''unnecessarily onerous and inefficient'' and ''in conflict with the goals of the * * * Regulatory Flexibility Act.'' Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. The Commission disagrees with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. The Commission's rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers (PSPs), many of whom may be small business entities, receive fair compensation. The Commission's rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls it receives from payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such as a LEC or clearinghouse. The Commission also provides a transition period. The Commission believes that its rules are designed to effectively optimize the efficiency and minimize the burdens of the compensation scheme on all parties, including small entities.

C. Description and Estimates of the Number of Small Entities Affected by the Report and Order

For the purposes of the Report and Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

The Commission has found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and consistently has certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas. However, in the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, several parties, including the SBA, commented that the Commission should have included small incumbent LECs in the IRFA pertaining to that order. The Commission recognizes SBA's special role and expertise with regard to the RFA, and intends to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although it is not fully persuaded that its prior practice has been incorrect, the Commission will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. Consistent with the Commission's prior practice, it shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, it includes small incumbent LECs in the FRFA. Accordingly, use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' The term ''small incumbent LECs'' refers to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

Telephone Companies (SIC 4813)

Total Number of Telephone Companies Affected. Many of the decisions and rules adopted in the Report and Order may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there

were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number encompasses a broad category which contains a variety of different subsets of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the Report and Order. The Commission estimates below the potential small entity telephone service firms or small incumbent LECs that may be affected by the Report and Order by service category.

Wireline Carriers and Service Providers. The SBA's definition of small entities for telephone communications companies, other than radiotelephone (wireless) companies, is one employing fewer than 1,500 persons. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in the Report and Order.

Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide appears to be the data the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in the Report and Order.

Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide appears to be the data collected annually in connection with TRS. According to the most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in the Report and Order.

Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 30 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in the Report and Order.

Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services (OSPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of operator service providers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 29 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in the Report and Order.

Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 197 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, it estimates

that there are fewer than 197 small entity pay telephone operators that may be affected by the decisions and rules adopted in the Report and Order.

Resellers (including debit card providers). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in the Report and Order.

800–Subscribers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information regarding the number of 800-subscribers appears to be the data collected on the number of 800-numbers in use. According to the most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in the Report and Order.

Location Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, the Commission derived a figure of 1,850,000 payphones in existence. Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, the Commission is unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in the Report and Order.

Wireless (Radiotelephone) Carriers (including paging services). The SBA's definition of a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in the Report and Order.

Cellular Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 789 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in the Report and Order.

Mobile Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, it estimates that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in the Report and Order.

Broadband PCS Licensees (including paging services). The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Its definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. It does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees affected by the decisions in the Report and Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses were to be awarded in the D, E, and F Block broadband PCS auctions, which was scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D, E, and F Block PCS auctions, 105 were small businesses. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. There were 114 eligible bidders for the F Block. The Commission cannot estimate, however, the number of these licenses that will be won by small entities under its definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, it assumes for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under its rules, which may be affected by the decisions and rules adopted in the Report and Order.

SMR Licensees (including paging services). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in the Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. It assumes, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in the Report and Order.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the rule adopted in the Report and Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in the Report and Order.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements, and Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, Consistent With Stated Objectives

Structure of the Analysis. In this section of the FRFA, the Commission analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of the Report and Order. As a part of this discussion, it mentions some of the types of skills that will be needed to meet the new requirements. It also describes the steps taken to minimize the economic impact of decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected.

Fair Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(A) directs the Commission to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone * * *.'' To implement section 276(b)(1)(A), the Report and Order requires: (i) That the market set the price for local coin calls originated by payphones; (ii) the appropriate per-call compensation amount for the service provided by independent payphone providers (PSPs) when they originate an interstate call should be the same amount the particular payphone provider charges for a local coin call; (iii) the adoption of the ''carrier pays'' compensation system, which essentially places the payment obligation of per-call compensation on the primary economic beneficiary of payphone calls; (iv) that the carrier, as the primary economic beneficiary of payphone calls, perform the tracking of calls it receives from payphones; (v) that carriers initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation; (vi) a direct billing arrangement between IXCs and intraLATA carriers and PSPs; (vii) that LECs, who maintain the list of ANIs, have the burden of resolving disputed ANIs; and (viii) that an interim compensation mechanism be set up under which PSPs are paid compensation at a flat monthly rate. Compliance with these requirements may require the use of engineering, technical, operational, accounting, billing, and legal skills.

The payphone industry appears to have the potential of being a very competitive industry once the significant subsidies and entry/exit restrictions which are presently distorting the competition are removed. However, the Commission perceives five potential areas that could have significant economic impact on small businesses and small incumbent LECs: (1) the amount of compensation paid to PSPs; (2) the ''carrier pays'' compensation system; (3) the administration of per-call compensation; (4) the direct billing arrangement between carriers and PSPs; and (5) the interim compensation mechanism.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

Amount of compensation: By requiring that the market set the price for individual coin calls originated by payphones the Report and Order ensures that PSPs, many of whom may be small business entities, receive fair compensation. The Commission considered different options in deciding upon this alternative. It rejected proposals for adopting a national uniform rate of compensation for all calls using a payphone because a single, nationwide rate could jeopardize the financial viability of a majority of

payphones. Rejection of this option allows for accounting for the significant variation in payphones in order to ensure the incentives to place and maintain phones in a variety of geographic areas. It also rejected proposals that certain types of calls should receive a different per-call compensation amount than others. It declined to interfere in marketplace transactions by providing for different compensation amounts for different types of calls, in instances where marketplace failures are limited or would have minimal impact on consumer welfare. It does not perceive the need to intervene in an apparently structurally competitive industry.

Many commentators, notably the IXCs, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. The Commission concluded that use of a marginal cost standard or any closely related TSLRIC standard would leave PSPs under compensated, because such cost standards do not permit the recovery of any of a PSPs' fixed costs, which make up the bulk of a PSP's costs. It also rejected, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

This ''market sets the price'' approach provides flexibility. Some PSPs may find it advantageous to set coin rates as low as $.10 per call in select locations, perhaps as promotions to enhance their brand names. PSPs in other locations may choose to set the coin rate higher, e.g. $.35 or $.40 per call. The Commission expects its action to minimize regulatory burdens, expedite and simplify negotiations, and minimize economic impacts through lower transaction costs.

The Commission rejected the proposal of RBOCs and some independent payphone providers to use AT&T O+ commissions as a measure of fair value of the service provided by independent payphone providers when they originate an interstate call. These commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the OSP through placards on the payphone. In the absence of reliable data, the appropriate per-call compensation amount is whatever amount the particular payphone charges for a local coin call. PSPs, IXCs, subscriber 800 carriers, and intraLATA carriers, many of whom may be small business entities, may find it advantageous to agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone because it will grant parties in the payphone industry some flexibility and allow them to take advantage of technological advances.

Payment of compensation. Various commenters, including small IXCs and paging services proposed that the Commission should adopt the ''carrier pays'' system. The Commission rejected proposals to adopt ''caller pays'' and ''set use fee'' systems, because it believe that they would involve greater transaction costs which can pose particular burdens for small businesses. It considered various alternatives to adopt the ''carrier pays'' system for per-call compensation because it places the payment obligation on the primary economic beneficiary in the least burdensome, most cost-effective manner. All carriers that receive calls from payphones are required to pay per-call compensation, whether they are IXCs or intraLATA carriers. The ''carrier pays'' system gives the carriers the broadest latitude on how to recover the costs of payphone compensation, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers, thereby involving fewer transaction costs. In addition, under the carrier pays system, individual carriers have the option of recovering either a different amount from their customers or no amount at all.

However, in the interests of administrative efficiency and lower costs, the Commission requires that facilities based carriers should pay the per-call compensation for calls received by their reseller customers. This would permit competitive facilities based carriers to negotiate contract provisions that would require the reseller to reimburse the carrier. The Commission believes its actions will expedite and simplify negotiations, minimize regulatory burdens and the impact of its decisions for all parties, including small entities.

Administration of per-call compensation. The Commission considered various proposals to determine who should provide call tracking. The Report and Order requires IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls it receives from payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such a LEC or clearinghouse. The Commission recognizes that tracking capabilities vary from carrier to carrier and it may be appropriate for some carriers to pay compensation at a flat rate basis until per-call tracking capabilities are put into place. Neither LECs nor PSPs are primary economic beneficiaries of payphone calls and PSPs do not universally have call-tracking capabilities. However, LECs, PSPs, and carriers receiving payphone calls should be able to take advantage of each others' technological capabilities through the contracting process.

In view of current difficulties in tracking such calls, the Commission concluded that a transition period is warranted. By permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition period for tracking subscriber 800 calls, it has taken appropriate steps to minimize the per-call tracking burden on small carriers. In addition, to parallel the obligation to pay compensation, the underlying, facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.

The Commission concluded that carriers should be required to initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation. This would facilitate the prompt and accurate payment of all per-call compensation. It believes these actions will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings, and reduce delay and transaction costs.

To establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs, the Commission concluded that LECs who maintain the list of ANIs must work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly for all parties concerned. This provides LECs with the incentive, which they do not currently have, to provide accurate and timely verification of ANIs for independently provided payphones. Additionally, no other party has the information more readily available. The Commission expects this action to assist all parties, including small entities, expedite and simplify negotiations, and help equalize bargaining power.

Each time a caller dials a subscriber 800 number, the PSP will also levy a charge which may be paid directly by the IXC, but will eventually be passed through to the 800 subscriber, either on

a per-call basis or in the form of higher per minute rates. Establishment of the requirement that PSPs inform these subscribers of the price of the call they are deciding to accept, provide subscribers with the opportunity to accept or decline to accept the call based on the cost. Without the requirement, the PSP would have the ability to charge a high amount in the face of the subscriber's lack of information. The Commission expects its action to facilitate good faith negotiations, and minimize regulatory burdens and the impact of its decisions for all parties, including small entities.

While incumbent LECs in many jurisdictions currently do not charge payphone callers for ''411'' calls made from their own payphones, the LECs charge independent PSPs for directory assistance calls made from their phones. The PSPs are not always allowed by the state to pass those charges on to callers, which can pose particular burdens for them. In the Report and Order, the Commission concluded that, to ensure fair compensation for ''411'' and other directory assistance calls from payphones, a PSP should be permitted to charge its local coin rate for the service, although the PSP may decline to charge for this service if it chooses. In addition, it concluded that if the incumbent LEC imposes a fee on independent payphone providers for ''411'' calls, then the LEC must impute the same fee to its own payphones for this service. The Commission believes its action will facilitate the development of competition.

The direct billing arrangement between IXCs and intraLATA carriers and PSPs adopted in the Report and Order places the burden of billing and collecting information on the parties who benefit the most from calls from payphones: carriers and PSPs. Carriers must send to each PSP a statement indicating the number of toll-free and access code calls received from that PSP's payphones. The carrier-payor has the option of using clearinghouses, similar to those that exist for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation. The Commission expects its action will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings.

Interim compensation mechanism. The Commission considered various proposals regarding the feasibility of implementing an interim compensation mechanism before final rules go into effect. Because IXCs and intraLATA carriers are not required to track individual calls until October 1, 1997, it concluded that PSPs should be paid monthly compensation on a flat monthly rate. It expects that the flat rate obligation will be of administrative convenience for all parties involved, including small businesses.

Reclassification of LEC-Owned Payphones

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(B) directs the Commission to ''discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a (per-call) compensation plan.'' Currently, incumbent LEC payphones, classified as part of the network, recover their costs from Carrier Common Line (CCL) charges assessed on those carriers that connect with the incumbent LEC. The Report and Order requires incumbent LECs to (1) classify their payphones as detariffed and deregulated CPE; (2) provide to PSPs nondiscriminatory access to unbundled central office coin transmission services and certain other services the LECs provide to their own payphones, and must file tariffs for central office coin services and those incumbent LECs that are not subject to price cap regulation must submit cost support for their central office coin service; (3) transfer their payphone assets to unregulated accounts or affiliates at the market value of the ''payphone going concern,'' by April 15, 1997, and obtain independent appraisal of the fair market value to submit to the Common Carrier Bureau within 180 days of the effective date of the Report and Order; and (4) reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, and file revised CCL tariffs reflecting the changed rate structures. Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

Some of the smaller incumbent LECs may find difficult the administrative burdens of reclassifying payphones as CPE, transferring payphone assets to unregulated accounts, and filing new tariffs. Therefore, if a requesting carrier, which may be a small entity, seeks access to an incumbent LEC's unbundled elements, the requesting carrier is required to compensate the incumbent LEC for any costs incurred to provide such access.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

The deregulation of LEC payphones is essential to promoting competition in the payphone industry. The Commission rejected several alternatives in making this determination, including proposals suggesting that the Commission (1) should allow smaller LECs to choose whether or not to deregulate their payphones; and (2) should impose a structural separation requirement for incumbent LEC payphones. The establishment of minimum national requirements for discontinuation of payphone subsidies from basic exchange and exchange access revenues should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements may also allow new entrants, including small entities, to take advantage of economies of scale.

By requiring the incumbent LECs to offer individual central office coin transmission services to PSPs on a nondiscriminatory, public, tariffed offering, new entrants, which may include small entities, should have access to the same technologies and economies of scale and scope that are available to incumbent LECs. This will permit competitive payphone providers, some of whom are small business entities, to offer payphone services using either instrument implemented ''smart payphones'' or ''dumb'' payphones that utilize central office coin services. The Commission rejected the proposal suggesting that the Commission require incumbent LECs to provide on a nondiscriminatory basis all the services that they provide to their own payphone operations or require incumbent LECs to perform joint marketing of the payphone operations of other providers. Instead, it requires only that the incumbent LEC offer the following services on a nondiscriminatory basis if it provides such services to its own payphone operations: fraud protection, special numbering assignments, and installation and maintenance of basic payphone services. Rejection of this alternative will allow small incumbent LECs to distinguish certain services from services offered by other payphone providers. The Commission's actions in this area could decrease entry barriers for small business entities and provide

reasonable opportunities for all payphone service providers to provide service.

Ability of Payphone Service Providers To Negotiate With Location Providers on the Presubscribed Intralata Carrier

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(E) directs the Commission to ''provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.'' The Report and Order grants to all payphone service providers, including incumbent LECs, the right to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. It also preempts any state regulations mandating the routing of intraLATA calls to the incumbent LEC. Compliance with these requirements should not necessitate the use of additional skills, since such skills are already used in negotiations concerning the interLATA carriers presubscribed to payphones.

Allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones could have a positive economic impact on payphone providers who are small business entities by allowing them flexibility to create favorable contract terms. Small incumbent LECs may suffer some negative economic impact because intraLATA calls will no longer be routinely routed to them.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

State regulations that require routing of intraLATA calls to the incumbent LEC are preempted by the Report and Order, thereby creating a national rule allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. A national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. The Commission's actions in granting to all payphone providers the same ability to negotiate with location providers on the selection of the intraLATA carrier presubscribed to the payphone will facilitate the development of competition.

Requiring LECS To Provide Dialing Parity for Payphones

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Report and Order concludes that the dialing parity requirements of section 251(b)(3) should extend to all payphone location providers and that the interLATA carrier unblocking requirements established in TOCSIA should be extended to all local and long-distance calls. The Report and Order requires that the technical and timing requirements established pursuant to section 251(b)(3) and section 271(c)(2)(B) should apply equally to payphones. Compliance with these requirements may require the use of engineering, technical, and operational skills.

Requiring the LECs to extend dialing parity to payphone location providers may burden some small LECs.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

While this requirement may burden some small LECs, such burdens are far outweighed by the benefits gained from competition among local exchange and long distance carriers, many of whom are small business entities. The Commission rejected several alternatives in making this determination, including: (1) A proposal suggesting that the states be given discretion to determine when and how dialing parity for intraLATA calls should be applied to payphones; (2) a proposal requiring LECs to provide dialing parity for payphones prior to all other phones; and (3) not altering the existing anti-blocking rules under TOCSIA. Rejection of these alternatives helps to ensure that small LECs will not be unnecessarily burdened. Furthermore, establishing a national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.

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

The Commission staff conducted several *ex parte* meetings with numerous outside parties and their counsel, several of whom may qualify as small business entities, during the pendency of the rulemaking to identify and discuss various aspects of the implementation of section 276. For example, the Commission received *ex parte* suggestions and comments from the American Public Communications Council, a trade association that represents independent payphone providers, many of whom qualify as small business entities. It has attempted, to the furthest possible extent, to take into account as many of these concerns as possible in promulgating the rules contained in the Report and Order.

F. Report to Congress

The Commission shall send a copy of this FRFA, along with the Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

Order on Reconsideration

The following Final Regulatory Flexibility Analysis on Reconsideration (FRFA on Reconsideration) addresses only those issues that the Commission modified in the Order on Reconsideration in the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (1996 Act). Specifically, this FRFA on Reconsideration addresses modification of tariffing requirements for payphone services, calculating carrier common line (CCL) charges, and amendments to Part 69 of the Commission's rules. The Commission also incorporates by reference the Report and Order released on September 20, 1996, CC Docket No. 96–128, 91–35, FCC 96–388 (61 FR 52307, October 7, 1996), and the Final Regulatory Flexibility Analysis (FRFA).

1. Need for and Objectives of the Order on Reconsideration and the Rules Adopted

The Order on Reconsideration requires no changes to the FRFA in the original Report and Order.

The objective of the rules adopted in the Order on Reconsideration is ''to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.'' In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Act on small businesses.

2. Summary of Petitions for Reconsideration and/or Comments Relating to Small Entities

No party sought reconsideration of the FRFA in this proceeding. The National

Telephone Cooperative Association (NTCA), however, requested a clarification of the requirement that LECs file coin transmission services in their access service tariffs may be satisfied by small LECs through participation in a national tariff filed by National Exchange Carrier Association (NECA) and recover its costs through a NECA administered pool. If not, NTCA asked for reconsideration of the decision to require federal tariffing. Moreover, NTCA also requested the Commission to clarify that the tariff provisions to be filed be limited to services added to enable payphone services, such as counting and control of coins and fraud protection, but do not include loops and switching functions, and to clarify the costing methodology to be used.

3. Description and Estimate of the Number of Small Entities Affected by the Order on Reconsideration

The modifications in the Order on Reconsideration apply only to incumbent LECs. The estimates of the number of small entities affected by the Order on Reconsideration remain the same as the estimates detailed in the FRFA in the Report and Order.

4. Tariffing Requirements for Unbundling of Payphone Services

i. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements on Reconsideration

The Order on Reconsideration modifies the federal tariffing provisions to require that LECs must file tariffs with the states regarding the provision of nondiscriminatory basic payphone services that enable LECs and independent providers to provide payphone service using either ''dumb'' or ''smart'' payphones. Any basic network services or unbundled features used by a LECs operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis and must be tariffed in the state and federal jurisdiction. The tariffs for basic payphone services and any unbundled features that LECs provide to their own payphone services must be: (1) Cost based; (2) consistent with the requirements of section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States unable to review these tariffs for compliance with section 276 and other requirements set forth in the Order may require the LECs operating in their state to file these tariffs with the Commission. Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

ii. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent and Independent LECs, and Alternatives Considered

This tariff filing requirement is not unduly burdensome on small entities in that LECs are now required to file their payphone service tariffs with the states in the same manner as they have been filing tariffs for other telephone services with the states. Additionally, to provide maximum flexibility and the least burdensome approach, the Order on Reconsideration delegates to the Common Carrier Bureau the authority to determine the least burdensome method for small carriers to comply with the requirements for filing of tariffs with the Commission, such as those suggested by the NTCA.

5. Amendments to Part 69

i. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements on Reconsideration

The Order on Reconsideration clarifies and modifies the method for calculating the carrier common line charge to remove payphone costs and to adjust for additional subscriber line revenues. The Order clarifies and revises the exogenous cost adjustment mechanism adopted in the Report and Order and requires LECs to subtract the payphone costs described in § 69.501(d) of the Commission Rules associated with payphone lines, prior to developing the payphone cost allocator. LECs proposing to subtract payphone line costs or inmate payphone costs for the purpose of their PCI adjustment are required to provide complete details to demonstrate that their line cost calculations are reasonable. LECs can achieve application of multiline subscriber line charges (SLCs) to payphone lines through recalculating and revising carrier CCL charges pursuant to the CCL formula in § 61.46(d). Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

ii. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent and Independent LECs, and Alternatives Considered

The requirement that LECs proposing to subtract payphone line costs or inmate payphone costs for the purpose of their PCI adjustment must provide complete details to demonstrate that their line cost calculations are reasonable, averts discrimination, facilitates the growth of competition, and ensures that there is no unnecessary burden for all parties, including small entities and small incumbent LECs.

6. Report to Congress

The Commission shall send a copy of this FRFA on Reconsideration, along with the Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

Summary of Order on Reconsideration

I. Background

1. On September 20, 1996, the Commission adopted a Report and Order implementing section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). In the Report and Order, the Commission adopted new rules and policies governing the payphone industry that: (1) Establish a plan to ensure fair compensation for ''each and every completed intrastate and interstate call using [a] payphone[;]'' (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (''BOC'') payphones; (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones; (5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located ''where there would otherwise not be a payphone[.]''

2. In the Report and Order, the Commission noted that the 1996 Act fundamentally changes telecommunications regulation. The Commission stated that the 1996 Act erects a ''pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' To this end, the Commission advanced the twin goals of section 276 of the 1996 Act of ''promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of

the general public * * *''. The Commission sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, the Commission concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.

3. On October 21, 1996, a number of parties filed petitions requesting that the Commission reconsider or clarify the rules adopted in the Report and Order. These petitions focused on the Commission's conclusions regarding the following: the status of competition in the payphone marketplace; the use of market-based compensation for payphone calls; the appropriate per-call compensation amount for various types of calls; the Commission's authority to let the market set local coin rates; state entry and exit regulations; who should pay the per-call compensation; how calls should be tracked; how per-call compensation payments should be administered; the amount and appropriate payors of the interim flat-rate compensation; the valuation of local exchange carriers (''LECs'') payphone assets; federal tariffing for payphone-related services; and various other requirements relating to payphones. In the Order on Reconsideration, the Commission addresses each of these issues and concludes that the petitions for reconsideration should be denied, with two limited exceptions, because it finds that the petitions contain no new evidence or arguments not contemplated by the conclusions in the Report and Order. On two issues, the Commission grants requests for reconsideration and modifies: (1) The requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. The Commission also clarifies several issues addressed in the Report and Order.

II. Issues

A. Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones

i. Payphone Calls Subject to This Rulemaking and Compensation Amount

4. *Defining Fair Compensation.* The Commission denies requests that it reconsider its conclusions in the Report and Order about the existence of a competitive payphone marketplace. The Commission concludes that the policies it adopted in the Report and Order will promote competition in a way that will benefit the general public. Because robust competition will take some time to develop, it provided in the Report and Order for a transition period before market-based pricing becomes effective. During this transition period, ''states may continue to set the local coin rate in the same manner as they currently do.'' After this transition period, the Commission may, at its option, ''ascertain the status of competition in the payphone marketplace,'' and states may recommend possible market failures to the Commission for investigation. The Commission concludes that, while the payphone marketplace may not be currently fully competitive, the rules adopted in the Report and Order will bring about competition, and the phased-in approach to market-based pricing will allow all parties to make the appropriate adjustments over time. In addition, it concludes that by monitoring the status of competition in the payphone marketplace, and by allowing states to refer potential market failures to it, it has ensured that market failures, particularly those arising from so-called locational monopolies, will be addressed. Because payphone callers in most cases are free to seek out alternative payphones in nearby locations or able to make calls from portable phones, it rejects arguments by some petitioners that all payphones will become individual unregulated monopolies with monopoly-level pricing.

5. *Ensuring Fair Compensation.* The Commission disagrees with MCI that its conclusion in the Report and Order concerning the ability of the BOCs to receive per-call compensation for certain 0+ calls interferes with pre-existing contracts, as prohibited by section 276(b)(3). First, it found in the Report and Order that section 276 mandates that the Commission provide for fair compensation for all calls originated by payphones, including 0+ calls for which there is no contract that compensates the payphone service provider (''PSP''). Second, it finds that because pre-existing contracts are grandfathered by section 276(b)(3), the BOCs ''would not otherwise receive any compensation for 0+ calls[,]'' because the contracts for such calls are between the location provider and the payphone's presubscribed operator service provider (''OSP''). Third, it concludes that, without disturbing existing contracts that cover 0+ calls, the BOCs should be able to receive the per-call compensation established by the Report and Order, ''so long as they do not otherwise receive compensation for * * * originating 0+ calls.'' Finally, it notes that, as the RBOCs point out, MCI does not argue that the pre-existing contracts between the location providers and the OSPs for BOC payphones are nullified or void. In sum, the Commission concludes that its determination in the Report and Order concerning compensation for 0+ calls originated by BOC payphones is required by the plain language of section 276(b)(1)(A), which directs it provide fair compensation for ''each and every completed intrastate and interstate call[,]'' and this determination does not interfere with existing contracts in a manner that is prohibited by section 276(b)(3). Accordingly, it denies MCI's request for reconsideration of this requirement.

6. In response to the RBOCs' request that it clarify that the BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate payphones, the Commission concludes that such per-call compensation is warranted when the BOCs do not otherwise receive compensation pursuant to a contract. This clarification is consistent with the conclusion that BOCs should receive per-call compensation on 0+ calls from their payphones in the absence of receiving compensation under a contract. In addition, the clarification is consistent with its conclusion in the Report and Order that inmate payphones are to receive the same compensation amount as other payphones, in the absence of a contract that prescribes a compensation methodology. The Commission also clarifies that inmate payphones, whether or not they are maintained by the BOCs, are not eligible for interim flat-rate compensation, because such payphones are not capable of originating either access code or subscriber 800 calls, and the interim compensation is provided only for those two types of calls. Because the level of 0+ commissions paid pursuant to contract on operator service calls is beyond the scope of both section 276 and this

proceeding, the Commission declines to require that LECs make available, on a nondiscriminatory basis, any commission payments provided to their own payphone divisions in return for the presubscription of operator service traffic to the LEC.

7. The Commission concluded in the Report and Order that it has the requisite authority under sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international calls. The Commission notes that it has relied upon its authority under these two sections of the Act, because it had concluded that there was ''no evidence of congressional intent to leave these calls uncompensated under Section 276.'' In addition, it found that a payphone performs similar functions in originating a call, regardless of the call's destination. Therefore, it concludes that its determination in the Report and Order, pursuant to sections 4(i) and 201(b) of the Act, is in the interest of equity and is necessary to enact a comprehensive regulatory framework to compensate all payphone calls that are not otherwise compensated pursuant to contract. While MCI argues that it may be difficult for carriers to recover the costs of per-call compensation on international calls, the Commission concludes that carriers and PSPs may negotiate differing compensation amounts, which take into account varying costs, for different types of calls.

8. *Completed Calls.* Because it would be an interpretation inconsistent with its responsibility under section 276, the Commission denies the request by Cable & Wireless that the Commission allow carriers to treat calls re-originated within the carrier's platform as a single compensable call. It had concluded in the Report and Order that, to comply with its statutory mandate that ''each and every completed intrastate and interstate call'' be compensated, ''multiple sequential calls made through the use of a payphone's '#' button should be counted as separate calls for compensation purposes.'' Although Cable & Wireless states that this approach is technically difficult, the Commission notes that the requirement that carriers track individual calls does not become effective for one year. Carriers will be able to use this period to address these types of technical difficulties with respect to their tracking obligations.

9. The Commission declines to require carriers, if they choose to block calls from particular payphones, to provide an announcement to payphone callers indicating that it is not the payphone equipment that is blocking the call. Although APCC and Peoples suggest that callers may become confused and could possibly damage the payphone equipment, the Commission concludes that PSPs are better equipped to take the necessary steps, including posting notices, to educate callers at their payphones and protect their equipment. The Commission also declines to reconsider its conclusion, as urged by AirTouch, that carriers are permitted to block calls originated by payphones. It concludes that 800 subscribers that are concerned that callers will not be able to reach them from payphones should contact their carriers and negotiate contract terms that will ensure that the 800 subscribers are able to receive such calls. The Commission declines to require the PSP to provide a coin-deposit mechanism for calls that are blocked by carriers.

10. The Commission disagrees with MCI's argument that PSPs should not be compensated for subscriber 800 calls because, according to MCI, they have the option of blocking these calls if they are concerned about a lack of compensation. MCI argues further that this approach would be inconsistent with the Commission's conclusion in the Report and Order that incoming calls need not be compensated because they can be blocked. First, the Commission concluded in the Report and Order that the average payphone originates a substantial number of subscriber 800 calls, in excess of 85 such calls per month. In contrast, there was no showing that the average payphone necessarily receives any incoming calls in a typical month. Second, while the Commission recognized in the Report and Order that carriers are permitted to block subscriber 800 calls, it did not address blocking of subscriber 800 calls by PSPs. It notes, however, that, if a PSP blocks access code calls (including 1–800 access numbers), it is in violation of its rules under Telephone Operator Consumer Services Improvement Act (''TOCSIA''). Third, the Commission concluded in the Report and Order that section 276's mandate that it provide fair compensation for ''each and every completed intrastate and interstate call'' requires it to provide such compensation for subscriber 800 calls. For these reasons, the Commission rejects MCI's request that it reconsider its decision to compensate subscriber 800 calls.

11. *Local Coin Calls.* The Commission finds that section 276 gives the Commission significant authority to ''take all actions necessary'' to ''promote the widespread deployment of payphone services to the benefit of the general public'' and, more specifically, to ensure fair compensation for ''each and every completed intrastate and interstate call.'' In enacting section 276 after section 2(b), and squarely addressing the issue of interstate and intrastate jurisdiction, Congress intended for section 276 to take precedence over any contrary implications based on section 2(b). While section 2(b) of the Act reserves to the states jurisdiction over intrastate communications, Congress can make an exception to that statutory rule whenever it chooses, and the exception in section 276 is broad. As stated in the Conference Report: ''In crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act.'' Congress gave the Commission the requisite authority in section 276 and directed us to adopt a comprehensive compensation plan for payphones, and it did so in the Report and Order. Congress also provided that ''[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.'' Contrary to an argument by Maine, the Commission concludes that section 276(c) eliminates any question about its authority to adopt a particular compensation plan, even if it contradicts existing state regulations. It finds that Congress's use of the term ''compensation'' instead of ''rates'', as argued by Maine, did not limit its authority to address local coin rates. It concludes that, because Congress gave it broad authority to enact a comprehensive payphone compensation plan, the term ''compensation'' in section 276 encompasses the authority to address local coin ''rates,'' because the local coin rate is the only manner in which a PSP is compensated for local coin calls. Accordingly, the Commission denies all petitions for reconsideration that have as their basis arguments that the Commission lacks jurisdiction to deregulate local coin rates, or that the Commission's action constitutes unwarranted preemption.

12. The Commission also rejects arguments that because the Commission chose to let the market set local coin rates in lieu of itself prescribing a nationwide rate or rate guidelines, that section 10 of the 1996 Act concerning forbearance applies. It concludes that Congress required the Commission to adopt regulations ensuring fair

compensation for all payphone calls and left it to the Commission to determine the appropriate approach to take. Therefore, because the Commission adopted a comprehensive regulatory framework to ensure fair compensation for PSPs and will continue to have oversight over the payphone industry, it concludes that it did not forebear from imposing regulation and are not required to conduct the forbearance analysis required by section 10.

13. Because section 276 gives the Commission jurisdiction to ensure fair compensation for ''each and every completed call'' originated by payphones, the Commission concludes that it has jurisdiction to impose a market-based rate for intrastate directory assistance calls from payphones. It also clarifies that PSPs are entitled to require consumers to deposit coins into the payphone for these calls, as they would any other local call. In response to the request that the Commission clarify that PSPs may be compensated for 0− general assistance calls where the caller asks for call rates or dialing instructions, it concludes that such a clarification is not appropriate, because such operator inquiries, which are distinct from directory assistance calls, merely seek information on how or whether to complete a future call and, thus, are not ''completed'' calls that are compensable under section 276.

14. The Commission concludes that, contrary to arguments by certain states, it gave adequate notice to interested parties, in accordance with the Administrative Procedures Act, that it was contemplating action concerning local coin rates. It concludes further that this notice was broad enough to encompass the option it ultimately adopted: the determination that the market should set the per-call rate for local coin calls at each payphone. In the Notice, the Commission stated: ''We seek comment * * * on how we should exercise our jurisdiction under section 276. We have a range of options for ensuring fair compensation for these calls, and we seek comment on which option will ensure fair compensation for PSPs with respect to coin sent-paid calls.'' The Commission then discussed a number of possible options within that range, including setting a nationwide local coin rate. The use of the term ''range'' was an indication that its articulation of possible options in the Notice was not an exhaustive list, but merely defined various points within the range. The Commission was under no obligation to adopt the precise proposals contained in the Notice. It concludes that letting the market set local coin rates was within the range of options on which it sought comment and a logical outgrowth from soliciting comment on ''how we should exercise our jurisdiction under Section 276'' with regard to local coin rates. It notes that various parties responding to the Notice addressed the issue of Commission jurisdiction over local coin rates in their comments.

15. In the Report and Order, the Commission stated that ''the market * * * is best able to set the appropriate price for payphone calls in the long term.'' It concludes that the record contained significant evidence, particularly in the comments of the RBOCs and the independent payphone providers, that the costs associated with each call from a payphone often exceed the local coin rate in a particular state. Therefore, it denies requests that it reconsider its conclusions about local coin rates because of arguments by petitioners that there is no evidence that local coin rates are not fairly compensatory. It also rejects suggestions by certain petitioners that the deregulation of local coin rates is not in the public interest and will be met with consumer antagonism. While some disruption or confusion among payphone callers is inevitable with any new policy, the Commission concludes that market-based pricing will result in a greater availability of payphones at more economically efficient prices, which will ultimately benefit callers.

16. A number of states argue that market-based rates will not always lead to reasonably priced payphone services, particularly in situations where the PSP is a monopoly provider. Ohio PUC and Oklahoma CC both request approval for local coin call rate ceilings, while Oklahoma CC individually seeks permission to identify market failures to the Commission immediately. The Commission declines both to reconsider its conclusions and to make the modifications suggested by the states. It concludes that the Report and Order adequately addresses the possibility of market failures that would lead to local coin rates that are not reasonable. It made an exception to the market-based approach for local coin rates in those situations in which the state makes a showing that market-based rates are not possible due to a market failure. Because the Commission intended the exception to be a limited one, however, it concludes that a state's showing would have to be detailed and likely the result of a state proceeding that itself examined the market failure.

17. *Payphone Fraud.* A number of petitioners request that the Commission reconsider its conclusions about payphone fraud and take steps to reduce the risk of fraud. In the Report and Order, the Commission stated that ''[w]e will aggressively take action against those involved in such fraud'' and detailed how we would proceed to address fraudulent practices.'' Without any specific factual circumstances before it, the Commission declines to take further steps that could be both costly and burdensome to all parties involved in payphone compensation. It states that it will continue, however, to monitor developments in this area and respond to specific requests for intervention from carriers or PSPs.

18. In response to requests that it reconsider its conclusions about the definition of ''payphone,'' the Commission clarifies that for the first year of the payphone compensation mechanism, when compensation is paid on a flat-rate basis, the definition of ''payphone,'' for compensation purposes, will be the one established in CC Docket No. 91–35, along with the alternative verification procedures. Once per-call compensation becomes effective, the Commission clarifies that, to be eligible for such compensation, payphones will be required to transmit specific payphone coding digits as a part of their automatic number identification (''ANI''), which will assist in identifying them to compensation payors. Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. It also clarifies that LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone. The Commission declines to require PSPs to use customer-owned, coin-operated telephone (''COCOT'') lines, as suggested by the RBOCs, because it previously found that COCOT service is not available in all jurisdictions.

19. More generally, as it stated in the Report and Order, ''a payphone is any telephone made available to the public on a fee-per-call basis, independent of any commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card.'' It clarifies that this definition of ''payphone'' excludes from the compensation mechanism phones in hotel rooms, dormitory rooms, or hospital rooms. It also concludes that, once per-call compensation becomes effective, LECs should provide to carrier-payors a list of emergency numbers, as such calls are statutorily exempt from compensation.

20. *Compensation Amount.* The Commission denies all requests for reconsideration of the per-call compensation amount that it adopted in

the *Report and Order*, in which the parties argue that the amount is inconsistent with the cost-based approach the Commission established in the local competition proceeding. Although Congress could have directed it to adopt a particular methodology for determining fair compensation, Congress did not mandate a cost-based standard for compensation in section 276, as it did in section 251. The Commission concluded in the Report and Order that ''use of a purely incremental cost standard for all calls could leave PSPs without fair compensation for certain types of payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls.'' In the Order on Reconsideration, the Commission concludes that the cost-based total element long run incremental cost (''TELRIC'') standard that the Commission relied upon in the local competition proceeding is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels. It notes that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems. In addition, as it concluded in the Report and Order, the Commission finds that the payphone industry is likely to become increasingly competitive. It also rejects suggestions that use of a market-based compensation standard, in lieu of one that is cost based, will overcompensate PSPs. The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless of the local coin rate at particular payphones, and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier. Finally, the Commission states that a cost-based compensation standard could lead to a reduction in payphones by limiting a PSP's recovery of its costs, and this result would be at odds with the legislative purpose of section 276 that the Commission ''promote the widespread deployment of payphone services to the benefit of the general public.''

21. More specifically, in denying all requests for reconsideration of the per-call compensation amount that it adopted in the Report and Order, the Commission rejects the arguments that the per-call compensation amount adopted in the Report and Order is inconsistent with the cost based approach the Commission established in the local competition proceeding. It concludes that the cost-based TELRIC plus a reasonable share of common cost standard upon which the Commission relied in the local competition proceeding is inapplicable here for three reasons. First, the purpose of the cost-based standard in the interconnection proceeding is to enable competitors to share in the economies of scale, scope and density, and thus rapidly to acquire potentially ''bottleneck'' elements that they cannot promptly supply themselves, at a cost in conformance with competitive retail pricing. Because of the cost structure of the industry and the ability of firms to rapidly enter, no such urgent need to share the benefits of these economies appears in the present proceeding.

22. Second, the Commission concludes that Congress's use of the phrase ''* * * payphone service providers are fairly compensated for each and every completed interstate and intrastate call * * * '' is a different standard than the cost based standard articulated for the compensation for interconnection and unbundled elements. It concludes that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for proving this service. As it noted in the Report and Order, the market, as it becomes competitive, should generate the a fair market-determined compensation rate. The cost-based interconnection standard, on the other hand, compensates a carrier for the long run incremental cost of providing interconnection or the long run incremental cost of providing an unbundled element plus a reasonable share of the common costs. Since the local exchange is not yet competitive, the Commission could not rely on the market to set competitive rates for unbundled elements. In the case of payphones, the presence of multiple PSPs already operating in many markets, and the structure of the industry that allows relatively easy entry and exit, led it to conclude that it can rely on market forces to provide for efficient pricing of these services in the near future.

23. Third, the TELRIC plus common cost standard in the local competition proceeding refers to the long run cost of an element or physical facility. Since there are relatively few common costs between separate facilities, TELRIC compensation will compensate a carrier for virtually all costs associated with providing (the services of) that facility. With the addition of a share of the relatively small common costs, the firm will be able to cover its total costs. Commenters argue that the Commission should apply a total service long-run incremental cost (''TSLRIC'') standard to only a subset of services (i.e., subscriber 800 and dial around calls) provided by a facility (payphone). In general, when several services are provided by the same facility, the incremental cost of providing any one service is very small and the common cost among these services is very large. Thus, a TSLRIC standard under which a carrier is compensated only for the incremental cost of each service individually without a reasonable allocation of common costs, as suggested by commenters, would not allow the carrier to recover the total costs of providing all of the services. A TSLRIC standard that yields prices that recover a reasonable share of joint and common costs would require the difficult allocation of those (large) costs among the different types of calls made from payphones.

24. The Commission also denies a request that it reconsider its compensation rules because the Commission did not mandate a uniform per-call compensation amount of $.90 to $1.50 for each compensable call. Under the approach it established in the Report and Order, the market is allowed to set the compensation amount for calls originated by each payphone. For market-based pricing to function effectively, there must be some variation in compensation amounts from location to location. It also denies Sprint's request that it either rescind the Report and Order in toto or establish a per-call compensation amount of $0, because Sprint does not present any arguments that were not already considered or contemplated by the Report and Order, and a compensation rate of $0 would not be in accord with the Commission's responsibility under the statute to ensure fair compensation for all payphone calls.

25. A number of carriers argue that the local coin rate is an inappropriate surrogate upon which to base per-call compensation, because coin calls have additional costs, such as coin collection, that other calls do not incur. Therefore, the carriers argue, use of the local coin rate will tend to overcompensate PSPs for compensable subscriber 800 and other calls. The Commission disagrees. In the Report and Order, it found that the costs of originating the various types of payphone calls are similar. If there are significant cost differences between local coin calls and other types of calls,

however, it concludes that, over time, the market will address these differences and dictate appropriate per-call compensation amounts for each type of payphone call. The Commission also concludes that the market will address likely cost variations in originating local coin calls from payphone to payphone. In this environment of similar-but-not-identical costs in originating the various types of payphone calls, it concluded in the Report and Order that the local coin rate is a default rate that applies in the absence of a contract between the carrier-payor and the PSP. Thus, it is a starting point for negotiations toward a mutually agreeable per-call compensation amount, not a fixed compensation rate. It concludes that those carriers that are concerned about overcompensating PSPs for subscriber 800 calls have substantial leverage, by way of the ability to block these calls from all or particular payphones, to negotiate with PSPs about the appropriate per-call compensation amount. Accordingly, the Commission denies those requests for reconsideration that are premised on the local coin rate being an inappropriate default compensation amount. It also declines to provide for downward adjustments in the default compensation amount to offset possible strategic pricing by PSPs; the carriers can make such provisions themselves through the contracting process.

26. The Commission denies the petitions for reconsideration filed by the inmate PSPs. The inmate PSPs argue that they should be entitled to receive a special $.90 per-call compensation amount because their costs of service are higher than those of other PSPs. The inmate PSPs argue further that intrastate 0+ calls are frequently subject to state rate caps that are equivalent to the large carriers' standard collect rates for intraLATA calls. The Commission notes that section 276(d), which contains the only mention of inmate phones in the payphone statute, states that ''the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.'' In the Report and Order, it elected to treat inmate payphones in the same manner as all other payphones, including semi-public payphones. Under this approach, inmate payphones are entitled to receive the default compensation rate for any call that is not otherwise compensated by contract or through some other arrangement. Because virtually all calls originated by inmate payphones are 0+ calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount. As the Commission found in the Report and Order, however, whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, then the statutory obligation to provide fair compensation is satisfied. It notes that, in response to their arguments about state-mandated intrastate toll rate ceilings, the inmate petitioners may remind the states that section 276's mandate that PSPs be fairly compensated for all payphone calls is an obligation that is borne both by the Commission and the states. If an inmate provider believes, after making its arguments to a particular state in light of section 276 and the instant proceeding, that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.

27. AT&T and MCI request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation. On the other hand, APCC argues that the Commission should not preempt forms of compensation that are outside the scope of our compensation rules. The Commission concludes that, in conjunction with reviewing, and removing if necessary, those regulations that affect competition, such as entry and exit restrictions, pursuant to the Report and Order, states should review their compensation regulations to ensure that PSPs are not receiving double compensation for certain types of calls. After a reasonable period for such a review, if any party believes that a specific state compensation rule conflicts with the Commission's rules, that party may file a petition for a declaratory ruling, and the Commission will evaluate the state compensation regulation at that time. Accordingly, the Commission declines to make the clarification requested by AT&T and MCI.

ii. Entities Required To Pay Compensation

28. As it stated in the Report and Order, the Commission concludes that of the two approaches initially proposed in the Notice, the carrier-pays approach and the set-use fee, the carrier-pays approach ''places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.'' In the case of compensable access code or subscriber 800 calls where the call utilizes a particular carrier no matter the telephone that originates the call, the primary economic beneficiary is the carrier that carries the call. In addition, with specific regard to subscriber 800 calls, the Commission concludes that it is the called party that receives greater economic benefit from the payphone call than the calling party. The Commission concludes that the interexchange carrier (''IXC'') can best pass on, in the most cost effective manner, any charges for compensable calls to the appropriate customer. Therefore, it rejects the caller-pays, coin-deposit approach to compensation, as proposed by commenters, because it would unduly burden transient payphone callers. The Commission also notes that TOCSIA prohibits it from prescribing that approach for interstate access code calls. Contrary to the arguments raised by petitioners, it concludes that its rejection of a caller-pays, coin-deposit approach must stand. The Commission has long held that callers should not be required to deposit coins when making a call that is otherwise billed to an account. It notes that coinless calling, including use of coinless payphones, has proliferated in recent years. It concludes that when transient callers have an expectation that they may avoid carrying coins to make payphone calls, because they will be making only calls billed to a calling card or to a subscriber 800 end-user, it would be burdensome and increase transaction costs to impose a compensation approach that would require callers to acquire coins to make such calls. The Commission concludes further that the ability to make coinless calls from payphones is a convenience that transient callers value.

29. While the prohibition in TOCSIA against advance payment by callers, as cited in the Report and Order, does not apply to subscriber 800 calls and, therefore, is not dispositive, the Commission concludes that the statute's direction that it avoid prescribing such a payment mechanism for a particular class of payphone calls (*i.e.* interstate access code calls) is consistent with the Commission's long-standing policy of not burdening callers with the deposit of coins when making a call that is otherwise billed to an account. In addition, if the Commission were to prescribe a coin-deposit compensation approach, TOCSIA would require the PSP to charge the end-user no more for making an access code call than it would charge for a call to the

presubscribed OSP. Thus, use of a coin-deposit compensation approach would require the PSP to impose a charge for access to the presubscribed OSP. More recently, in the 1996 amendments to the Act, Congress prohibited carriers from assessing the calling party a charge for completing any 800 number call. While this provision of the Act does not expressly apply to PSPs, the Commission concludes that section 228(c)(7) provides persuasive evidence that Congress intended to ensure access to 800 number subscribers without the calling party incurring a charge. In addition to the foregoing reasons, the Commission concludes that it would be unduly burdensome and costly to mandate a caller-pays, coin-deposit approach for a particular type of subscriber 800 calls, such as calls to a paging service, while relying upon a carrier-pays approach for other compensable calls.

30. With regard to arguments by AT&T and Sprint that the Commission adopt a set-use fee that could be billed by carriers as agents for PSPs, the Commission concludes that its rejection of the set-use fee compensation approach precludes a carrier from billing a particular government-mandate fee for use of payphones on behalf of PSPs. The Commission noted in the Report and Order, however, that, under the carrier-pays approach, carriers have ''the most flexibility to recover their own costs, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers.'' The Commission concludes that the compensation approach adopted in the Report and Order gives carriers the ability, if they desire, to bill their customers for whatever amount they choose for use of the payphone. Carriers may find that billing such a payphone charge would give visibility to the public of the cost of using the payphone.

31. In the Report and Order, the Commission stated that ''[a]lthough some commenters would have the Commission limit the ways in which carriers could recover the cost of per-call compensation, it concluded that the marketplace will determine, over time, the appropriate options for recovering these costs.'' It concluded that this approach is necessary to give carriers the most flexibility in recovering their costs. For this reason, the Commission declines to adopt PageNet's proposal that the Commission limit IXCs to spreading the costs of compensation over all 800 subscribers and 800 access code users. Although petitioners from the paging industry argue that the carrier-pays approach will impose substantial costs and burdens on that industry, the Commission notes that these petitions do not contain specific data showing the volume of calls the paging companies receive from payphones. Therefore, it concludes that these claims are unsubstantiated and the possible costs and burdens unknown. It also rejects proposals that it increase the SLC as a means of spreading the cost of compensation over all callers. It concluded in the Report and Order that ''raising the SLC for this purpose would be contrary to the goals of the Act, because these payments would not be borne by either the primary economic beneficiary of the payphone calls or the cost causer.'' While the public is indeed a beneficiary of payphone calls generally, the primary economic beneficiary of a particular compensable payphone call is the carrier that carries the call.

32. In the Report and Order, the Commission concluded that the underlying facilities-based carrier should be required to pay compensation to the PSP ''in lieu of a non-facilities-based carrier that resells services[.]'' Some IXCs argue in response that the Commission should, concurrent with its conclusion that the primary economic beneficiary of a call should pay the requisite compensation to the PSP, require resellers to pay compensation for the calls they receive from payphones and to assume responsibility for the tracking of such calls. The Commission concludes that it would be significantly burdensome for some parties, namely debit card providers, to track and pay compensation to PSPs on a per-call basis. It concludes, however, that it should clarify its conclusion in the Report and Order concerning which carriers are required to pay compensation and provide for per-call tracking. It clarifies that a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier. If a carrier with a switching capability has technical difficulty in tracking calls from origination to termination, it may fulfill its tracking and payment obligations by contracting out this duty to another entity, consistent with the market-based principles that it established in the Report and Order. If a carrier does not maintain its own switching capability, then, as set forth in the Report and Order, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.

iii. Ability of Carriers To Track Calls From Payphones

33. In the Report and Order, the Commission recognized that ''tracking capabilities vary from carrier to carrier'' and concluded, as a result, that ''LECs, PSPs, and the carriers receiving payphone calls should be able to take advantage of each others technological capabilities through the contracting process.'' It also concluded that ''no standardized technology for tracking calls is necessary, and that IXCs may use the technology of their choice to meet their tracking obligations.'' During the period before per-call tracking becomes mandatory, the Commission concludes in the Order on Reconsideration that carriers must take all appropriate steps, including using the contracting process, to provide for the per-call tracking of all calls they receive from payphones. Therefore, it declines to modify the per-call tracking requirements set forth in the Report and Order and concludes that carriers should meet their per-call tracking obligations, if they are not otherwise technically able, through contracts with other entities.

iv. Administration of Per-Call Compensation

34. Some IXCs argue that the differing per-call compensation amounts make the per-call compensation rules adopted in the Report and Order unadministerable for the carrier-payors. The Commission disagrees. While there are expenses associated with administering the compensation rules, the Commission concludes that these expenses are unavoidable and must be borne by the entity that receives the primary economic benefit of the payphone calls and is best able to administer a compensation system between it and those that receive the compensation. While varying per-call compensation amounts will eventually result from the Commission's decision to let the market set the appropriate per-call compensation amount for compensable calls, it notes that for the first two years of the compensation mechanism established by its rules, the carrier-payors will not be required to pay per-call compensation in varying amounts. Carrier-payors should use this two-year period to make the requisite adjustments to their internal payphone compensation paying systems to prepare for variable per-call compensation amounts. Therefore, the Commission declines to modify its per-call

compensation rules as requested. It concludes further that compensation carrier-payors have an ability, however, to insulate themselves against potential costs that may be associated with differing compensation amounts by negotiating their own compensation arrangements, including compensation amounts, with PSPs.

35. In the Report and Order, the Commission concluded, in response to an argument that we require compensation to be paid on a monthly basis, that it should ''leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.'' Therefore, it declines to mandate a particular period for paying compensation, including penalties for late payments, and concludes that if a party believes that compensation should be paid more or less frequently than is currently the industry norm, that party should negotiate that particular issue with the other parties as a part of its total compensation contract.

36. With regard to MCI's argument that the Commission reconsider its conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in questions, the Commission concludes, as it did in the Report and Order, that the carrier should remain liable for these claims for that period, although the parties (*i.e.,* the carrier-payor and the PSP) can reduce this period of time through a contractual provision. MCI also argues that the Commission should reconsider its conclusion that the time for a PSP to file a complaint with the Commission will not begin to accrue until the carrier-payor issues a final denial of the claim. The Commission concludes that while the statute of limitations for bringing a complaint before the Commission is set by the Act, it is within its discretion to define the point at which the compensation claim becomes ripe for a complaint. Therefore, as it concluded in the Report and Order, it finds that ''the time period for the statute of limitations does not begin to run until after the carrier-payor considers a compensation claim and issues a final denial of that claim. To conclude otherwise, as suggested by MCI, would permit a carrier-payor to delay a denial of the claim to preclude a PSP's complaint remedy before the Commission.''

v. Interim Compensation Mechanism

37. A number of IXCs argue that the interim compensation rules are discriminatory because they exclude LECs and small IXCs at the expense of the large IXCs. The Commission notes that once per-call compensation becomes effective, all carriers, including small IXCs and LECs, will be required to pay compensation for all calls deemed compensable by the Report and Order. The interim flat-rate compensation mechanism, however, was adopted for a specific, limited transitional period, and thus applies to those carriers that carry the large majority of compensable calls. To extend interim compensation obligations to all carriers would significantly increase the administrative costs of the compensation mechanism. As it did in the access code compensation proceeding, the Commission excludes small carriers with annual toll revenues under $100 million, because ''IXCs earning less than $100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues.'' It also excludes LECs from the interim flat-rate compensation obligation for similar reasons of administrative practicability and because LECs, on an individual basis, currently do not carry a significant volume of compensable calls. Thus, because the interim flat-rate compensation mechanism was adopted for a finite, transitional period, the Commission declines to modify its rule to include additional carriers, as suggested by the IXCs. If a party, in the course of the year during which the interim flat-rate compensation applies, has evidence that the LECs' carrying of compensable calls has increased significantly above current levels, it may petition the Commission to adjust the interim flat-rate to include some LECs as carrier-payors to account for the increase. The Commission delegates authority to the Chief, Common Carrier Bureau, to make any necessary adjustments to the list of compensation-payors for the interim flat-rate compensation period.

38. With regard to AT&T's argument that interim compensation should not apply to low-usage and semi-public payphones, the Commission notes that it concluded in the Report and Order that PSPs will be allowed to receive per-call compensation for calls originated by semi-public payphones. For the reasons indicated in the Report and Order, the Commission concludes that PSPs are able to collect flat-rate interim compensation for semi-public payphones. In addition, because section 276 of the Act neither defines nor directs the Commission to treat so-called ''low-usage'' payphones differently than other payphones, it concludes that flat-rate interim compensation applies to all payphones, regardless if they are considered to be ''low-usage'' payphones. The Commission notes that the call volume data upon which it calculated the flat-rate interim compensation in the Report and Order is based on average call volumes from a variety of payphones maintained by independent providers and the BOCs. Its estimate of 131 compensable calls originated by each payphone each month is an average for each payphone; some payphones will originate more than 131 calls, while others will originate less. In sum, the Commission concludes that the level of interim compensation already takes into account the varying call volumes from payphones.

39. The Commission denies the motion filed by Cable & Wireless that requests permission to pay its share of the flat-rate interim compensation amount into an interest-bearing escrow account until March 31, 1997. Although Cable & Wireless argues that it currently does not have a system in place for paying such compensation to PSPs, the Commission notes that this is true for a significant number of carriers obligated to pay the flat-rate interim compensation. Carriers that receive calls from payphones, however, have been on notice since February 8, 1996, the date the 1996 Act was enacted, that they would be obligated to pay for such calls in the near future. In addition, many carriers, including Cable & Wireless for a time, have been required to pay flat-rate compensation for access code calls. Because the rules adopted in the instant proceeding did not become effective until thirty days after publication in the Federal Register, at which time the compensation period commences, carriers had an adequate time to devise a means of paying compensation. The carriers will have additional time beyond this thirty-day period in light of the fact that the actual compensation payments will not be due until after the compensation period has ended. Therefore, because it has not pleaded circumstances of a unique nature, the Commission denies Cable & Wireless's motion.

40. The Commission denies a request that it require those IXCs that are currently able to pay per-call compensation to begin to do so immediately. The Commission has provided IXCs with a one-year period to implement a per-call tracking and compensation mechanism. In the interim, the Commission dated a flat-rate compensation amount for PSPs. To ensure a relatively easy administration for all parties and to allow them to

prepare for the per-call mechanism, it declines to modify its rules to require some IXCs to pay per-call compensation for all or some calls under the interim compensation mechanism. It concludes that the requested modification would impose greater transaction costs for all parties that outweigh its benefits, particularly because the flat-rate compensation mechanism is a interim mechanism that is scheduled to terminate in one year. Individual carrier-payors and the PSPs have the option, however, of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate. Such a carrier-payor would have to petition the Commission for waiver and receive an approval before implementing such an arrangement. The Commission delegates the requisite authority to the Chief, Common Carrier Bureau, to determine whether any such waivers from its interim flat-rate compensation mechanism in the instant proceeding should be granted.

41. The RBOCs, BellSouth, and Ameritech request that the Commission clarify that the LECs be allowed to eliminate subsidies and reclassify their assets, and, as a result, be eligible to receive payphone compensation, by April 15, 1997, as opposed to on that date. The Commission clarifies that the LECs may complete all of the steps necessary to receive compensation by April 15, 1997. In this regard, it recognizes that LECs may be in different positions with regard to the actions required to comply with the requirements established in the Report and Order. It also recognizes that there are benefits to moving quickly to the more competitive payphone market structure that it seeks to establish. The Commission states that it must be cautious, however, to ensure that LECs comply with the requirements set forth in the Report and Order. Accordingly, the Commission concludes that LECs will be eligible for compensation like other PSPs when they have completed the requirements for implementing its payphone regulatory scheme to implement section 276. LECs may file and obtain approval of these requirements earlier than the dates included in the Report and Order, as revised in the Order on Reconsideration, but no later than those required dates. To receive compensation, a LEC must be able to certify the following: (1) It has an effective cost accounting manual (''CAM'') filing; (2) it has an effective interstate carrier common line (''CCL'') tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (''SLC'') revenue; (3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; (4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment (''CPE'') and related costs as required in the Report and Order; (5) it has in effect intrastate tariffs for basic payphone services (for ''dumb'' and ''smart'' payphones); and (6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines. The Commission clarifies that the requirements of the Report and Order apply to inmate payphones that were deregulated in an earlier order. As the requirements of the Report and Order become due, LECs must comply with those requirements for all payphones, including inmate payphones.

42. In addition to the requirements for all other LECs, BOCs must also have approved CEI plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its comparably efficient interconnection (''CEI'') plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones. The Commission delegates authority to the Chief, Common Carrier Bureau, to make any necessary determination as to whether a LEC has complied with all requirements as set forth above.

vi. Barriers to Entry and Exit

43. As it stated in the Report and Order, the Commission's ultimate goal in this proceeding is to ensure the wide deployment of payphones through the development of a competitive payphone industry. To achieve this goal, it found that it would be necessary to eliminate certain vestiges of a long-standing regulatory approach to payphones. To this end, the Report and Order directed the removal of subsidies to payphones, provided for nondiscriminatory access to bottleneck facilities, ensured compensation for all calls from payphones, and allowed all competitors an equal opportunity to compete for essential aspects of the payphone business. In particular, the Commission directed each state to examine its regulations applicable to payphones and PSPs, removing or modifying those that erect barriers to entry or exit and thereby affect the ability of companies to compete in the payphone industry on an equal footing. The Commission concludes on reconsideration that these actions are essential to implementing the congressional directive to establish a ''pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' It also concludes that they are necessary in order to implement the stated goals of section 276 ''of promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public * * *'' In short, burdensome state entry and exit requirements would be inconsistent with the rules the Commission has adopted to implement the congressional mandate embedded generally in section 276 of the Act, and, more specifically, in the requirements of section 276(b)(1)(A) to ensure fair compensation for each and every call using a payphone. For these reasons, the Commission expresses satisfaction that its directive to the states to eliminate such burdens is within the preemption authority granted to it by Congress in section 276(c). Accordingly, it denies requests by the states that it reconsider its conclusions in that regard.

44. While it recognizes the concerns expressed by the states, the Commission finds that none of the actions it took to ensure a competitive payphone industry is inconsistent with, or infringes upon, the states' traditional police powers. Rather, the *Report and Order* takes the initial steps necessary to move payphone services from a regulated industry to an unregulated one. As with any business, however, states retain authority to impose certain requirements without competitive effect that are designed to protect the health, safety and welfare of its citizens. For example, reasonable zoning requirements restricting the placement of payphones for public safety purposes are a legitimate exercise of a state's police power, just as a state may designate areas within its jurisdiction where restaurants and other competitive businesses may or may not be located. Similarly, a state may require a PSP to register as a prerequisite to doing business within that state, just as many require such registration of other nonregulated businesses. Indeed, the Commission stated in the Report and Order that states need remove or modify only ''those regulations that affect payphone competition[.]'' The

Commission notes, as one example, that ''the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.'' It emphasizes that any state regulations must treat all competitors in a nondiscriminatory and equal manner, and not involve the state in evaluating the subjective qualifications of competitors to provide payphone services. Thus, a state can identify, for public safety reasons, areas where no competitor can place a payphone; but it cannot draw distinctions that allow some class of competitors to enter the payphone market and not others. In this way, the market will determine who is best equipped to provide these services, while at the same time encouraging the development of advanced technology and the wide deployment of payphones.

45. California also expresses the concern that the Commission's direction that states eliminate barriers to entry would prevent a state from requiring the placement of payphones in unprofitable locations, including densely populated urban areas, where persons would otherwise have no recourse to payphones. California argues that these restrictions would limit the states' ability to provide for the welfare of their residents. The Commission disagrees, explaining that there are at least two means by which a state could address the problem described by California. First, a location where a payphone does not exist because it is unprofitable, but which serves the public welfare, satisfies the requirements for placement of a public interest payphone. To this extent, a state may rely upon the public interest payphone funding mechanisms to arrange for the placement of a payphone at such location. Where a location does not satisfy the criteria for placement of a public interest payphone, the state may still contract with a PSP for provision of payphone service, in its role as a location provider, in locations over which it has such authority. It simply may not rely upon the funding mechanism for public interest payphones to support such payphones. Of course, a state may not, as suggested in the RBOCs comments, require that a PSP place a payphone at a particular location. Such a requirement would neither be competitively neutral, nor ensure fair compensation to the PSP as required by the 1996 Act. A state may, however, enter into a voluntary agreement with a PSP at mutually agreeable terms for the provision of such service.

B. Reclassification of Incumbent LEC-Owned Payphones

46. Incumbent LEC payphones, classified as part of the network, recover their costs from CCL charges assessed on those carriers that connect with the incumbent LEC. In order to comply with section 276(b)(1)(B) by removing payphone costs from the CCL charge and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, the Report and Order established requirements for: (1) The termination of access charge compensation and all other subsidies for incumbent LEC payphones; (2) the prospective classification of incumbent LEC and AT&T payphones as CPE; (3) tariffing of basic payphone services and functionalities; and (4) the reclassification and transfer of incumbent LEC payphone equipment assets from regulated to nonregulated status.

i. Classification of LEC Payphones as CPE

a. *CPE Deregulation*. 47. In the Report and Order, the Commission concluded that to best effectuate the 1996 Act's mandate that access charge payphone service elements and payphone subsidies from basic exchange and exchange access revenues be discontinued, incumbent LEC payphones should be treated as deregulated and detariffed CPE. In addition, the Commission concluded that AT&T payphones must be deregulated, detariffed, and treated as CPE.

b. *Unbundling of Payphone Services*. 48. Petitions for reconsideration requested that the Commission reconsider its requirement that LECs file federal tariffs for payphone services. In the Order on Reconsideration the Commission modifies the tariffing requirement. Section 276 requires that the Commission take all actions necessary to ''discontinue * * * all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues.'' To implement this requirement, in the Report and Order the Commission deregulated payphone equipment and established a requirement that LECs provide tariffed payphone services to independent payphone providers that they provide to their own payphone operations. Federal tariffing enables the Commission to directly ensure that payphone services comply with section 276. In Computer III and ONA, the Commission included both state and federal tariffing requirements. The Commission's requirement in the Report and Order for federal tariffing was consistent with section 276, Computer III and ONA. The Commission did not, in the Report and Order, preclude states from requiring the tariffing of payphone services. Consistent with this conclusion, the Commission provided that states could require further unbundling of payphone services than those required in the Report and Order. Although the Commission disagrees with petitioners regarding its authority to require federal tariffing of payphone services, on reconsideration the Commission modifies the federally tariffing requirement as discussed below. As required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented ''smart payphones'' or ''dumb'' payphones that utilize central office coin services, or some combination of the two, in a manner similar to the LECS. LECs must file those tariffs with the states. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. The Commission states that those unbundled features or functions must be tariffed in the state and federal jurisdiction, and that federal tariffing of unbundled network features is consistent with Computer III and ONA. The Commission has also required, for example, federal tariffing of originating line screening services.

49. In the Order on Reconsideration, the Commission requires LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) Cost based; (2) consistent with the requirements of section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services. States unable to review these tariffs may require the LECs operating in their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled

features consistent with the requirements established in the Report and Order. LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. The Commission will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of section 276. As required in the Report and Order, and affirmed in the Order on Reconsideration, all required tariffs, both intrastate and interstate, must be filed no later than January 15, 1997 and must be effective no later than April 15, 1997. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of the Order on Reconsideration, the Report and Order, and section 276, conclude: (1) That existing tariffs are consistent with the requirements of the Report and Order as revised in the Order on Reconsideration; and (2) that in such case no further filings are required. The Commission delegates authority to the Common Carrier Bureau to determine the least burdensome method for small carriers to comply with the requirements for the filing of tariffs with the Commission.

50. In the Report and Order the Commission provided a waiver of the notification period of Computer II and Computer III network information disclosure requirements with which BOCs may be required to comply pursuant to the requirements of the Report and Order. In the Order on Reconsideration, consistent with the clarification above that LECs may comply with all the requirements of the Report and Order by April 15, 1997, the Commission also clarifies that the waiver of the network information disclosure requirements to allow a minimum three month period for notification of payphone service and related unbundled features tariffs is also granted if BOCs file those tariffs earlier than the January 15, 1997 date. The Commission clarifies further that the waiver provided in the Report and Order and in the Order on Reconsideration is only effective for payphone tariffs to comply with these requirements and only until April 15, 1997, because network information disclosures must be made, as required by the Report and Order, no later than January 15, 1997.

51. On reconsideration, the Commission declines to require further unbundling of payphone services beyond those established in the Report and Order. The Commission clarifies that any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions. Under Computer III, independent payphone providers may request unbundled features through a 120-day process and BOCs must indicate why they decline to provide the requested features. In the Report and Order, the Commission did not create a similar requirement for LECs other than BOCs to provide unbundled network functionalities requested by independent payphone providers. However, as discussed in the Order on Reconsideration, and provided in the Report and Order, states may require all LECs to provide, pursuant to nondiscriminatory tariffs, unbundled network functionalities associated with payphone services.

c. *Other Payphone Services.* 52. In the *Order on Reconsideration,* the Commission clarifies that the requirement for LECs to provide installation and maintenance services applies only to the payphone transmission lines and unbundled basic functionalities not the payphone equipment, which pursuant to the Report and Order is unregulated equipment. The Commission declines to require access to unregulated services, such as installation and maintenance of unregulated CPE, and billing and collection (beyond the requirement established in the Report and Order). Services the Commission has deregulated are available on a competitive basis and do not have to be provided by LECs as the only source of services. The Commission also declines to require the LECs to joint market for independent payphone providers. The Commission states that it has not required joint marketing in Computer III, which also required nondiscriminatory access to BOC services.

d. *Registration and Demarcation Point for Payphones.* 53. As requested by the RBOC Coalition, the Commission clarifies that its minimum point of entry demarcation point standards are flexible enough to allow for placement of payphones at the nearer and most cost-effective drop point in unique circumstances, such as service stations. The Commission notes that this conclusion is consistent with the Commission's rules at 47 CFR 68.3, which defines the demarcation point and allows LECs to select a location ''as determined by the telephone company's reasonable and nondiscriminatory standard operating practices.'' The Commission requires that LECs must treat independent payphone providers in a nondiscriminatory manner with regard to such flexible placement.

54. The Commission delegates to the Chief, Common Carrier Bureau, the authority to establish any specific requirements associated with the existing payphone equipment the Commission grandfathered from registration requirements under section 68.2 in the Report and Order.

ii. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

55. The Commission reaffirms its conclusions in the Report and Order regarding payphone asset valuation and accounting issues. The Report and Order addressed the issues that were raised again on reconsideration and stated that, in the situation in which a BOC or a LEC chooses to maintain the nonregulated payphone assets on the carrier's regulated books of account, the Commission's Part 64 cost allocation rules contain the necessary safeguards required by section 276 of the 1996 Act to protect regulated ratepayers from improper cross-subsidies. Pursuant to these long-standing cost allocation rules, carriers are not required to ''write-up'' payphone assets when they are reclassified as nonregulated assets. The Commission concludes that APCC raised no new arguments in either its petition or comments that contradict the conclusions in the Report and Order.

56. The Commission reaffirms its conclusions with respect to asset valuation when a BOC or a LEC transfers payphone assets to an affiliate. The Commission states that it does not believe, however, that the RBOC Coalition, BellSouth, SW Bell, and Ameritech raise an issue that it must clarify on reconsideration. The Commission states that those petitioners agree with the Commission that, if payphone assets are transferred from the carrier to an affiliate, the affiliate transactions rules must apply, and that under the Commission's rules, the transferred assets must be valued at the higher of fair market value or net book value. The petitioners disagree, however, with the Commission's determination that fair market value of assets transferred includes intangible assets that are not recorded on the carrier's regulated books. Some of these petitioners cited the Joint Cost Reconsideration Order and a 1988 Ameritech Cost Allocation Manual Review Order as authority for their contention. The Commission disagrees with the petitioners for the reasons discussed below.

57. In the Report and Order, the Commission stated that, if a carrier

transferred its payphone assets to an affiliate, the transaction would be governed by the Commission's affiliate transactions rules. Accordingly, the payphone asset transfer would be recorded on the carrier's books at the higher of fair market value or net book value. The Commission further stated that fair market value is ''the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.'' The Commission next concluded that the going concern value associated with the payphone business must be taken into consideration in determining fair market value and that going concern value includes the value of intangible assets such as location contracts that add value to the payphone business. The Commission clarifies this latter point.

58. The Commission reiterates in the Order on Reconsideration, that it continues to apply the definition of ''fair market value'' as provided for in the Report and Order. The issue raised by the RBOC Coalition, BellSouth, SW Bell and Ameritech on reconsideration focused on whether the definition should be applied to the tangible value of the assets, as contrasted to the value of all property rights directly associated with the payphone assets. The Commission clarifies that the answer depends on the nature of the transfer itself.

59. The Commission envisioned in the Report and Order that if payphone assets were transferred by a carrier to an affiliate, these assets would be transferred inclusive of intangible assets such as location contracts. In this instance, appraisal techniques would be applied such as discounting the stream of predicted cash flows over the term of the location contract, capitalizing net income from payphone operations, using comparable sales data, or any other reasonable method that would yield an estimated fair market value. This computation could be done for each payphone on an individual basis, for accumulations of payphone assets, for example by geographic area, or for all payphone assets. If appraisal techniques indicated that fair market value exceeded net book value, the transfer of the payphone assets should be recorded at the fair market value. The Commission further states in the Report and Order, and the Order on Reconsideration, that the value of the carrier's brand name should not be included in the fair market value computation. If a carrier could reasonably estimate the value associated with the brand name, this value should be deducted from the overall fair market value computation.

60. The Commission states that it did not envision in the Report and Order that a carrier would transfer only the physical assets themselves, but it discusses that situation in the Order on Reconsideration. On the date of transfer to affiliates, there may be circumstances in which the location contracts supporting payphone assets may have expired or otherwise been terminated. In this case, the affiliate would take those payphone assets and deploy those assets to new locations subject to new contracts. The fair market value established by reasonable appraisal techniques would not include the value of intangible assets such as location contracts; only the physical assets would be transferred. Even so, the same definition of fair market value would be applicable.

61. The Commission states that the conclusions in the Report and Order and in the Order on Reconsideration are consistent with its affiliate transactions rules and do not reflect any change in those rules. The Commission states that its conclusions also do not conflict with the Joint Cost Reconsideration Order or the Ameritech CAM Order. In the Joint Cost Reconsideration Order, the Commission addressed in a footnote a commenter's suggestion that a nonregulated affiliate should be charged for the value of previous training when an employee is transferred to the affiliate. In that instance, the Commission stated that the value of previous employee training is an intangible benefit, the allocation of which is beyond the scope of the proceeding. In the Ameritech CAM Order, the Commission addressed the employee training issue again and stated that allocation of costs of employee training would not be required unless it became apparent that the regulated entity was providing employee training as a service to its affiliate. In addition, in the Ameritech CAM Order, the Commission addressed the BOC brand name issue. In that order, the Commission reaffirmed its position that the BOC brand name was an intangible benefit that has never appeared on Ameritech's books and is not a cost for affiliate transactions purposes.

62. In the Order on Reconsideration the Commission states that it agrees that intangible benefits such as the carrier's brand name should not be considered in the determination of fair market value for affiliate transactions rules purposes. Such benefits accrue to all assets of the carrier and are not directly related to the asset being valued. In addition, as the Commission stated in the Report and Order, intangible assets such as the carrier's brand name would not generally be transferred by a willing seller under the definition of fair market value. The Commission thus concludes in the Order on Reconsideration that such intangible assets should not be included in the determination of fair market value. The Commission states that this determination is consistent with existing Commission rules and the Ameritech CAM Order.

63. The Commission disagrees with those petitioners who assert that intangible assets, such as the going concern value stemming from location contracts and other like assets, should not be included in the determination of fair market value. Going concern value is the additional element of value that attaches to property by reason of its existence as an integral part of a going concern. As such, this intangible asset is directly related to the payphone assets being transferred and enhances the value of the assets. The fact that this intangible asset is directly related to the asset distinguishes this intangible asset from the carrier brand name that is not directly related. In addition, the petitioners have asserted that the cost of this intangible asset has never been recorded on the carriers' regulated books and thus should not be considered in determining fair market value. Most, if not all, of the going concern value associated with the payphone assets is generated by the existence of the location contracts. While the cost of these location contracts are not capitalized to the payphone asset accounts, the commissions paid to location providers as required by the location contracts are recorded as period expenses on the carrier's books. This further distinguishes these intangible assets from the carrier's brand name.

64. The Commission states that it does not see any conflict with the Joint Cost Reconsideration Order or Ameritech CAM Order as those orders addressed the intangible benefits accruing from previous employee training. Like the carrier brand name, that type of intangible benefit is not directly associated with any particular asset. In addition, it is doubtful whether such an intangible benefit is even subject to valuation under reasonable appraisal techniques. As a result, the Commission concludes that these types of intangible benefits are distinguishable from the going concern value generated by the location contracts of the payphone assets. The Commission thus concludes that it did nothing in the Report and Order that conflicted with existing

Commission rules, nor deviated from either the Joint Cost Reconsideration Order or the Ameritech CAM Order.

iii. Termination of Access Charge Compensation and Other Subsidies

65. The Report and Order requires LECs to remove interstate payphone costs being recovered through CCL charges by doing the following: (1) Transferring payphone set costs to nonregulated accounts; and (2) transferring the recovery of payphone line costs from CCL charges to subscriber line charges. The Order on Reconsideration addresses petitions seeking clarification of the method of revising CCL charges under price cap rules, and provides some modifications.

66. The Commission denies USTA's request regarding § 61.45(d)(1)(vi). The Commission indicates that it stated clearly in the Report and Order that LECs are required to transfer payphone set costs from regulated to nonregulated accounts pursuant to § 64.901 and other applicable rules. Section 61.45(d)(1)(v) governs exogenous cost changes resulting from ''the reallocation of investment from regulated to nonregulated activities pursuant to § 64.901.'' The Commission concludes USTA has not provided any reasonable basis for construing § 61.45(d)(1)(v) to be inapplicable.

67. USTA seeks clarification of the procedure for LECs to use in removing from the CCL charges the deregulated payphone costs described in § 69.501(d) of the rules. The Report and Order requires LECs to determine the percent ratio of payphone cost to all costs in the common line category in 1995, the payphone cost allocator, and to reduce the Common Line Basket price cap index (''PCI'') by that percentage. USTA maintains that costs associated with payphone lines identified by § 69.501(d) should be subtracted before developing the payphone cost allocator, because payphone lines will remain under regulation. AT&T maintains that the intent of the Report and Order clearly states that payphone line costs allocated pursuant to § 69.501(d) should remain as part of the LEC's regulated operations, and thus supports USTA's position.

68. USTA also seeks acknowledgment that the exogenous cost adjustment to the PCI should be reduced by the amount of PCI adjustment that has already occurred as a result of prior deregulation of inmate payphones. According to USTA, this credit can be obtained by multiplying the PCI in effect prior to the inmate payphone filing by the payphone cost allocator. AT&T maintains that USTA's suggested approach will not achieve the correct result, which can be achieved by clarifying that the PCI and payphone cost allocator described in paragraph 185 of the Report and Order refer to the PCI and allocator that existed prior to implementation of the inmate payphone order.

69. The Commission agrees that LECs should subtract the payphone costs described in § 69.501(d) associated with payphone lines, prior to developing the payphone cost allocator. The Commission therefore clarifies and revises the exogenous cost adjustment mechanism it adopted in paragraph 185 of the Report and Order, and requires LECs to subtract the costs of lines associated with payphones from the costs described in § 69.501(d), prior to calculating their payphone cost allocator. The Commission further agrees that a credit should be applied to the PCI adjustment equal to any prior PCI adjustment associated with inmate payphone deregulation, and that AT&T has proposed a method that achieves the correct result. The Commission states that LECs proposing to subtract payphone line costs or inmate payphone costs from § 69.501(d) for the purpose of their PCI adjustment should provide complete details, including references to parts 32, 36, and 69 of the rules and associated ARMIS line items, to demonstrate that their line cost calculations are reasonable.

70. Sprint seeks clarification by the Commission that CCL charges must be reduced by more than the amount of payphone equipment cost transferred from regulated to nonregulated accounts. Sprint further espouses that payphone cost includes non-equipment costs such as the cost of the local network used for payphone service and local business office expense. BellSouth maintains that local network and local business associated with the payphone lines should not be reclassified as nonregulated. The Commission agrees with Sprint that there are non-equipment, local and network costs attributable to payphone set cost and concludes that the exogenous cost adjustment, as modified, removes an adequate amount of such interstate overhead costs from the LEC's common line charges. The Commission also agrees with BellSouth that line cost should not be reclassified, and concludes that this is clearly stated in the Report and Order.

71. USTA and AT&T seek clarification of the treatment of additional revenues that will accrue to LECs as a result of the rule change that results in a multiline SLC charge on payphone lines. According to USTA, the application of a SLC to payphone lines will be a price cap restructure reflecting: (1) The additional SLC revenue as a result of applying a multiline SLC to public payphone lines, and (2) the additional SLC revenue as a result of applying the multiline SLC to semi-private payphones instead of the residential and single line business SLC that currently applies. The RBOC Coalition supports USTA's methodology. Similarly, AT&T maintains that LECs should reduce CCL charges by an amount equal to the additional SLC revenue. AT&T believes, however, that USTA's reference to restructuring the base period revenue is unclear. AT&T advocates no change to the base period revenue for the purpose of comparing revenues under the existing and modified rate structures.

72. The Commission agrees that application of multiline SLCs to payphone lines is a restructure pursuant to § 61.46(c), requiring a comparison of existing revenue to receipts of revenue under the modified rate structure. LECs can achieve this result by recalculating and revising CCL charges pursuant to the CCL formula in § 61.46(d), using the following steps. First, recalculate the end user common line (minutes of use) factor displayed in 1996 annual filing to include public payphone costs and lines including any necessary adjustments to forecasts to reflect: (1) The increase in SLC revenue from application of multiline SLCs to public payphone lines; and (2) the increase in SLC revenue from applying multiline SLCs to the semi-private payphone lines instead of the residential and single line business SLC. Second, use the same carrier common line (minutes of use) factor displayed in the 1996 annual filing, but recalculate the percent change in the PCI to reflect the exogenous cost change associated with payphone cost deregulated as a result of the Report and Order. Third, recalculate the percent change in the PCI to incorporate any change in Long Term Support (LTS) paid to NECA's common line pool, if revised LTS data are available at the time of filing. Otherwise, the LTS adjustment can be shown as a true-up to prior year LTS and reported in the 1997 annual filing. Fourth, recalculate the carrier common line (minutes of use), the CCL revenue component of the formula, to reflect these changes. Finally, recalculate the maximum allowable CCL charges.

73. The procedure above will result in the removal from the CCL charge of deregulated set cost. Regulated line cost will also be removed and recovered through SLC charges except any portion that might exceed the $6.00 cap on the

multiline SLC charge. Those SLC deficit costs will be recovered through the CCL charge, in the same manner as the deficit costs associated with non-payphone lines.

74. WPTA contends that the Act requires the Commission to discontinue the application of SLCs with regard to all payphone lines, to meet the Act's requirement for removal of subsidies from payphone services. BellSouth disputes WPTA's interpretation of the Act by contending that regulated charges such as the SLC should not apply only if those charges subsidize nonregulated payphone operations. BellSouth contends there is no subsidization, because the SLC serves the purpose of recovering regulated costs associated with payphone lines. The Commission agrees with BellSouth that the application of a SLC to payphone lines is necessary for LECs to recover regulated costs assigned to the interstate jurisdiction. In addition, SLC charges will apply equally to LEC and non-LEC payphone lines and, therefore, the incremental SLC cost is the same for LEC and non-LEC payphone providers.

75. Finally, The Commission revises the rules regarding the recovery of common line costs. The Commission revises Part 69 of its rules to reflect the changes.

C. Nonstructural Safeguards for BOC Provision of Payphone Service

76. In response to the request from the RBOC Coalition that the Commission clarify that the Report and Order preempts inconsistent nonstructural safeguards, the Commission notes in the Order on Reconsideration that section 276(c) provides for such preemption. The Commission clarifies that the Report and Order does preempt nonstructural safeguards that are inconsistent with those established in the Report and Order. In that order, the Commission specifically preempted any structural separation requirements for the LEC provision of payphone service because it concluded that such requirements are inconsistent with section 276. With regard to other nonstructural safeguards, the Commission noted that it applied the Computer III and ONA safeguards to the provision of payphone service by the BOCs. Although the Commission declined to apply these same safeguards to the nonBOC LECs, the Commission indicated that it did not preempt the states from imposing nonstructural safeguards that are no more stringent than those the Commission imposed on the BOCs. In the Computer III proceeding the Commission addressed when state nonstructural safeguards would be inconsistent with Computer III. The Commission addressed such preemption of state requirements with regard to jurisdictionally-mixed enhanced services in Computer III. In the Order on Reconsideration, the Commission adopts that analysis for preemption of state payphone service nonstructural safeguards that are inconsistent with the Report and Order. The Commission concludes that it is necessary to go further than the Computer III analysis to determine if a nonstructural safeguard is inconsistent with section 276 because, for example, it is clear from section 276 that BOCs and other LECs may provide payphone services on an integrated basis. Thus, state requirements that, for example, require the LECs or BOCs to provide payphone services only through a separate corporate entity with separate books would be inconsistent with section 276. The Commission has previously addressed state regulations that may conflict with the Computer III network disclosure and CPNI requirements. In the Order on Reconsideration, the Commission adopts that analysis for clarifying when state requirements would be inconsistent with those requirements, although the Commission notes that CPNI requirements must also be consistent with section 222 of the Act. The provision for state requirements for further unbundling of payphone network functionalities are discussed in the Report and Order and above.

77. The Commission clarifies that the requirements of the Report and Order apply to all payphones, including inmate payphones. LECs must comply with the requirements of the Report and Order with regard to inmate payphones.

78. With regard to CEI Plans for payphone service, in the Order on Reconsideration, the Commission clarifies that they will be placed on public notice in a similar manner to CEI plans that have been filed for enhanced services. Like CEI plans for enhanced services, the Commission delegates the authority to review CEI plans to the Chief, Common Carrier Bureau. The Commission states that it anticipates that payphone service CEI plans will raise fewer issues than CEI plans for enhanced services because payphone services described in the CEI plans required by the Report and Order will address only basic payphone services and unbundled payphone features, not enhanced services. CEI plan review will evaluate the application of the nondiscrimination and cross-subsidy nonstructural safeguards to the provision of payphone services by each BOC as required by the Report and Order and the Order on Reconsideration.

D. Ability of BOCs To Negotiate With Location Providers on the Presubscribed Interlata Carrier

79. *InterLATA Presubscription*. The Commission denies BellSouth's request to reconsider or clarify whether BOCs may engage in branding of interLATA service for its payphones. The Commission concludes that nothing in section 276(b)(1)(D) of the 1996 Act authorizes BOCs to engage in branding, or ''packaging,'' of interLATA service. The Commission explains that section 276(b)(1)(D) does not place BOCs on an equal footing with independent PSPs in every conceivable regard. Rather, that section is, by its own terms, limited to BOCs ''negotiating'' with location providers with respect to the location providers' ''selecting and contracting'' for interLATA service to their payphones. In the Report and Order, the Commission rejected BellSouth's argument that this necessarily allowed a BOC to engage in all conduct allowed of non-BOC PSPs, including the provision of interLATA service to payphones outside of the requirements of section 271 of the 1996 Act. The Commission finds that the same reasoning refutes BellSouth's argument that section 276 authorizes a BOC to ''brand'' interLATA OSP service—in effect, holding itself out as providing such service—simply because non-BOC PSPs may be able to do so. The Commission adds that if Congress had intended such a broad grant of authority, it would not have included such specific limiting language in the statute. The Commission also notes that to the extent a BOC is holding itself out to the public as providing interLATA service through use of an audible brand identifying itself as the carrier, such conduct would seem to be inconsistent with the goals of TOCSIA, as well as inconsistent with the requirements of section 271 of the 1996 Act.

80. *Contracts*. The Commission declines AT&T's request that it clarify that nothing in the statute or the new rules allows location providers to terminate contracts with carriers regarding the interLATA carrier presubscribed to payphones on their premises, regardless of the date of such agreements. The Commission believes that this issue was satisfactorily addressed in the Report and Order.

81. The Commission concludes that contracts entered into pursuant to the grant of authority in section 276(b)(1)(D), but prior to a BOC receiving approval of a CEI plan required by the Report and Order, are in

violation of the Commission's rules adopted in the proceeding. The Commission explains that section 276(b)(1)(D) grants BOCs the authority to negotiate and contract with location providers with respect to the interLATA carrier presubscribed to their payphones. Congress conditioned this grant of authority upon the completion of this Commission rulemaking, specifically required by section 276, for purposes of evaluating whether granting such rights would be consistent with the public interest. In carrying out this responsibility, the Commission determined that each BOC should first be required to establish certain nonstructural and accounting safeguards as a prerequisite to being allowed to exercise these presubscription rights. The Commission finds that full compliance with these precautions is necessary to ensure the BOCs are not acting in an anticompetitive manner in the provision of these services and, ultimately, to protect the interests of the public. The Commission states that its decision to require the filing and approval of CEI plans was, in part, to prevent the BOCs from using their control over bottleneck facilities and other resources in order to obtain a competitive advantage over the non-LEC PSPs. The Commission concludes that, while it is not in a position to declare null and void specific contracts that it has not determined to be unlawful, it will review any complaints concerning such contracts in light of this policy.

E. Ability of Payphone Service Providers to Negotiate With Location Providers on the Presubscribed Intralata Carrier

82. The Commission clarifies that, for purposes of the rules implementing section 276(b)(1)(E) of the 1996 Act, intraLATA calls include local calls. The Commission agrees with the reasoning presented by APCC that the policies supporting free competition in intraLATA presubscription are equally applicable to local calls.

83. The Commission declines, however, to reconsider its decision to allow states to require 0− calls to be initially routed to the incumbent LEC or other local service provider, provided that the state does not mandate that the LEC or local service provider ultimately carry non-emergency intraLATA calls initiated by dialing '0' only. As the Commission stated in the Report and Order, it does not find that such requirements are necessarily inconsistent with the statutory language that PSPs should be allowed to negotiate for the intraLATA carriers presubscribed to their payphones. The Commission notes that states may impose reasonable requirements on the exercise of these rights, especially for purposes of ensuring public health and safety. Accordingly, it is unwilling at this time to find that a state requirement concerning the initial routing of 0− calls, in order to ensure that 0− emergency calls are handled in an appropriate and timely manner, unduly burdens non-LEC PSPs.

F. Establishment of Public Interest Payphones

84. The Commission denies APCC's request that the definition of public interest payphones be modified to exclude payphones located within 200 yards of another payphone. Besides lacking any basis in the record for specifying a particular distance restriction, the Commission finds that such a requirement would unnecessarily restrict the states' ability to address local geographic, social and economic conditions impacting the need for payphones. The Commission concludes, as it did in the Report and Order, that the states are better positioned to respond to the diverse and unique payphones need of their communities.

85. The Commission also denies Ohio PUC's request that it reconsider its determination that PIPs may not be placed in locations where payphones already exist as a result of the market. The Commission finds that Congress restricted the locations for which states could use the public interest payphone support mechanisms to subsidize the placement of a payphone. As stated in the Report and Order, the statutory language reflects a congressional intent that reliance on the public interest payphone provision is to be limited to instances where a payphone serves a strong public interest that would not be fulfilled by the normal operation of the marketplace.

86. The Commission adds that, in its capacity as a location provider, a state may certainly contract with a PSP to place a non-PIP payphone at any location over which it has such authority. A state may, for example, contract with a PSP to place a payphone on a street corner, or in a school building, or at an airport, that competes with other payphones at or near such locations. It may not, however, subsidize such payphones through a public interest payphone support mechanism. Moreover, a state may contract with the PSP on any basis which a PSP is voluntarily willing to offer its services. Thus, if a state prefers to require low end-user rates for such payphones, perhaps as a trade-off to receiving lower commissions from the PSP, it may contract with the PSP on those terms.

III. Conclusion

87. In the Order on Reconsideration, the Commission affirms the essential features of the policies established in the Report and Order. On reconsideration, however, the Commission modifies: (1) The requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. The Commission also clarifies various issues addressed in the *Report and Order.*

IV. Ordering Clauses

88. Accordingly, pursuant to the authority contained in sections 1, 4, 201–205, 226, 276 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201, 205, 226, 276, and 405, *it is ordered* that the policies, rules, and requirements set forth herein *are adopted.*

89. *It is further ordered,* that 47 CFR Part 69 is amended and shall be effective (30) days after publication in the Federal Register.

90. *It is further ordered,* that the Petitions for Reconsideration filed by Ohio PUC, NTCA, BellSouth and Sprint, are granted in part and denied in part, as described herein. All other Petitions for Reconsideration filed in this proceeding are denied

91. *It is further ordered,* that the Petitions for Clarification filed in this proceeding are denied in part, and granted in part, as described herein.

92. *It is further ordered,* that MCI's Motion to Serve One Day Late is granted.

93. *It is further ordered,* that CompTel's Motion to Accept Petition for Reconsideration, or in the Alternative to Treat As Comments on Petitions for Reconsideration, is denied in part and granted in part, as described herein.

94. *It is further ordered,* that Cable & Wireless' Motion for Temporary Waiver or, in the Alternative, for a Limited Stay, is denied.

95. *It is further ordered,* that this Memorandum Opinion and Order on Reconsideration will be effective (30) days after publication of a summary thereof in the Federal Register.

List of Subjects

47 CFR Part 64

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

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Labeling, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Amended

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.5 is amended by revising paragraph (a) to read as follows:

§ 69.5 Persons to be assessed.

(a) End user charges shall be computed and assessed upon end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part.

* * * * *

3. Section 69.104 is amended by revising paragraph (a), redesignating paragraph (d) as paragraph (d)(1), and adding a new paragraph (d)(2) to read as follows:

§ 69.104 End user common line.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall also be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

* * * * *

(d)(1) * * *

(2) The charge for each subscriber line associated with a public telephone shall be equal to the monthly charge computed in accordance with paragraph (d)(1) of this section.

* * * * *

4. Section 69.501 is amended by removing and reserving paragraph (d); and by revising paragraph (e) to read as follows:

§ 69.501 General.

* * * * *

(e) Any portion of the Common Line element revenue requirement that is not assigned to Carrier Common Line elements pursuant to paragraphs (a), (b), and (c) of this section shall be apportioned between End User Common Line and Carrier Common Line pursuant to § 69.502. Such portion of the Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this subpart.

[FR Doc. 96–30908 Filed 12–11–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–152; Amendment 199–14]

RIN 2137–AC95

Reporting of Drug and Alcohol Testing Results

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the Drug and Alcohol Testing Rules to allow the optional reporting of drug and alcohol testing results to RSPA by computer disk.

DATES: This direct final rule takes effect April 11, 1997. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by February 10, 1997, RSPA will publish a confirmation document within 15 days of the close of the comment period, advising the public of the date the direct final rule will become effective. If an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate changes based on the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 5:00 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant entrance at Seventh and E Streets, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, regarding the subject matter of this document, or the Dockets Unit (202) 366–4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

On March 28, 1996, RSPA published a Request for Public Comment (61 FR 13918) on its Management Information System Standardized Data Collection and Reporting of Drug Testing Materials information collection. Two commentors requested that RSPA allow electronic filing of drug testing forms. RSPA agrees with these commentors that allowing the filing of this information by computer disk may reduce the paperwork burden of this regulation. Therefore, RSPA is amending Section 199.25(d), Reporting of anti-drug testing results, to allow the alternative of filing the report on a computer disk provided by RSPA. The disk can be submitted in Word Perfect 6.1, Microsoft Word 6.0, or any ASCII format. If this option is used, a signature page attesting to the validity of the computer form must be sent to the RSPA address specified in Section 199.25(b). Additionally, RSPA is amending Section 199.229(c), Reporting of Alcohol Testing Results, to allow operators the option of filing their alcohol testing results by computer disk. If this option is used, a signature page attesting to the validity of the information must be submitted similar to the drug filing procedure.

II. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This amendment may reduce the administrative burden of the drug and alcohol testing results reporting rules by

allowing operators to choose the method of reporting that they deem most cost-effective. This amendment is administrative in nature and is consistent with the President's goals of regulatory reinvention and improvement in customer service. There is no additional cost to comply with this rule because it is optional. This rule is considered to be non-major under Executive Order 12866, and is not considered significant under DOT Regulatory Policy and Procedures (44 FR 22034; February 26, 1979). Therefore, this change does not warrant the preparation of a Regulatory Evaluation.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''), and RSPA has determined that preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

Based on the above facts, I certify under Section 606 of the Regulatory Flexibility Act that this amendment does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA is amending 49 CFR 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

§ 199.25 [Amended]

2. Paragraph (d) of § 199.25 is revised to read as follows:

§ 199.25 Reporting of anti-drug testing results.

* * * * *

(d) Each report shall be signed by the Operator's anti-drug manager or designated representative. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in paragraph (b) of this section.

* * * * *

§ 199.229 [Amended]

3. Paragraph (c) of 199.229 is revised to read as follows:

§ 199.229 Reporting of alcohol testing results.

* * * * *

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in this section.

* * * * *

Issued in Washington, D.C. on December 6, 1996.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–31488 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 61, No. 240
Thursday, December 12, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–96–16]

Milk in the Iowa Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This document invites written comments on a proposal to decrease the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage would be decreased by 10 percentage points from 30 percent of plant receipts to 20 percent of such receipts for the months of December 1996 through March 1997. The action was requested by Beatrice Cheese, Inc., which contends that the action is necessary to prevent the uneconomic shipment of milk from its Fredericksburg, Iowa, supply plant.

DATES: Comments must be submitted on or before December 19, 1996.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance copies of such comments may be faxed to (202) 690–0552.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

The supply plant shipping percentages proposed to be revised are incorporated into the order to prevent the uneconomic shipment of milk. This proposed action will decrease the percentage of milk receipts that handlers are required to move to fluid milk distributing plants. With a decrease in the shipping percentage, supply plant operators will not have to move milk uneconomically to pool distributing plants to keep the milk received at their plants priced under the order.

The proposed reduction of the required supply plant shipping percentage for the months of December 1996 through March 1997 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The proposed revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice of Proposed Revision and Opportunity to File Comments

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of December 1996 through March 1997.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after the publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time

needed to complete the required procedures and include December 1996 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

Section 1079.7(b)(1) of the Iowa order allows the Director of the Dairy Division to reduce or increase a pool supply plant's minimum shipping requirement by up to 10 percentage points to prevent uneconomic shipments of milk or to assure an adequate supply of milk for fluid use. Beatrice Cheese, Inc., which operates a pool supply plant regulated under the Iowa order, requested that the percentages be decreased by 10 percentage points for the months of November 1996 through March 1997. The proponent's request states that the Department's October 23, 1996, shipping percentage revision increasing the shipping percentages from 30 percent of plant receipts to 35 percent for the months of September through November beginning with October 1996, and from 20 percent to 30 percent for the months of December 1996 through March 1997, has caused unjust financial losses, and has encouraged uneconomic shipments of milk by Beatrice in attempts to meet Federal order requirements. Beatrice contends that it was not able to pool 10,500,000 lbs. of producer milk to comply with order requirements to the detriment of Iowa's dairy farmers.

Additionally, Beatrice states that market conditions have changed drastically since the October 23, 1996, decision. Furthermore, according to Beatrice, the recent drop in the cheese and butter markets has resulted in more than an adequate supply of milk for fluid use, which should continue through the spring of 1997, thereby eliminating the need for increased shipping percentages.

As proposed by Beatrice, the percentage of a supply plant's receipts that must be shipped to pool distributing plants if the supply plant is to be considered a pool plant would be decreased by 10 percentage points, from 35 percent to 25 percent, for the month of November 1996, and from 30 percent to 20 percent for the months of December 1996 through March 1997. Although Beatrice's request seeks to revise the supply plant shipping percentage for November 1996, it is impractical and infeasible to include such month in this proposed action based on the amount of time necessary for the required procedures, including a comment period. Therefore, comments should be directed towards the proposal involving the December 1996 through March 1997 period.

In view of the current supply and demand relationship, it may be necessary to decrease the shipping percentage requirements for pool supply plants under Order 79 as proposed to provide for the efficient and economic marketing of milk during the months of December 1996 through March 1997.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: December 6, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 96–31563 Filed 12–11–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–29–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B, 214B–1, and 214ST helicopters, that currently establishes a retirement life of 60,000 high-power events for the main rotor trunnion (trunnion). This proposal would require changing the method of calculating retirement life for the trunnion from high power events to a maximum accumulated Retirement Index Number (RIN). This proposal is prompted by fatigue analyses and tests that show certain trunnions fail sooner than originally anticipated because of the unanticipated higher number of lifts or takeoffs (torque events) performed with those trunnions in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by the proposed AD are intended to prevent fatigue failure of the trunnion, which could result in loss of the main rotor and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Attention: Product Support Department, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5959.

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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–SW–29–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, Office of the Assistant Chief Counsel, Attention: Rules Docket No.

94–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On July 20, 1994, the FAA issued AD 94–15–14, Amendment 39–8985 (59 FR 40798, August 10, 1994), to require changing the method of calculating the retirement life for the trunnion, part number (P/N) 214–010–230–101, from flight hours to high-power events calculated using the number of takeoffs and external load lifts. That action was prompted by fatigue analyses and tests that show certain trunnions fail sooner than originally anticipated because of the unanticipated high number of lifts and takeoffs (torque events) performed with those trunnions in addition to the time-in-service (TIS) accrued under other operating conditions. The requirements of that AD are intended to prevent fatigue failure of the trunnion, which could result in loss of the main rotor and subsequent loss of control of the helicopter.

Since the issuance of that AD, BHTI has issued BHTI Information Letter GEN–94–54, dated April 15, 1994, Subject: Retirement Index Number (RIN) For Cycle Lifed Components, which introduces a different method of accounting for fatigue damage on components that have shortened service lives as a result of frequent torque events. Additionally, BHTI has issued BHTI Alert Service Bulletin (ASB) 214–94–55, which is applicable to the Model 214B helicopters, and ASB 214ST–94–70, which is applicable to the Model 214ST helicopters, both of which are dated November 7, 1994 and describe procedures for converting flight hours and total number of torque events into a RIN for the trunnion, P/N 214–010–230–101. Although ASB 214–94–55 does not state that it applies to Model 214B–1 helicopters, this was an oversight by the manufacturer. That ASB was intended to apply to both Model 214B and 214B–1 helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214B, 214B–1, and 214ST helicopters of the same type design, the proposed AD would supersede AD 94–15–14 to require creation of a component history card using the RIN system; a system for tracking increases to the accumulated RIN; and would establish a maximum accumulated RIN for the trunnion of 120,000 at which the trunnion must be removed from service.

The FAA estimates that 8 helicopters of U.S. registry would be affected by this proposed AD, and that it would take: (1) 10 work hours to replace the affected trunnion due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $11,000. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,360 for the first year and $16,520 for each subsequent year. These costs assume replacement of the trunnion in one helicopter each year, creation and maintenance of the records for all the fleet the first year, and creation of one helicopter's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8985 (59 FR 40798, August 10, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 94–SW–29–AD. Supersedes AD 94–15–14, Amendment 39–8985.

Applicability: Model 214B, 214B–1, and 214ST helicopters, with main rotor trunnion (trunnion), part number (P/N) 214–010–230–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (e) 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 helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the trunnion, which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the trunnion, P/N 214–040–230–101.

(b) Determine and record on a component history card or equivalent record the accumulated Retirement Index Number (RIN) to-date on the trunnion by multiplying the accumulated high-power event total to-date by 2 or as follows:

(1) For Model 214B, multiply the flight hour total to-date by 24 (round up any resulting fraction to the next higher whole number), or

(2) For Model 214ST, multiply the factored flight hour total to-date by 24 (round up any resulting fraction to the next higher whole number).

Note 2: BHTI Alert Service Bulletin (ASB) No. 214–94–55, which is applicable to Model 214B and 214 B–1 helicopters, and ASB No. 214ST–94–70, which is applicable to Model 214ST helicopters, both dated November 7, 1994, pertain to this AD.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed and, at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(1) For the Model 214B and 214B–1 helicopters,

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external lift, or increase the RIN by 2 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(2) For the Model 214ST helicopters,

(i) Increase the RIN by 2 for each takeoff.

(ii) Increase the RIN by 2 for each external load lift operation, or increase the RIN by 4 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(d) Remove the trunnion, P/N 214–010–230–101, from service on or before attaining an accumulated RIN of 120,000. The trunnion is no longer retired based upon flight hours. This AD revises the Airworthiness Limitation section of the maintenance manual by establishing a new retirement life for the trunnion of 120,000 RIN.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

(f) 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 helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 4, 1996.

Eric Briese,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–31523 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require a visual inspection to determine if rudder disconnection has occurred, and replacement of the disconnect unit with a new disconnect unit, if necessary. This proposal is prompted by reports that, due to the existing design, the disconnect unit of the rudder disconnect system inadvertently opened on some airplanes. The actions specified by the proposed AD are intended to prevent the disconnect unit from opening inadvertently, which could lead to inadequate rudder control, if the engine fails during take-off or go-around and if the airplane is at low speed.

DATES: Comments must be received by January 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkö ping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–236–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports that the disconnect unit of the rudder control system was found opened on some in-service airplanes. Investigation revealed that the existing design of the disconnect unit, having part number (P/N) 7327305–511 or –512, may allow it to inadvertently open without the disconnect handle being pulled. This condition, if not corrected, could result in the disconnection of the left and right rudder pedals; this situation could lead to inadequate rudder control, if the engine fails during take-off or go-around and if the airplane is at low speed.

Explanation of Relevant Service Information

Saab has issued Alert Service Bulletin 2000–A27–020, dated March 25, 1996, which describes procedures for performing a visual inspection to determine if rudder disconnection has occurred. For cases where disconnection has occurred, this service bulletin also describes procedures for replacement of the discrepant disconnect unit with a new disconnect unit having P/N 7327299–661.

Saab also has issued Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996, which describes procedures for replacement of disconnect units, having P/N 7327305–511 or –512, with a new disconnect unit having P/N 7327305–513 or 7327299–661.

The LFV classified these service bulletins as mandatory and issued

Swedish airworthiness directives (SAD) 1–095, dated March 25, 1996, and 1–096R1, dated June 19, 1996 in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to determine if rudder disconnection has occurred, and, if so, the immediate replacement of the disconnect unit with a new unit. The new unit would be required to be installed eventually on all affected airplanes. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,260, or $420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 96–NM–236–AD.

Applicability: Model SAAB 2000 series airplanes, serial number 004 through 035 inclusive, equipped with a disconnect unit having part number (P/N) 7327305–511 or –512; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the disconnect unit from opening inadvertently, which could lead to inadequate rudder control, if the engine fails during take-off or go-around and if the airplane is at low speed, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to determine if rudder disconnection has occurred, in accordance with Saab Alert Service Bulletin 2000–A27–020, dated March 25, 1996.

(1) If no disconnection has occurred, within 6 months after the effective date of this AD, replace the disconnect unit with a new disconnect unit, in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. After replacement, no further action is required by this AD..

(2) If disconnection has occurred, prior to further flight, replace the disconnect unit with a new disconnect unit, in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. After replacement, no further action is required by this AD.

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

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

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

Issued in Renton, Washington, on December 5, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31527 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209762–95]

RIN 1545–AT32

Allocations of Depreciation Recapture Among Partners in a Partnership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of depreciation recapture among partners in a partnership. The proposed regulations amend existing regulations to require that any gain characterized as depreciation recapture must be allocated to each partner in an amount equal to the lesser of the partner's share of total gain from the sale of the property or the partner's share of depreciation from the property. The proposed regulations affect partnerships and their partners. This document also contains a notice of public hearing on the proposed regulations.

DATES: Written comments must be received by March 6, 1997. Outlines of oral comments and requests to speak at the public hearing scheduled for March 27, 1997, at 10 a.m., must be received by March 6, 1997.

ADDRESSES: Send submissions to CC:DOM:CORP:R [REG–209762–95], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–209762–95], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Daniel J. Coburn or Deborah Harrington, (202) 622–3050 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to change the current Income Tax Regulations (26 CFR part 1) relating to the characterization and allocation of depreciation recapture among partners in a partnership.

Section 1245 of the Internal Revenue Code requires taxpayers to recharacterize as ordinary income some or all of the gain on the disposition of certain types of business properties. The amount recharacterized as ordinary income (recapture gain) is the lesser of: (a) the gain realized on disposition, or (b) the total deductions allowed or allowable for depreciation or amortization from the property. Section 1.1245–1(e)(2) of the Income Tax Regulations currently provides that each partner's share of recapture gain will generally be determined in accordance with the provisions of section 704. The regulations also provide that, if the partnership agreement provides for the allocation of total gain from the property but does not provide for the allocation of recapture gain, recapture gain is allocated in the same manner as total gain.

The current regulations create some uncertainty because it is unclear how recapture gain is allocated under section 704. The allocation of recapture gain cannot have substantial economic effect because classifying a portion of the gain as recapture gain merely changes the tax character of the gain. In addition, by allowing the partnership to allocate recapture gain in the same manner as total gain, the current regulations increase the possibility that a partner may receive an allocation of recapture gain in excess of the partner's share of depreciation from the property. For example, if a partner acquires an interest in a partnership that has fully depreciated the property and the property is subsequently sold at a gain, the partner may be allocated a portion of the total gain and a portion of the recapture gain, even though the partner did not receive any depreciation deductions from the property. This mismatch between depreciation allocations and recapture allocations should be minimized because recapture gain is intended to offset the earlier depreciation deductions taken from the property and should therefore be allocated to the extent possible to the partner that received those depreciation deductions. Finally, the current regulations do not provide guidance on the allocation of recapture gain from contributed property subject to section 704(c). In the legislative history of the 1984 amendment to section 704(c), Congress suggested that Treasury and the Service issue regulations governing the allocation of recapture gain inherent in property contributed to a partnership. See H.R. Rep. No. 861, 98th Cong., 2d Sess. 857 (1984); see also Staff of the Joint Comm. on Taxation, 98th Cong., 2d Sess., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 214 (Comm. Print 1984). In the 1994 preamble to the section 704(c) final regulations, Treasury and the Service indicated that this issue would be considered in a separate regulations project. 59 FR 66,726 (1994).

Explanation of Provisions

The proposed regulations provide guidance on allocating recapture gain among partners, including recapture gain attributable to contributed property. The proposed regulations provide that a partner's share of recapture gain is equal to the lesser of (1) the partner's share of total gain arising from the disposition of the property, or (2) the partner's share of depreciation or amortization from the property. This rule seeks to insure, to the extent possible, that a partner recognizes recapture on the disposition of property in an amount equal to the depreciation or amortization deductions previously taken by the partner on the property. If recapture gain remains unallocated under the general rule, the remaining unallocated gain is allocated among those partners whose shares of total gain on the disposition of the property exceed their shares of depreciation or amortization with respect to the property. Recapture gain may be unallocated under the general rule if, for example, the total gain allocated to a partner on the sale of the property is less than the amount of depreciation previously allocated to that partner.

The proposed regulations provide special rules for determining a partner's share of depreciation or amortization from contributed property subject to section 704(c). The proposed regulations provide that a contributing partner's share of depreciation or amortization includes depreciation or amortization allowed or allowable prior to contribution. In addition, the proposed regulations provide that curative and

remedial allocations generally reduce the contributing partner's share of depreciation or amortization and increase the noncontributing partners' shares of depreciation or amortization.

Treasury and the Service request comments on whether these special rules can be incorporated into accounting systems that track section 704(c) allocations for partnerships with multiple section 704(c) properties.

Proposed Effective Date

These amendments are proposed to apply to properties acquired by a partnership on or after the date the regulations are published as final regulations in the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 27, 1997, at 10:00 a.m. in room 3313 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by March 6, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 6, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal authors of these regulations are Daniel J. Coburn and Deborah Harrington, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements. Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.704–3 is amended as follows:

1. Paragraphs (a)(9) and (a)(10) are redesignated as paragraphs (a)(10) and (a)(11), respectively.

2. New paragraph (a)(9) is added.

The addition reads as follows:

§ 1.704–3 Contributed property.

(a) * * *

(9) *Contributing and noncontributing partners' recapture shares.* For special rules applicable to the allocation of recapture gain with respect to property contributed by a partner to a partnership, see §§ 1.1245–1(e)(2) and 1.1250–1(f).

* * * * *

Par. 3. Section 1.1245–1 is amended by revising paragraph (e)(2) to read as follows:

§ 1.1245–1 General rule for treatment of gain from dispositions of certain depreciable property.

* * * * *

(e) * * *

(2)(i) Unless paragraph (e)(3) of this section applies, a partner's distributive share of gain recognized under section 1245(a)(1) by the partnership is equal to the lesser of the partner's share of the total gain from the disposition of the property or the partner's share of the depreciation or amortization with respect to the property. Any gain recognized under section 1245(a)(1) by the partnership that is not allocated under the first sentence of this paragraph is allocated among the partners whose shares of total gain exceed their shares of depreciation or amortization with respect to the property and is allocated to those partners in proportion to (but not in excess of) their shares of the total gain (including gain recognized under section 1245(a)(1)) from the disposition of the property.

(ii) A partner's share of depreciation or amortization with respect to property equals the total amount of allowed or allowable depreciation or amortization previously allocated to that partner with respect to the property. If a partner transfers a partnership interest, a share of depreciation or amortization must be allocated to the transferee partner as it would have been allocated to the transferor partner. If the partner transfers a portion of the partnership interest, a share of depreciation or amortization proportionate to the interest transferred must be allocated to the transferee partner.

(iii)(A) A partner's share of depreciation or amortization with respect to property contributed by the partner includes the amount of depreciation or amortization allowed or allowable to the partner for the period prior to the property's contribution.

(B) The partners' shares of depreciation or amortization with respect to property contributed by a partner must be adjusted to account for any curative allocations. (See § 1.704–3(c) for a description of the curative allocation method). The contributing partner's share of depreciation or amortization with respect to the contributed property is decreased (but not below zero) by the amount of any curative allocation of ordinary income to the contributing partner with respect to the contributed property and by the amount of any curative allocation of deduction or loss (other than capital loss) allocated to the noncontributing partners with respect to the contributed property. A noncontributing partner's share of depreciation or amortization with respect to the contributed property is increased by the noncontributing partner's share of any curative allocation of ordinary income to the contributing partner with respect to the contributed property and by the amount of any curative allocation of deduction or loss (other than capital loss) allocated to the noncontributing partner with respect to the contributed property. The partners' shares of depreciation or amortization with respect to property from which curative allocations of depreciation or amortization are taken is determined without regard to those curative allocations.

(C) The partners' shares of depreciation or amortization with respect to property contributed by a partner must be adjusted to account for any remedial allocations. (See § 1.704–3(d) for a description of the remedial allocation method.) The contributing partner's share of depreciation or amortization with respect to the contributed property is decreased (but not below zero) by the amount of any remedial allocation of ordinary income to the contributing partner with respect to the contributed property. A noncontributing partner's share of depreciation or amortization with respect to the contributed property is increased by the amount of any remedial allocation of depreciation or amortization to the noncontributing partner with respect to the contributed property.

(D) The principles of this paragraph (e)(2)(iii) apply in determining the effect of remedial or curative allocations on a partner's share of depreciation or amortization with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(f).

(iv) *Examples.* The application of this paragraph (e)(2) may be illustrated by the following examples:

Example 1. Recapture allocations. (i) *Facts.* A and B each contribute $5,000 cash to form AB, a general partnership. The partnership agreement provides that depreciation deductions will be allocated 90 percent to A and 10 percent to B, and, on the sale of depreciable property, A will first be allocated gain to the extent necessary to equalize A's and B's capital accounts. Any remaining gain will be allocated 50 percent to A and 50 percent to B. In its first year of operations, AB purchases depreciable equipment for $5,000. AB depreciates the equipment over its 5-year recovery period and elects to use the straight-line method. In its first year of operations, AB's operating income equals its expenses (other than depreciation).

(ii) *Year 1.* In its first year of operations, AB has $1,000 of depreciation from the partnership equipment. (To simplify this example, the partnership's depreciation deductions are determined without regard to any first-year depreciation conventions.) In accordance with the partnership agreement, AB allocates 90 percent ($900) of the depreciation to A and 10 percent ($100) of the depreciation to B. At the end of the year, AB sells the equipment for $5,200, recognizing $1,200 of gain ($5,200 amount realized less $4,000 adjusted tax basis). In accordance with the partnership agreement, the first $800 of gain is allocated to A to equalize the partners' capital accounts, and the remaining $400 of gain is allocated $200 to A and $200 to B.

(iii) *Recapture allocations.* $1,000 of the gain from the sale of the equipment is treated as gain recognized under section 1245(a)(1). Under paragraph (e)(2)(i) of this section, each partner's share of this section 1245 gain is the lesser of the partner's share of total gain recognized on the sale of the equipment or the partner's share of total depreciation with respect to the equipment. Thus, A's share of the section 1245 gain is $900 (the lesser of A's share of total gain ($1,000) and A's share of depreciation ($900)) and B's share of the section 1245 gain is $100 (the lesser of B's share of total gain ($200) and B's share of depreciation ($100)). Accordingly, $900 of the $1,000 of total gain allocated to A will be treated as ordinary income and $100 of the $200 of total gain allocated to B will be treated as ordinary income.

Example 2. Recapture allocation limited by gain share. Assume the same facts as in *Example 1,* except that the partnership agreement provides that gains and losses from the sale of depreciable property will be allocated equally between the partners. On the sale of the equipment, the partnership's total gain of $1,200 is allocated $600 to A and $600 to B. Under paragraph (e)(2)(i) of this section, A's share of the section 1245 gain is limited to $600 (the amount of total gain allocated to A) even though A's share of the total depreciation from the equipment was $900. The remaining $400 of section 1245 gain must be allocated to B. Accordingly, all $600 of total gain allocated to A is treated as ordinary income and $400 of the $600 of total gain allocated to B is treated as ordinary income.

Example 3. Determination of partners' shares of depreciation with respect to contributed property. (i) *Facts.* C and D form partnership CD as equal partners. C contributes depreciable personal property C1 with an adjusted tax basis of $800 and a fair market value of $2,800. D contributes $2,800 cash. Prior to contributing C1, C claimed $200 of depreciation from C1. At the time of contribution, C1 has four years remaining on its 5-year recovery period and is depreciable under the straight-line method. At the time CD is formed, it purchases depreciable personal property D1 for $2,800, which is depreciable over seven years under the straight-line method. (To simplify the example, all depreciation is determined without regard to any first-year depreciation conventions).

(ii) *Traditional method.* C and D will each be allocated $350 of the total of $700 of book depreciation from C1 in year 1. Under the traditional method of making section 704(c) allocations, C will not be allocated any tax depreciation from C1 and D will be allocated the entire $200 of tax depreciation from C1. C and D will each be allocated $200 of book and tax depreciation from D1. As a result, after the first year of partnership operations, C's share of depreciation with respect to C1 is $200 (the depreciation taken by C prior to contribution) and D's share of depreciation with respect to C1 is $200 (the amount of tax depreciation allocated to D). C and D each have a $200 share of depreciation with respect to D1.

(iii) *Effect of curative allocations.* If the partnership elects to make curative allocations under § 1.704–3(c) using depreciation from D1, the results in year 1 will be the same as under the traditional method, except that $150 of the $200 of tax depreciation from D1 that would have been allocated to C under the traditional method will be allocated to D as additional depreciation with respect to C1. As a result, after the first year of partnership operations, C's share of depreciation with respect to C1 will be reduced to $50 (the total depreciation taken by C prior to contribution ($200) decreased by the amount of the curative allocation to D ($150)). C's share of depreciation with respect to D1 will still be $200 and D's share of depreciation with respect to C1 will be $350 (the depreciation allocated to D under the traditional method ($200) increased by the amount of the curative allocation to D ($150)). D's share of depreciation with respect to D1 will still be $200.

(iv) *Effect of remedial allocations.* If the partnership elects the remedial allocation method for making section 704(c) allocations under § 1.704–3(d), there will be $600 of total book depreciation from C1 in year 1. (Under the remedial allocation method, the amount by which C1's book basis ($2,800) exceeds its tax basis ($800) is depreciated over a 5-year life, rather than a 4-year life). C and D will each be allocated one-half ($300) of the total book depreciation. As under the traditional method, C will be allocated $0 of tax depreciation from C1 and D will be allocated $200 of tax depreciation from C1. Because the ceiling rule would cause a disparity of $100 between D's book and tax allocations of depreciation, D will also receive a $100 remedial allocation of depreciation with respect to C1, and C will receive a $100 remedial allocation of income with respect to C1. As a result, after the first year of partnership operations, D's share of depreciation with respect to C1 is $300 (the depreciation allocated to D under the traditional method ($200) increased by the amount of the remedial allocation ($100)). C's share of depreciation with respect to C1 is $100 (the total depreciation taken by C prior to contribution ($200) decreased by the amount of the remedial allocation of income ($100)). As under the traditional method, C and D each have a $200 share of depreciation with respect to D1.

(v) *Effective date.* This paragraph (e)(2) is effective for properties acquired by the partnership on or after [the date the regulations are published as final regulations in the Federal Register].

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–31364 Filed 12–11–96; 8:45 am]

BILLING CODE 4830–01–U

Notices

Federal Register
Vol. 61, No. 240
Thursday, December 12, 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

Forest Service

Cold Springs Project, Rocky Mountain Region, Medicine Bow/Routt National Forest, Albany County, WY and Converse County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to improve forest health by tree harvest, and treatment of excess fuels to manage an increasing catastrophic wildfire potential, and to accomplish other connected and/or related action(s), including wildlife habitat improvement and improved access development and travel management, within the Cold Springs analysis area on the Medicine Bow/Routt National Forest in Albany and Converse counties, Wyoming, which are now ripe for decision.

The Forest Service invites comments, and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning, in cooperation with the State of Wyoming and other federal agencies, a full environmental analysis of this proposal, an alternative to it that will examine the effects of doing nothing, i.e., a ''no action'' alternative to the proposal, and other alternatives as may be determined to be appropriate in order to analyze significant issues that may surface during scoping and the initial public comment period. Interested or affected persons may participate in, and contribute to this analysis, and to the final decision. A public meeting will be held in January, 1997 at the new Douglas Ranger District Office at 2250 East Richards Avenue, Douglas, Wyoming on a date and time to be determined. The purpose of this meeting is to present, describe and discuss site-specific information about the proposed action and the analysis area, and to provide an opportunity for the public and agencies to ask questions and comment about issues that should be considered in the analysis. Interested persons may contact the District Ranger at the address or telephone number given below after December 5, 1996, to learn the date and time.

The issues raised at this meeting and during the scoping phase of the analysis will establish the scope of the environmental analysis and help the responsible official develop a reasonable range of alternatives to be considered. The Forest Service welcomes and will consider all timely public or agency comments on this proposal.

DATES: Comments in response to this Notice of Intent and concerning the scope of the analysis may be written or oral, and should be received by February 3, 1997.

ADDRESSES: Send written comments to Malcolm Edwards, District Ranger, Douglas Ranger District, 809 S. 9th Street, Douglas, Wyoming 82633. Oral comments can be made by calling (307) 358–4690.

RESPONSIBLE OFFICIAL: Jerry E. Schmidt, Forest Supervisor, Medicine Bow/Routt National Forest, 2468 Jackson St., Laramie, Wyoming, 82070.

FOR FURTHER INFORMATION CONTACT: William Steenson, Environmental Coordinator, at (307) 358–4690.

SUPPLEMENTARY INFORMATION: The proposal for the Cold Springs project includes individual tree harvest, by salvage and stand thinning, and stand regeneration methods, of an estimated 8 mmbf (million board feet), associated road construction and/or reconstruction over an estimated at 9.0 miles, right(s)–of–way acquisition, fuels treatment, wildlife habitat enhancements, and related actions. The tree harvest is intended to promote a healthy forest stand condition, salvage dead and dying trees that are accessible and useable, and provide commercial wood products to industry, improve tree age class distribution and increase the acres of young trees in the area, and benefit wildlife species that use forest stands and non-forest areas in all successional stages. The Cold Springs analysis area contains two(2) relatively large land areas that are minimally-roaded by historic, two-track roads, and have what may be described as a ''roadless character'', and are, therefore, suitable for analysis in an EIS.

The decision to be made is whether, and by what means, to proceed with tree harvest by timber sale(s), associated access and road construction activities, stand regeneration and wildfire hazard reduction, and other connected and related actions to achieve project goals and objectives.

The Medicine Bow National Forest Land and Resource Management Plan includes provisions for two(2) timber sales currently decided and/or now in NEPA analysis in what has more recently become known as the Cold Springs analysis area. These sales are the Box Elder (1997) and Russell's Camp (1997) sales. The cumulative effects of these planned sale offerings will be analyzed together with any other site-specific proposals for tree removal by commercial sale offerings that may be made a part of the pending Cold Springs environmental assessment.

The Forest Service currently manages the NFS lands within the analysis area under ''Management Prescriptions 1A, 2A, 5B, 6B and 9A.'' The proposed action is consistent with the management standards and guidelines, goals and objectives for these management areas and the Medicine Bow National Forest Plan.

The Draft Environmental Impact Statement (DEIS) is expected to be available after August, 1997; the Final Environmental Impact Statement and Record of Decision after December, 1997.

A 60-day public comment period on the DEIS will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability'' in the Federal Register.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft stage, but are not

raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these rulings, it is important that persons who are interested in this proposal participate by the close of the 60-day comment period so that the Forest Service has all substantive comments and objections available at a time when it can meaningfully consider them, and can respond to them in the Final EIS.

To assist the responsible official in identifying and considering issues about the proposed action, comments on the Draft EIS should be specific to the analysis area and the actions considered. It is helpful if comments reference specific chapters, sections and page numbers. Comments may address the adequacy of the analysis documented in the draft, or the merits of the alternatives formulated and discussed. Reviewers may wish to refer to the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1503.3) in addressing these points. All comments made on a DEIS are regarded as public information.

Dated: November 25, 1996.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 96–31501 Filed 12–11–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems, Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held January 7 & 8, Room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

January 7

General Session

9:00 a.m.–12:00 p.m.

1. Opening remarks by the Chairmen.
2. Presentation on Office of Exporter Services outreach program.
3. Update on status of Export Administration Regulations.
4. Public discussion on encryption issues.
5. Other comments or presentations by the public.

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

January 8

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below:

Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: December 6, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–31495 Filed 12–11–96; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 6, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits and GALs.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995).

Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant the section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following limits:

Category	Restraint limit
338/638	793,000 dozen.
339/639	943,669 dozen.
340/640	816,350 dozen.
342/642	574,484 dozen.
347/348/647/ 648.	1,954,182 dozen of which not more than 1,032,396 dozen shall be in Categories 647/648.
351/651	978,664 dozen.
352/652	10,070,000 dozen.
433	21,400 dozen.
442	72,658 dozen.
443	132,928 numbers.
444	72,658 numbers.
448	37,430 dozen.
633	119,783 dozen.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), and 54 FR 50425 (December 6, 1989), effective on January 1, 1997, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the period January 1, 1997 through December 31, 1997:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/ 648.	8,050,000 dozen.
351/651	1,000,000 dozen.
352/652	30,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC, and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–31537 Filed 12–11–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, December 19, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of the Notification to the Chicago Board of Trade regarding the adequacy of the delivery specifications for its corn and soybean contracts.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–31763 Filed 12–10–96; 3:32 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on January 7, 1997; January 14, 1997; January 21, 1997; and January 28, 1997; at 10:00 a.m., in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: December 6, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–31553 Filed 12–11–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–130–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

December 6, 1996.

Take notice that on November 27, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta STE 125, Houston, Texas 77057–5637, filed in Docket No. CP97–130–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to establish a point of delivery to be located in Williamson County, Tennessee, for Part 284, Subpart G transportation service at an existing interconnection to United Cities Gas Company (United Cities) under Columbia Gulf's blanket certificate issued in Docket No. CP83–496–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to establish an interconnection originally constructed pursuant to the Natural Gas Policy Act Section 311 authorization located in Williamson County, Tennessee, for Untied Cities. Columbia Gulf states the two 12-inch taps were put in-service on November 20, 1995, with the actual cost of the installation to them being $436,455. Columbia Gulf advises the estimated quantity of natural gas to be delivered to the existing interconnection is 30,500 Dth daily and 1 Bcf annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31518 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–115–000]

Koch Gateway Pipeline Company; Correction to Notice of Proposed Changes in FERC Gas Tariff

December 6, 1996.

Take notice that on December 3, 1996, the Commission advised the public of a November 27, 1996 filing made by Koch Gateway Pipeline Company (Koch). According to Koch the December 3 notice did not accurately represent the nature and content of the filing. Accordingly, the Commission now revises that notice.

Take notice that on November 27, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing the following tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective December 27, 1996:

Sixth Revised Sheet No. 2705
Sixth Revised Sheet No. 2706

Koch states this filing is submitted as an application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. ¶ 717c (1988), and Part 154 of the Rules and Regulations of the Federal Energy Regulatory Commission.

Koch states that it files the above tariff sheets to revise the Crediting of Revenue section of the Imbalance Resolution Procedures in Koch's General Terms and Conditions. Koch states that these revisions clearly address how both cash and volumes will be accounted for under this program.

Koch states that copies of the filing are being mailed to Koch's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31515 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–158–000]

Mississippi River Transmission Corporation; Notice of Filing of Interruptible Revenue Crediting Report

December 6, 1996.

Take notice that on December 2, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing worksheets reflecting the proposed lump sum distribution of Excess Revenues derived from providing service under Rate Schedules ITS and ISS and certain revenues derived from authorized overrun service.

MRT states that the calculation of MRT's Excess Revenues results in a principal refund amount of $704,283 applicable to Rate Schedules FTS and SCT customers and a principal refund amount of $5,414 applicable to Rate Schedule FSS customers attributable to the 12-month period ended October 31, 1996. MRT states that the filing is being made pursuant to Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

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, 88 First Street, NE., 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 on or before December 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31514 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–180–000 and RP97–181–000 (Not Consolidated)]

Northwest Pipeline Corporation, CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1996.

Take notice that the applicants referenced above tendered for filing pro forma tariff sheets in 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 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 NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 23, 1996. Protests will be considered by the Commission in determining the appropriation action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31513 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–129–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application to Amend Certificate

December 6, 1996.

Take notice that on November 27, 1996, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP97–129–000, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations (18 CFR 157), to amend the case-specific certificate of public convenience and necessity issued in Docket No. CP84–146–000, *et al.* pursuant to which Transco provides firm transportation service to Public Service Electric & Gas Company (PSE&G) under Transco's Rate Schedule X–275. Transco wants to add an existing interconnection between the systems of Transco and CNG Transmission Corporation at Leidy, Pennsylvania (CNG/Leidy) as a point of receipt under Rate Schedule X–275, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that the CNG/Leidy receipt point is within PSE&G's existing firm transportation path under Rate Schedule X–275. Transco asserts that the addition of this receipt point will not result in any detriment or disadvantage to Transco's other customers, alter the firm quantities authorized for delivery to PSE&G, or require the construction of any facilities.

Transco explains that this amendment is required by the public convenience and necessity because it will enable PSE&G to access additional gas supplies from the CNG/Leidy receipt point under the Rate Schedule X–275 service, thereby adding security and flexibility to the gas supply requirement of PSE&G and its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 16, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time require herein, if the Commission on its own review of the matter finds that a grant of the certificate for the proposal is require by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice is such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31519 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–42–001]

Truckline Gas Company; Notice of Proposed Change in FERC Gas Tariff

December 6, 1996.

Take notice that on December 4, 1996, Truckline Gas Company (Truckline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective November 17, 1996.

Truckline states that this filing is being made as a result of Truckline including two typographical errors on Sheet No. 9A, which was included in the October 18, 1996 filing in this docket and to repaginate Rate Schedule LFT which was inadvertently placed in with Rate Schedule QNT. Truckline states that the tariff sheets included in Appendix A merely correct administrative errors and in no way change Rate Schedule LFT as it was approved by the Commission on November 15, 1996.

Truckline states that copies of this filing are being served on all parties to this proceeding, jurisdictional customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31516 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–14–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

December 6, 1996.

Take notice that on December 4, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 4, 1996:

Second Revised Volume No. 1

Twelfth Revised Sheet No. 778
Fourteenth Revised Sheet No. 779
Thirteenth Revised Sheet No. 780
Eleventh Revised Sheet No. 781
Thirteenth Revised Sheet Nos. 782–784
Fifteenth Revised Sheet No. 785
Sixteenth Revised Sheet No. 786
Seventeenth Revised Sheet Nos. 787–788
Eighteenth Revised Sheet Nos. 789–790
Seventeenth Revised Sheet No. 791
Eighteenth Revised Sheet Nos. 792–794
Thirteenth Revised Sheet No. 829
Fourteenth Revised Sheet No. 831

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31517 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–73–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 5, 1996.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. EL96–73–000]

Take notice that on October 25, 1996, PSI Energy, Inc. tendered for filing additional information to its August 23, 1996, filing in this docket.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Atlantic City Electric Company, Delmarva Power & Light Company

[Docket No. EC97–7–000]

Take notice that on November 27, 1996, Atlantic City Electric Company (Atlantic) and Delmarva Power & Light Company (Delmarva) (collectively, ''Applicants'') tendered for filing an application to merge Atlantic and Delmarva as separate operating subsidiaries of a newly-formed holding company, which will be a registered holding company under the Public Utility Holding Company Act (PUHCA).

Atlantic is currently a subsidiary of Atlantic Energy, Inc., an exempt holding company under PUHCA. Under the terms of an Agreement and Plan of Merger, the common shares of Atlantic Energy and Delmarva will be surrendered and the common shareholders will receive common shares of the newly-formed, as-yet unnamed holding company. Applicants state that the exchange ratios for the common stock were negotiated at arms-length. As part of these negotiations, applicants also agreed that Atlantic Energy shareholders will receive a separately established amount of so-called ''Class A'' common stock.

Notice is also hereby given that in conjunction with and dependent on approval of the merger, applicants have proposed a ''hold-harmless'' provision that is stated to ensure that the merger will not increase the rates under any existing FERC-jurisdictional resale agreement throughout the remaining terms of such agreements.

Applicants have filed a joint open-access FERC Order No. 888 transmission tariff, which applicants state would go into effect at the time the merger closes unless superseded by tariffs made effective as part of the ongoing proceedings involving the restructuring of the Pennsylvania-New Jersey-Maryland Interconnection Association.

Applicants submit that the proposed merger, which, for accounting purposes, is treated as an acquisition by Delmarva of Atlantic Energy, is consistent with the public interest as required by Section 203 of the FPA. Applicants, therefore, request that the Commission approve the proposed transaction and merger without the necessity of a hearing.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas & Electric Company

[Docket No. ER97–205–000]

Take notice that on November 27, 1996, Pacific Gas & Electric Company tendered for filing a correction to its October 24, 1996, filing in the above-referenced docket.

Copies of this filing have been served upon the U.S. Department of the Navy and the California Public Utilities Commission.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER97–304–000]

Take notice that on November 25, 1996, Interstate Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER97–506–000]

Take notice that on November 19, 1996, Florida Power & Light Company tendered for filing a Notice of Cancellation of the Service Agreement with Industrial Energy Applications, Inc.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER97–539–000]

Take notice that on November 21, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed umbrella type transmission service agreement between WPSC and Sonat Power Marketing L.P., dated November 5, 1996.

Comment date: December 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER97–562–000]

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 Montaup Electric Company (Montaup). 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 Montaup and the Massachusetts Department of Public Utilities.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER97–563–000]

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 Equitable Power Services Co. (Equitable). 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 Equitable and the Massachusetts Department of Public Utilities.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER97–564–000]

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 Equitable Power Services Co. (Equitable). 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 Equitable and the Massachusetts Department of Public Utilities.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–565–000]

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. 8 to add Illinova Power Marketing, Inc. and Public Service Electric and Gas Company to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing to the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is November 21, 1996.

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, and the West Virginia Public Service Commission.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–579–000]

Take notice that on November 25, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Commonwealth Edison Company (Commonwealth). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Commonwealth.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Potomac Electric Power Company

[Docket No. ER97–580–000]

Take notice that on November 25, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Engelhard Power Marketing, Inc., Enron Power Marketing, Inc. and Potomac Electric Power Company. An effective date of November 25, 1996, for these service agreements, with waiver of notice, is requested.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER97–581–000]

Take notice that on November 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Morgan Stanley Capital Group, Inc. This Transmission Service Agreement specifies that Morgan Stanley Capital Group, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in [Docket No. OA96–194–000]. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Morgan Stanley Capital Group, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Morgan Stanley Capital Group, Inc. as the parties may mutually agree.

NMPC requests an effective date of November 13, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Morgan Stanley Capital Group, Inc.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. OA97–34–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 20, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and InterCoast Power Marketing Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on InterCoast Power Marketing Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. OA97–35–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Heartland Energy Services, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Heartland Energy Services, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. OA97–36–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Kimball Power Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Kimball Power Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. OA97–37–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Koch Power Services, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Koch Power Services, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. OA97–38–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Citizens Lehman Power Sales.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Citizens Lehman Power Sales, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. OA97–39–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Catex Vitol Electric LLC.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Catex Vitol Electric LLC, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. OA97–40–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and AES Power, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on AES Power, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. OA97–41–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and LG&E Power Marketing Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on LG&E Power Marketing, Inc. the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. OA97–42–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Duke/Louis Dreyfus L.L.C.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Duke/Louis Dreyfus L.L.C., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. OA97–43–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996,

tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and MidCon Power Services Corp.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on MidCon Power Services Corp., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. OA97–44–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Torco Energy Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Torco Energy Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. OA97–45–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Stand Energy Corporation.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Stand Energy Corporation, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Cinergy Services, Inc.

[Docket No. OA97–46–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and NorAm Energy Services, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on NorAm Energy Services, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. OA97–47–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and City of Tallahassee.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on City of Tallahassee, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc.

[Docket No. OA97–48–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Sonat Power Marketing, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Sonat Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. OA97–49–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 22, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Tennessee Power Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Tennessee Power Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. OA97–50–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 25, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Central Illinois Light Company.

The modifications are being made to comply with the unbundling

requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Central Illinois Light Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. OA97–51–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 25, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Industrial Energy Applications, Inc.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Industrial Energy Applications, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. OA97–52–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 25, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and Aquila Power Corporation.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on Acquila Power Corporation, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. OA97–53–000]

Take notice that Cinergy Services, Inc. (Cinergy) on November 25, 1996, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), modifications to the Interchange Agreement between Cinergy and PECO Energy Company.

The modifications are being made to comply with the unbundling requirement for coordination contracts contained in the Commission's Order No. 888 by the December 31, 1996 deadline.

Cinergy has requested an effective date of January 1, 1997.

Copies of the filing were served on PECO Energy Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31521 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP96–492–000, CP96–492–002, and CP96–606–000]

CNG Transmission Corporation, Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Seasonal Service Expansion Project and Request for Comments on Environmental Issues

December 6, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Seasonal Service Expansion Project.[1] The total project involves the construction of about 43.6 miles of pipeline, five salt caverns, four brine injection wells, one new compressor station, and additional facilities at an existing compressor station; use of five existing caverns at a storage facility; and hydrostatic testing of existing pipeline for operation at higher pressure. The facilities would be in West Virginia, Pennsylvania, New York, Maryland, and Virginia. (See appendix 1 for location maps of the proposed facilities.)[2] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Projects

CNG Transmission Corporation (CNG) in Docket No. CP96–492–000 (''SSE Project'') and Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. CP96–606–000 (''Winternet Project'') (together these projects are referred to as the ''Seasonal Service Expansion Project'') want to expand the capacity of their facilities.[3]

For the SSE Project, CNG proposes facilities to provide 103,000 dekatherms per day (Dth/d) of transmission service and 9.3 billion cubic feet (Bcf) of storage capacity for various customers. CNG seeks authority to:

[1] CNG Transmission Corporation's and Texas Eastern Transmission Corporation's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] CNG filed a related application in Docket No. CP96–493–000. The staff will prepare a separate environmental assessment for that project.

- construct about 15.1 miles of 24-inch-diameter pipeline in Wetzel County, West Virginia (Line TL–492 Extensions 1 and 2);
- construct a 4,000 horsepower (hp) addition to the existing Chambersburg Compressor Station in Franklin County, Pennsylvania;
- conduct hydrostatic testing of five segments of the existing 30-inch-diameter Line PL–1 in Loudoun County, Virginia; Frederick and Washington Counties, Maryland; and Franklin County, Pennsylvania, and to increase the maximum allowable operating pressure of those pipeline segments to 1,250 pounds per square inch gauge (psig);
- construct a new compressor station (Bath Compressor Station) with three 3,200 hp compressors in Steuben County, New York;
- construct metering and regulating facilities at the Bath Compressor Station;
- construct about 20.4 miles of 16-inch-diameter pipeline in Steuben County, New York, connecting CNG's Woodhull Compressor Station to the Bath Compressor Station (Line TL–504);
- lease from Texas Eastern 64,000 Dth/d of transmission capacity on the CRP Line in Pennsylvania from November 1, 1997, through October 31, 1999; and
- lease, operate, convert, and develop (over a period of four years) salt cavern storage facilities near the Town of Bath, New York, at the Bath Petroleum Storage Inc. (Bath Petroleum) storage facility including:

—conversion of five existing liquid hydrocarbon storage caverns to gas storage caverns (well numbers 1, 3, 5, 6, and 7);
—development of five gas storage caverns (well numbers 9, 10, 11, 12, and 14);
—drilling or four brine disposal wells (wells 1BD, 2BD, 3BD, and 4BD) and use of an existing brine disposal well (well 8BD); and
—construction of various lengths of 16-, 12-, and 8-inch-diameter pipeline to connect the 10 storage wells to the Bath Compressor Station.

Bath Petroleum, acting as a contractor for CNG, would convert the caverns to gas storage and construct the additional salt caverns and pipelines within its existing storage facility.

For the Winternet Project, Texas Eastern proposes to lease to CNG 64,000 Dth/d of transmission capacity on the CRP Line (jointly-owned by Texas Eastern and CNG) in Pennsylvania from November 1, 1997, through October 31, 1999. After October 31, 1999, this capacity would be committed to Columbia Gas Transmission Corporation pursuant to a pending application in Docket No. CP96–559–000. In order to provide CNG with continued transmission capacity after October 31, 1999, Texas Eastern proposes to construct additional capacity in 1999 on the CRP Line including:

- 4.96 miles of 36-inch-diameter pipeline on the discharge of the Uniontown Compressor Station from mileposts (MPs) 1071.64 to 1076.60 in Somerset County, Pennsylvania, replacing 24-inch-diameter idled pipeline;
- 3.13 miles of 36-inch-diameter pipeline on the discharge of the Bedford Compressor Station from MPs 1123.73 to 1126.86 in Fulton County, Pennsylvania, replacing 24-inch-diameter idled pipeline; and
- the following aboveground facilities:

—mainline, crossover, and blowoff piping and valving;
—pressure regulating devices;
—pig launchers and receivers; and
—associated pipeline and valves for operating and maintenance purposes.

Land Requirements for Construction

The following table summarizes the acres of land required for the projects by docket.

Disturbed areas	CP96–492–000	CP96–606–000
Temporary Work Space	246	79
Permanent Right-of-way	194	60
New Aboveground Facilities	44	0
Total (by project)	484	139

Construction of all facilities proposed by CNG and Texas Eastern would require about 623 acres of land. Following construction, about 254 acres would be maintained as new permanent right-of-way and about 44 acres as new aboveground facility sites. The remaining 325 acres of land would be restored and allowed to revert to its former use.

Additional temporary work spaces may be required at road, stream, and wetland crossings. Access to most of the project would be along existing roads that may require widening and/or grading. A few new access roads may be constructed.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest

groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG and Texas Eastern.

This preliminary list of issues may be changed based on your comments and our analysis.

- About 8 acres of prime farmland would be taken permanently out of agricultural production by the expansion at the Chambersburg Compressor Station.
- Hydrostatic testing of the Myersville segment, Frederick County, Maryland, is within the South Mountain State Park.
- Federally listed endangered or threatened species may occur in the proposed project area.
- The crossing of the Canisteo River requires a Section 401 permit and a site specific crossing plan.
- Increase in noise and emissions would occur due to the construction of the Bath Compressor Station and the expansion of the Chambersburg Compressor Station.
- A total of 39 wetlands would be crossed.
- A total of 41 streams (18 perennial and 23 intermittent) would be crossed. Four of the perennial streams in West Virginia are classified as high quality streams. Six perennial streams in Pennsylvania and six in New York are classified as cold water fisheries.
- The use of the Bath Petroleum storage facility would involve:

—conversion of existing liquid petroleum products storage caverns to natural gas storage;
—development by solution mining (leaching) of new storage caverns;
—drilling and use of brine disposal wells;
—withdrawal of groundwater to use in the leaching process;
—disposal of brine and solid wastes created by the leaching process; and
—long-term operation issues involved in using salt caverns.

Public Participation

Your can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426;
- Reference Docket Nos. CP96–492–000, CP96–492–002, and CP96–606–000;
- Also, send a *copy* of your letter to: Ms. Jennifer Goggin, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before January 6, 1997.

If you wish to receive a copy of the EA, you should request one from Ms. Goggin at the above address by using the form attached as Appendix 3.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

Your do not need intervenor status to have your scoping comments considered.

Additional procedural information about the proposed project is available from Ms. Jennifer Goggin, EA Project Manager, at (202) 208–2226.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31520 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1494–133, et al.

Hydroelectric Applications [Grand River Dam Authority (GRDA), et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Non-project Use of Project Lands (Expansion of Marina).

b. Project No.: 1494–133.

c. Date Filed: October 7, 1996.

d. Applicant: Grand River Dam Authority (GRDA).

e. Name of Project: Pensacola Project.

f. Location: The proposed marina expansion would be located in the Duck Creek area of Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant contact: Marsha Hawkins, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. FERC contact: John K. Hannula, (202) 219–0116.

j. Comment date: January 9, 1997.

k. Description of the Application: GRDA requests approval to permit Terry Frost, d/b/a Cherokee Yacht Club, to add two additional docks containing 53 boat slips.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. Type of Application: Joint Application for Transfer of License.

b. Project No.: 3155–020.

c. Date Filed: October 21, 1996.

d. Applicants: Coxlake Carbonton Associates, L.P. and Coxlake Carbonton Associates, LLC.

e. Name of Project: Carbonton Dam Hydroelectric Project.

f. Location: On the Deep River in Lee County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 USC 791 (a)–825 (r).

h. Contacts:

Garrison W. Brinton, Manager, Cox Lake Carbonton Associates, 50 East 77th Street, New York, NY 10021, (212) 628–6499.

Shiryl G. Ballard, Esquire, Hunton & Williams, P.O. Box 109, Raleigh, NC 27602, (919) 899–3000.

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

j. Comment Date: January 10, 1997.

k. Description of the Proposed Action: The licensee, Coxlake Carbonton Associates, L.P., a New York limited partnership, seeks to transfer the project license to Coxlake Carbonton Associates, LLC, a North Carolina limited liability company.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

3a. Type of Filing: Request for Extension of Time to Commence Project Construction.

b. Applicant: Northumberland Hydro Partners, L.P.

c. Project Name/No.: The proposed Northumberland Hydroelectric Project, FERC No. 4244–015, is to be located in Saratoga, Saratoga County, and Northumberland, Washington County, New York, on the Hudson River.

d. Date Filed: October 29, 1996.

e. Pursuant to: Public Law 104–242.

f. Applicant Contact: John M. Forester, Exec. Vice President, Adirondack Hydro Development Corporation, 39 Hudson Falls Road, South Glens Falls, NY 12803, (518) 747–0930.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: January 9, 1997.

i. Description of the Request: Northumberland Hydro Partners, L.P. requests that the exiting deadline for the commencement of construction for FERC Project No. 4244 be extended to January 16, 1998.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. Type of Application: Petition for Declaratory Order.

b. Docket No: DI97–2–000.

c. Date Filed: 11/08/96.

d. Applicant: Petersburg Municipal Power & Light.

e. Name of Project: Blind Slough Project (FERC Project No. 201).

f. Location: In southeast Alaska on the southern portion of Mitkof Island approximately 16.5 highway miles south of the City of Petersburg. (T. 61 S., R. 80 E., secs. 12 and 13, and T. 61 S., R. 81 E., secs. 6, 7, 8 and 18, Copper River Meridian, AK).

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Nan Nalder, Acres International Corporation, 3254 Eleventh Avenue, Seattle, WA 98119, (206) 281–7079, (206) 213–0652 (FAX).

i. FERC Contact: Diane M. Murray (202) 219–2682.

j. Comment Date: January 10, 1997.

k. Description of Project: The existing project consists of: (1) A 32-foot-high by 205-foot-long rockfill dam with a concrete upstream face covered by ¼-inch thick aluminum plate and surmounted by a 30-inch aluminum parapet wall; (2) an ungated side-channel spillway; (3) Crystal Lake Reservoir, with approximately 4,450 acre-feet of active storage and a surface area of 233 acres at spillway crest elevation 1,294 feet msl; (4) a 4,642-foot-long, 20-inch- diameter steel penstock; (5) a small collection basin near the downstream toe of the project's dam, containing two pumps used to pump leakage flow into the project's penstock; (6) two powerhouses containing generating units with rated capacities of 1,600 kW and 400 kW; and (7) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To provide electricity for the Petersburg Municipal Power & Light customers.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. Type of Application: Amendment of license.

b. Project Nos: 11077.

c. Date Filed: November 25, 1996.

d. Applicant: Alaska Power & Telephone Company.

e. Name of Project: Goat Lake Hydro Project.

f. Location: Skagway, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)-825(r).

h. Applicant Contact: Robert S. Grimm, P.O. Box 222, 191 Otto Street, Port Townsend, WA 98368, (907) 983–2902.

i. FERC Contact: Susan Tseng, (202) 219–2798.

j. Comment Date: January 21, 1997.

k. Description of Project: Alaska Power & Telephone Company (licensee) has filed an application to modify and relocate several project features. The licensee proposes to change the alignment and extend the access road to the bottom of the Skagway River Valley, relocate the powerhouse to the west side of the Skagway River, extend the transmission line to the new powerhouse location, realign the penstock route to provide to an elevated crossing of Brackett Wagon Road and the Skagway River, delete the 125-foot-long spillway and excavate a trench parallel to the natural outlet of the lake. The proposed changes will increase the acreage the project occupies on lands owned by the Alaska Department of Natural Resources, but do not affect the total acreage on federal lands.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 11594–000.

c. Date filed: November 12, 1996.

d. Applicant: Utah Associated Municipal Power Systems.

e. Name of Project: Dworshak Skeleton Bay Hydroelectric Project.

f. Location: Integral with the U.S. Army Corps of Engineer's existing 717-foot-high Dworshak dam, on the North Fork Clearwater River, in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Douglas Hunter, General Manager, Utah Associated Municipal Power Systems, 8722 South 300 West, Sandy, Utah 84070, (801) 566–3938.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: February 13, 1997.

k. Description of Project: The proposed project would involve adding a powerhouse onto the existing Corps of Engineer's powerhouse, and installing one generating unit with an installed capacity of 40 MW. Electricity will be transported via Bonneville Power Administration's existing transmission line.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: New Major License.

b. Project No.: P–2663–004.

c. Date Filed: May 12, 1995.

d. Applicant: Minnesota Power & Light Company.

e. Name of Project: Pillager Hydro Project.

f. Location: On the Crow Wing River in Cass and Morrison Counties near Pillager, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Christopher D. Anderson, Attorney, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 722–2641.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Deadline Date: See paragraph D9.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project consists of the following: (1) An existing reservoir with a surface area of 768 acres

(ac) at the normal maximum surface elevation of 1199.25 feet National Geodetic Vertical Datum (NGVD); (2) an existing earth dike, located in a swale north of the dam, about 1,332 feet long with a maximum height of about 2 feet and an existing earth embankment section (the ''North Embankment''), about 225 feet long with a maximum height of about 25 feet, which includes a two foot-wide concrete corewall; (3) an existing reinforced concrete powerhouse, supported on a pile foundation, 98 feet long, 38 feet wide, and 35 feet high, containing: (a) an intake structure, consisting of 4 intake bays with steel trashracks, controlled by 3 timber gates, (b) two vertical Francis turbines, each manufactured by S. Morgan Smith and rated at 1,300 hp (or 975 kW), and (c) two existing General Electric generators, each rated at 760 kW (providing at total plant capacity of 1,520 kW); (4) an existing concrete gravity roll-way type dam composed of: (a) a gated section, about 357 feet long, equipped with 16 timber stop log gates, (b) a sluice gate section about 13 feet long equipped with a 4 feet wide sluice gate and a 6 feet by 6 feet log sluice gate; (5) an existing earth embankment section, about 223 feet long with a maximum height of about 30 feet; and (6) existing appurtenant facilities. No changes are being proposed for this major license. The applicant estimates the average annual generation for this project is 8,826 MWh. The dam and existing project facilities are owned by the applicant.

m. Purpose of Project: Project power is utilized in the applicant's power generation system.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802 or by calling (218) 722–2641.

Standard Paragraphs

A4. *Development Application:* Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. *Preliminary Permit:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. *Notice of intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as

applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. *Filing and Service of Responsive Documents:* The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (February 3, 1997 for Project No. 2663–004). All reply comments must be filed with the Commission within 105 days from the date of this notice (March 20, 1997 for Project No. 2663–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: December 6, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–31522 Filed 12–11–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5664–1]

Agency Information Collection Activities Under OMB Review;NSPS for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the NESHAP for Small Industrial-Commercial-Institutional Steam Generating Units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 13, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer, United States Environmental Protection Agency, 202–260–2740, and refer to the EPA ICR No. 1564.04

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards (NSPS) for Small Industrial-Commercial-Institutional Steam Generating Units—40 CFR Part 60, Subpart Dc, OMB No. 2060–0202, Expiration Date: 9/30/96.

This is request for a reinstatement of a previously approved collection.

Abstract: The NSPS for Subpart Dc were proposed on June 9, 1989 and promulgated on September 12, 1990. These standards apply to steam generating units with a maximum design heat input capacity of 29 megawatts (MW)(100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) commencing construction, modification or reconstruction after June 9, 1989. The pollutants regulated under this Subpart include sulfur dioxide (SO_2) and particulate matter (PM).

Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are required, in general, of all sources subject to NSPS.

The standards require reporting of the results of the initial performance test to determine compliance with the applicable $S0_2$ and/or PM standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the SO_2 standard, the regulation requires submittal of the results of the CEMS demonstration.

After the initial report, the standard for SO_2 requires each affected facility to submit quarterly compliance reports. After the initial report, the standard for PM requires quarterly reports to be submitted to notify of any emissions exceeding the applicable opacity limit. If there are no excess emissions, a semiannual report stating that no exceedences occurred may be submitted.

The recordkeeping requirements for small industrial-commercial-institutional steam generating units consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including the applicable sulfur

dioxide and/or particulate matter results. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

The reporting requirements for this type of facility currently include the initial notifications listed, the initial performance test results, and quarterly report of SO_2 emissions, and instances of excess opacity. Semiannual opacity reports are required when there is no excess opacity. Semiannual excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedence or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 15, 1996.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small Industrial-Commercial-Institutional Steam Generating Units.

Estimated Number of Respondents: 319.

Frequency of Response: 4.

Estimated Total Annual Hour Burden: 229,673 Hours.

Estimated Total Annualized Cost Burden: $9,940,000.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1564.04 and OMB Control No. 2060–0202 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: December 6, 1996.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–31557 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–P

[AD–FRL–5663–8]

Agency Information Collection Activities Under OMB Review; Industrial Combustion Coordinated Rulemaking Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; and, it includes the actual data collection instrument (questionnaire).

DATES: Comments must be submitted on or before January 13, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1796.01. The ICR supporting statement and other relevant materials are also available electronically on the Technology Transfer Network (TTN). Choose the ''ICCR-Industrial Combustion Coordinated Rulemaking Process'' selection from the Technical Information Areas menu. To download the ICR from the main menu, select ''<R> Download Forms for Replies''. The TTN is one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits-per-second (bps) modem. The TTN is also accessible through the Internet via TELNET at ''TELNET ttnbbs.rtpnc.epa.gov'', or at the Internet World Wide Web site ''http:\\ttnwww.rtpnc.epa.gov''. If more information on the TTN is needed, call the help desk at (919) 541–5384. The help desk is staffed from 11:00 a.m. to 5:00 p.m., Eastern time. A voice menu system is available at other times.

SUPPLEMENTARY INFORMATION:

Title: Industrial Combustion Coordinated Rulemaking (ICCR) Questionnaire (EPA ICR No. 1796.01). This is a new collection.

Abstract: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is sent to ten or more persons unless it displays a currently valid OMB control number. The OMB control numbers for EPA's approved information collection requests are listed in 40 CFR Part 9 and 48 CFR 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on July 29, 1996 (61 FR 39450). Seven comments were received. A brief summary of the ICR is provided below; however, for more detail, refer to the previous Federal Register Notice and to the ICR supporting statement.

Sections 112 and 129 of the Clean Air Act (the Act) require EPA to develop regulations to limit emissions of toxic or hazardous air pollutants, and in some cases, emissions of certain criteria air pollutants as well, from several categories of combustion sources, including industrial boilers, commercial/institutional boilers, process heaters, industrial/commercial waste incinerators, other solid waste combustors, stationary combustion turbines, and stationary internal combustion engines. These combustion sources are used pervasively for energy generation and waste disposal in a wide variety of industries and commercial and institutional establishments. They combust fuels including oil, coal, natural gas, wood, and non-hazardous wastes. Both hazardous air pollutants and criteria pollutants are emitted.

These regulations could affect hundreds of thousands of combustion

sources nationwide and will have significant environmental, health, and cost impacts. The EPA has decided to coordinate the development of these regulations in a single effort termed the ''Industrial Combustion Coordinated Rulemaking'' (ICCR).

The overall goal of the ICCR is to develop a unified set of Federal air emissions regulations that will maximize environmental and public health benefits in a flexible framework at a reasonable cost of compliance, avoiding duplicative and overlapping regulatory requirements, within the constraints of the Act. A Federal Advisory Committee Act (FACA) advisory committee and a series of work groups, composed of stakeholders and EPA, have been established to develop recommendations that will assist EPA in implementing the ICCR. This will permit active stakeholder participation in all aspects of regulatory development.

Additional information about the ICCR, as well as information on how to participate in the ICCR, is available in the document ''Industrial Combustion Coordinated Rulemaking—Proposed Organizational Structure and Process.'' This document may be downloaded from the TTN, described above under ''For Further Information Contact:''.

The Clean Air Act requires development of six of the seven regulations by November 2000, which in turn necessitates proposal by November 1999—only three years from now. To ensure that the 1999 and 2000 dates are met, the necessary information to develop these regulations must be collected by early 1997, analyses of the information must be completed in 1997, regulatory alternatives must be identified and various analyses of the impacts associated with these alternatives must be completed in 1998, and the proposed rule(s) must be developed and proposed in 1999.

It should be noted that EPA is under Court Order to develop regulations under section 129 of the Act for industrial and commercial waste incinerators, which is one of the source categories included in the ICCR. The litigants have agreed to an interim extension of the court-ordered proposal date for these regulations from May 30, 1996 to January 15, 1997. As a condition associated with this extension, EPA must develop a formal questionnaire under section 114 of the Act by January 1997 to collect all the information EPA feels is necessary to develop regulations for industrial and commercial solid waste incinerators. The EPA will meet with the litigants in January 1997 to discuss whether sufficient information to develop regulations for industrial and commercial solid waste incinerators is likely to be obtained more quickly and effectively by sending out the questionnaire or by other means, such as through the ICCR.

It is EPA's hope that through the efforts of the stakeholders participating in the ICCR, there will be no need—or only a limited need—for EPA to use the authority of section 114 of the Act (which requires mandatory response) to send the formal questionnaire to thousands of combustion sources. It is the goal and the task of the Source Work Groups working under the ICCR FACA Advisory Committee to devise and implement a means for gathering the information necessary to develop regulations from all sources—including industry—in a voluntary and cooperative manner.

While initial response to the ICCR has been positive from all stakeholders, including industry, State/local agencies, environmental groups, etc., and EPA is committed to doing everything it can to ensure the success of the ICCR, EPA must be prepared and in a position to meet the statutory dates in the Act for adoption of the regulations. Consequently, EPA must proceed with development of an ICR for all the combustion sources included in the ICCR, and must proceed along this path in parallel with the Source Work Group activities under the ICCR. This will permit EPA to send out the questionnaire to gather the necessary information and do the necessary analyses in time to meet the statutory and court-ordered deadlines if the ICCR Work Group information collection efforts do not succeed.

If the judgment in January 1997 is that the information collection efforts through the ICCR have failed or proven to be inadequate, then EPA will implement the formal questionnaire by mid-January 1997. However, if it appears that the ICCR will be successful in collecting the needed information voluntarily, the questionnaire will not be sent out, or a scaled back version could be used to collect only the information that can not be obtained by other means.

Questionnaire Description: To develop regulations, EPA will need information to determine the maximum achievable control technology (MACT) floor; identify regulatory alternatives (i.e., possible regulations) more stringent than the MACT floor; and analyze the environmental and public health benefit, as well as the cost and economic impacts of the alternatives. These analyses of impacts are the basis for decisions about which regulatory alternative(s) to propose as the regulation.

The proposed questionnaire has five parts: general facility information; combustor information; control device information; emissions information; and capital and annual costs. As discussed above, the questionnaire would be mailed—either in total or in part, as appropriate—in hardcopy form to the intended recipients. An electronic version of the questionnaire is being planned to allow for electronic completion and submittal.

Because of their pervasive use, these combustion devices are located in establishments in nearly every, if not all, 2-digit standard industrial classification (SIC) codes. The questionnaire would be sent to a statistical sampling of over 8 million establishments that are classified by SIC codes.

Recipients of this questionnaire would be required to respond under the authority of section 114 of the Act. If a respondent believes the disclosure of certain information requested would compromise a trade secret, it would need to be clearly identified as such and will be treated as confidential until a determination is made. Any information subsequently determined to constitute a trade secret will be protected under 18 U.S.C. 1905. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public without further notice (40 CFR 2.203, September 1, 1976).

Burden Statement: The one-time public burden for this collection of information is estimated to range from 50 to 400 hours per response for owners or operators of one or more combustion device, with an average of 200 hours for respondents with 5 combustion devices. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose 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.

Respondents/Affected Entities: owners or operators of industrial

boilers, institutional/commercial boilers, process heaters, industrial/commercial solid waste incinerators or other solid waste incinerators (not including hazardous waste incinerators, medical waste incinerators, or municipal waste incinerators burning more than 40 tons/day of municipal solid waste), stationary gas turbines, or stationary internal combustion engines.

Estimated Number of Respondents: 35,000

Frequency of Response: One-time

Estimated Total Annual Hour Burden: 2.34 million

Estimated Total Annualized Cost Burden: $90.8 million

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1796.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: December 6, 1996.

Richard T, Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–31559 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5663–6]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of time for request for comment.

SUMMARY: On October 9, 1996, the Environmental Protection Agency (''EPA'') published a notice in the Federal Register (Pages 53025–30) requesting comment on how it calculates the economic benefit obtained by regulated entities as a result of violating environmental requirements. By this notice, EPA is extending the deadline for comment from January 1, 1997 to March 3, 1997.

DATES: Comments must be received by EPA at the address below by March 3, 1997.

ADDRESSES: Written comments should be submitted in triplicate to: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248–A, 401 M Street, SW, Washington, D.C. 20460.

EPA will maintain a record of all written comments submitted pursuant to this notice. Copies of the comments may be reviewed at the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling (202) 564–2235.

FOR FURTHER INFORMATION CONTACT: Copies of the BEN computer model and the BEN Users Manual may be obtained from the National Technological Information Service by calling (703) 487–4650. Callers should request order number PB95–502514INC. Electronic copies of these items are also downloadable through the Office of Enforcement and Compliance Assurance's communications network called ''Enviroene.'' Enviroene is a free public network accessible via the World Wide Web on the Internet (http://es.inel.gov). The actual internet address of the BEN model is: http//es.inel.gov/oeca/models/ben.html. The internet address of the BEN Users Manual is: http//es.inel.gov/oeca/models/benmanual.html. For further information, contact Jonathan Libber, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564–6011.

Dated: December 3, 1996.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 96–31561 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5664–4]

Request for Nominations of Candidates for the National Environmental Education Advisory Council

SUMMARY: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA, after consultation with the Secretary of U.S. Department of Education. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members.
- Colleges and universities—two members.
- Not-for-profit organizations involved in environmental education—two members.
- State departments of education and natural resources—two members.
- Business and industry—two members.
- Senior Americans—one member.

Members are chosen to represent the various geographic regions of the country, and the Council shall have minority representation. The professional backgrounds of Council members include scientific, policy, and other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period, which runs from November to November of each calender year. Members are expected to participate in up to two (2) meetings per year and bi-monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator. There are currently six (6) vacancies on the Advisory Council that must be filled. These include the following:

- Classroom teacher—one vacancy (Nov. 1996–Nov. 1998).
- Not-for-profit organization—one vacancy (Nov. 1996–Nov. 1999).
- State department of education—one vacancy (Nov. 1996–Nov. 1999).
- Business and Industry—two vacancies (Nov. 1996–Nov. 1999).
- Colleges and Universities—one vacancy (Nov. 1996–Nov. 1999).

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, national and tribal level environmental education;
- Cross-sector partnerships; leveraging resources for environmental education;
- Professional development for teachers and other education professionals; and

• Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional considerations:

The Council is also looking for individuals who demonstrate the following:

• Strong leadership skills.
• Analytical ability.
• Ability to stand apart and evaluate programs in an unbiased fashion.
• Team players.
• Conviction to follow-through and to meet deadlines.
• Ability to review items on short notice.

DATES: Nominations of candidates to fill the existing vacancies on the Council must be submitted no later than February 15, 1997. Any interested person or organization may submit nominations of qualified persons. The nominations must include the following:

• Name/address/phone of nominating individual.
• 1–2 page resume of nominated candidate.
• Two (2) letters of support for the nominee.
• One (1) page statement of ''How the candidate is qualified.'' This must not exceed one (1) page and may be written by either the nominator or nominee.
• One (1) page statement by the nominee on his/her personal perspective on environmental education. This must not exceed one (1) page.

ADDRESSES: Submit nominations to Ginger Keho, Advisory Council Coordinator, Environmental Education Division, Office of Communications, Education and Public Affairs (1707), U.S. EPA, 401 M Street, S.W.,Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Keho at the above address, or call (202) 260–4129. E-mail address: keho.ginger@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Denise Graveline,

Acting Associate Administrator, Office of Communications, Education and Public Affairs.

[FR Doc. 96–31558 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–P

[PF–678; FRL–5576–2]

Clofencet; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of clofencet, [MON 21200], in or on wheat as a primary application; in or on the cereal grains group (excluding rice, wild rice and sweet corn) and soybeans as rotational crops; and in animal products. This summary was prepared by the petitioner, Monsanto Company.

DATES: Comments, identified by docket number [PF–678], must be received on or before January 13, 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 Highway, 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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–678]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6027, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 4F4346) from the Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the plant growth regulator (hybridizing agent) clofencet, [MON 21200], 2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt in or on the raw agricultural commodities from direct treatment with clofencet: wheat grain at 250 parts per million (ppm), wheat hay at 40 ppm, wheat straw at 50 ppm and wheat forage at 10 ppm. Secondary residues in the animal product commodities of cattle, goats, hogs, horses and sheep: fat at 0.04 ppm, kidney at 10 ppm, meat at 0.15 ppm, meat by-products (except kidney) at 0.5 ppm and milk at 0.02 ppm. Secondary residues in the animal product commodities of poultry: eggs at 1 ppm, fat at 0.04 ppm, meat at 0.15 ppm, and meat by-products at 0.2 ppm. Rotational crop tolerances in the raw agricultural commodities: soybeans at 30 ppm, soybean hay at 10 ppm and soybean forage at 10 ppm. The cereal grain crop group (except rice, wild rice and sweet corn) grown as rotational crops: grain at 20 ppm, straw at 4 ppm, forage at 4 ppm, stover (fodder) at 1 ppm and hay at 15 ppm. The proposed analytical method for primary and rotational crops includes derivatization of clofencet to its methyl ester followed by analysis via gas chromatography with electron

capture detection. For rotational crops, it is necessary to first hydrolyze clofencet-sugar conjugates to clofencet before proceeding with derivatization. The proposed method for animal tissues includes derivatization of clofencet to its methyl ester followed by analysis via HPLC with UV detection. For milk and eggs, analysis is achieved by extraction, concentration and direct analysis via HPLC with UV detection.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Monsanto has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Monsanto and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Monsanto Petition Summary

1. *Clofencet uses.* Clofencet is the active ingredient in Genesis Chemical Hybridizing Agent (CHA), which is used in the production of hybrid wheat seed. Clofencet prevents normal pollen development in wheat without affecting female fertility. This allows for efficient cross-pollination of the treated female line by an untreated male pollinator line grown in close proximity, to produce hybrid wheat seed. By using this technique, hybrid wheat with greater yield potential, drought resistance and disease resistance may be produced. It is important to note that clofencet will not be sold directly to the wheat grower; rather it will be a tool utilized by specially trained seed company personnel to produce hybrid wheat seed which will ultimately be purchased by the wheat grower for planting.

The proposed use pattern of Genesis is a single postemergent application at the appropriate stage of growth, namely stages 7 to 9 (Feekes scale) or stages 32 to 39 (Zadoks scale). The maximum proposed application rate in the United States is 10 pounds active ingredient per acre. Due to seed production considerations, Genesis will not be applied to the same site in successive years. The maximum market penetration for Genesis will not exceed 0.2 to 1 percent of the total wheat acreage in the United States.

Genesis has been effective across a wide range of germplasm in all market classes of wheat. It has a wide crop-safety margin and the seed produced from treated females is of high quality. Wheat is the only crop for which Genesis is known to be commercially efficacious.

2. *Clofencet safety*. Monsanto has submitted over 40 separate mammalian and ecological toxicology studies in support of tolerances for clofencet. The following mammalian toxicity studies on clofencet (technical grade active ingredient (TGAI)) have been conducted: A rat acute oral toxicity study with an LD_{50} of 3,306 mg/kg/day.

A rat dermal toxicity study with an LD_{50} of >500 mg/kg/day.

A rat acute inhalation study with an LC_{50} of >3.8 mg/l (MON 21233 manufacturing use product).

A primary eye irritation study in the rabbit which showed moderate irritation.

A primary dermal irritation study in the rabbit which showed essentially no irritation.

A primary dermal sensitization study in guinea pigs which showed no sensitization.

An acute neurotoxicity study in the rat which showed no neurotoxic effects at any dose.

A subchronic (90–day) neurotoxicity study in the rat which showed no neurotoxic effects at any dose.

A 21–day dermal toxicity study in the rat which showed no toxic effects at any dose tested with a NOEL of 1,000 mg/kg/day.

A 90–day feeding study in dogs with a NOEL of 50 mg/kg/day based on histological findings in the thymus and testes.

A 90–day feeding study in the rat with a NOEL of 5,000 ppm in the diet based on decreased cumulative weight gain and slightly increased kidney weights.

A 24–month chronic feeding/oncogenicity study in the rat with a systemic NOEL of 1,000 ppm (47 and 58 mg/kg/day in males and females, respectively) based on hematology effects and histological findings in the lung and kidney. There was an equivocal oncogenic response in the liver and thyroid at 20,000 ppm, the highest dose tested.

An 18–month oncogenicity study in the mouse with a systemic NOEL of 3,000 ppm (453 and 642 mg/kg/day for males and females, respectively) based on decreased survival in the high dose group. A slightly increased incidence of histiocytic sarcomas were observed in female mice at 7,000 ppm, the highest dose tested.

A 12–month feeding study in the dog with a NOEL of 5 mg/kg/day based on histological changes in the testes/epididymis and thymus.

A teratology study in the rat with a maternal and developmental NOEL of 1,000 mg/kg/day, the highest dose level tested.

A teratology study in the rabbit with a maternal and developmental NOEL of 150 mg/kg/day based on excessive maternal toxicity (including mortality, abortions and excessive weight loss) and slight developmental effects including slight decreases in fetal weight and slight, non-statistically significant increased incidences in hydrocephaly and delayed ossification.

A two-generation reproduction study in the rat with a NOEL of 500 ppm (38 and 52 mg/kg/day for males and females, respectively) based on a decrease in pup viability during the first four days of lactation.

Several mutagenicity studies: Ames *Salmonella* Assay; CHO/HGPRT Point Mutation Assay; *In Vitro* Cytogenetics Assay in Human Lymphocytes; Mouse Micronucleus Assay; and *In Vivo/In Vitro* Hepatocyte DNA Repair Assay; all negative.

3. *Threshold effects — chronic effects.* Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for clofencet at 0.005 milligrams (mg)/ kilogram (kg)/day. The RfD for clofencet is based on a 1–year feeding study in dogs with a No Observable Effect Level (NOEL) of 0.5 mg/kg/day and an uncertainty factor of 100.

Acute toxicity. Based on the available acute toxicity data, EPA has determined that clofencet does not pose any acute dietary risks.

4. *Non threshold effects—carcinogenicity.* Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified clofencet as Group ''C'' for carcinogenicity (possible human carcinogen - limited evidence of carcinogenicity in the absence of human data) based on the results of carcinogenicity studies in two species.

In a 24–month feeding study in rats, statistically significant increases in thyroid C-cell adenomas and combined adenoma/carcinoma were observed in male rats at the highest dose tested (20,000 ppm). There was also a statistically significant positive trend for these tumors, but the incidences were within or only slightly above that reported for historical controls. In addition, the tumors were mostly benign and occurred only at an excessive dose. The highest dose in this study was considered to be excessive in males, and adequate in female rats.

In an 18–month feeding study in mice, statistically significant increases in histiocytic sarcomas were observed in female mice at the highest dose tested (7,000 ppm) with a statistically significant positive trend. The incidence of these tumors also exceeded historical

controls. In male mice there were no statistically significant increases in tumors at any dose. The highest dose tested in both sexes was determined to have been adequate for assessing the carcinogenic potential of clofencet, without excessive toxicity.

The classification of Group ''C'' was based on the increase in histiocytic sarcomas in female mice. The thyroid C-cell tumors in male rats were considered to have occurred only at an excessive dose. There were no apparent genotoxicity concerns and little additional support for carcinogenicity based on SAR analysis; therefore, EPA's Carcinogenicity Peer Review Committee (CPRC) recommended that the RfD approach be used for quantitation of human risk.

5. *Aggregate exposure.* For purposes of assessing the potential dietary exposure under these tolerances, the EPA has estimated aggregate exposure based on the anticipated residue for clofencet on primary crop (PC) wheat grain at 96.8 ppm, rotational crop (RC) soybeans at 8.87 ppm, RC corn at 0.92 ppm, RC sorghum at 2.05 ppm and other RC cereal grains (except rice, wild rice and sweet corn) at 6.7 ppm. In addition, aggregate exposure from animal products were estimated from tolerance values of 0.02 ppm for milk, 0.15 ppm for meat, 0.04 ppm for fat, 10.0 ppm for kidney, 0.5 ppm for meat by-products (except kidney), 0.15 ppm for poultry meat, 0.2 ppm for poultry meat by-products, 0.04 ppm for poultry fat and 1.0 ppm for eggs. Estimated exposure is obtained by multiplying the anticipated residue or tolerance level residue by the consumption data which estimates the amount of food products consumed for each of the above commodities by various population subgroups. There are no other established (permanent) U.S. tolerances for clofencet, and there are no registered uses (section 3) for clofencet on food or feed crops in the United States.

In conducting this exposure assessment, the EPA has made very conservative assumptions. First, the reasonable assumption is made that 1 percent of the total wheat acreage will be sprayed with clofencet, but it is further assumed that all of this clofencet treated wheat - which is only intended for seed production - will enter the food chain. Monsanto estimates that a maximum of 10 percent of this seed will enter the food chain. Second, it is assumed that 100 percent of all labeled rotational crops will be planted on clofencet treated fields - even though only 1 percent of wheat fields will be treated with clofencet and, further, it is not possible to plant multiple crops on the same field. Third, full tolerance values are used for animal products rather than anticipated residues. These factors result in an overestimate of human exposure which should be taken in consideration when reviewing the calculated human dietary exposure values.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, the mitigation measures volunteered by Monsanto and requested by the EPA and the unique and restricted use characteristics of the chemical, Monsanto does not anticipate exposure to residues of clofencet in drinking water. There are no established Maximum Concentration Level (MCL) for residues of clofencet in drinking water. Monsanto has not estimated non-occupational exposure for clofencet since the proposed registration for clofencet is limited to wheat seed production by certified hybrid seed technicians only. It will be a restricted use registration. Thus, the non-occupational exposure to the general population is expected to be negligible.

Monsanto also considered the potential for cumulative effects of clofencet and other substances that have a common mechanism of toxicity. Monsanto concluded that consideration of a common mechanism of toxicity is not appropriate at this time. First, clofencet is only one of two chemical hybridizing agents currently registered on wheat and the other one is owned by this petitioner and is not currently available commercially. Second, Monsanto does not have reliable information to indicate that toxic effects produced by clofencet would be cumulative with those of any other chemical compounds. Thus, Monsanto is considering only the potential risks of clofencet in its aggregate exposure assessment.

6. *Determination of safety for U.S. population— reference dose.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, EPA has concluded that aggregate exposure to clofencet will utilize 7.6 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD for the U.S. population because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Monsanto concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clofencet residues.

7. *Safety determination for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clofencet, Monsanto considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate the potential for adverse effects on the developing organism resulting from exposure during prenatal development to the female parent. Reproduction studies provide information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity.

In a developmental toxicity study in the rat, no developmental or maternal toxicity were observed up to a dosage of 1,000 mg/kg/day, the highest dose level tested and the limit dose for this species as specified in the Pesticide Assessment Guidelines. The NOEL was considered to be 1,000 mg/kg/day.

In a developmental toxicity study in the rabbit, severe maternal toxicity (mortality, abortion, decreased body weight gain and decreased food consumption) and equivocal developmental toxicity (possible lower fetal body weights, marginal increased incidence of fetal hydroencephalus and delayed ossification) were observed at 500 mg/kg/day, the highest dose level tested. The NOEL for both maternal and developmental toxicity was considered to be 150 mg/kg/day. The developmental effects observed in this study were considered to be secondary to the severe maternal stress.

In a 2-generation reproduction study in rats, pups from the 5,000 and 20,000 ppm dose levels had an increased incidence of pup mortality in both matings of the F1 generation during lactation days 1 to 4. The NOEL was considered to be 500 ppm (38 and 52 mg/kg/day for males and females, respectively). Although the increased incidence of pup mortality was significantly increased when compared to concurrent controls, the laboratory at which the study was conducted reports that their historical control incidence of pup survivability is less than is seen at other laboratories. A viral infection in the colony was suspected, but nothing was definitely proven. No effects on fertility were observed.

FFDCA Section 408 provides that EPA may apply an additional safety factor (up to 10) in the case of threshold effects for infants and children to account for pre- and post-natal toxicity and the completeness of the database. Based on

current toxicological data requirements, the database relative to pre- and post-natal effects in children is complete. Further, in the developmental toxicity study in the rabbit and the 2-generation reproduction study in the rat, the NOEL's are already an additional 30X and an average (male/female) of 9X, respectively, above the NOEL on which the RfD was established (5.0 mg/kg/day from a one-year feeding study in dogs). Based on all the above information, Monsanto concludes that an additional uncertainty factor is not warranted and that the RfD of 0.05 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative dietary exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of clofencet by children aged <1 (nursing) to age 12, ranges from 10.5 percent for children 7 to 12 years old up to 22.7 percent for non-nursing infants (<1 year old). Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Monsanto concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clofencet residues.

8. *Estrogenic effects.* No specific tests have been conducted with clofencet to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occuring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity tests, i.e., teratology and multi-generation reproduction studies, which would suggest that clofencet produces these kinds of effects.

9. *Chemical residue.* The metabolism of clofencet in plants and animals is adequately understood for the purposes of these tolerances. There are no Codex maximum residues levels established for residues of clofencet on wheat or indicated rotational crops. There is a practical analytical method for detecting and measuring levels of clofencet in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA will provide information on this method to the Food and Drug Administration (FDA). The method is available to anyone who is interested in pesticide residue enforcement from: By mail: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5805.

Residues of clofencet have been found to concentrate slightly (<2×) in wheat shorts and bran, and in soybean hulls and meal. The EPA examined all relevant data and after consideration of the restricted use of the chemical for seed production only, the limited opportunity for this seed to enter commerce as grain and the dilution factors involved in making all of the above processed fractions (with the exception of wheat bran) ''ready to eat'', the EPA determined that no additional tolerances were necessary to cover these processed fractions. All of the proposed tolerance levels are adequate to cover residues likely to be present from the proposed use of clofencet. Therefore, no special processing to reduce the residues will be necessary

10. *Environmental fate.* Laboratory studies indicate that clofencet has the potential to persist in soil and be mobile. However, the results of field dissipation studies indicate that downward movement of clofencet is limited. In addition, the limited use of clofencet for hybrid wheat seed production only, the current practice of never using the same seed production field in two consecutive years and label mitigation measures agreed upon by Monsanto and the EPA, will further reduce the likelihood of clofencet appearing in ground or surface water.

II. Administrative Matters

Interested persons are invited to submit written comments on this notice of filing. Comments must bear a notation indicating the document control number, [PF–678]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice of filing under docket number [PF–678] (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 as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this filing of notice, 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 rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

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

Dated: December 4, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–31555 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–677; FRL–5576–1]

Valent U.S.A. Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing to renew a time-limited tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm). This summary was prepared by the petitioner, Valent U.S.A. Corporation (Valent).

DATES: Comments, identified by the docket number [PF–677], must be received on or before, January 13, 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 Highway, Arlington, VA. 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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–677]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. 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. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Product Manager (PM 23), Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703) 305–6224. e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 14, 1990, (55 FR 24084), EPA established a time-limited tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the herbicide lactofen, 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity cottonseed at 0.05 ppm. The time-limited tolerance expires on December 31, 1996. This tolerance was requested in pesticide petition (PP) 9F3798 by Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596, and establishes the maximum permissible level for residues of the herbicide in or on this RAC. The tolerance was issued as a time-limited tolerance because EPA required additional residue chemistry data. The petitioner proposes to renew the time-limited tolerance for a one–year period. Valent requested this tolerance extension pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). The request addresses the requirements of the new FFDCA Section 408(d)(2). The time-limited tolerance would expire on December 31, 1997. The proposed analytical method is RM–28D, a gas chromatography method.

Pursuant to the Section 408(d)(2)(A)(i) of the FFDCA, as amended, Valent has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Valent and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Valent Petition Summary

A. Residue Chemistry

1. *Plant metabolism*. Lactofen is used to control broad leaved weeds in crops by preemergent (soybean, peanut), or early postemergent (soybean, cotton, peanut) applications with extended pre-harvest intervals (45 to 70 days). Plant metabolism protocols (soybean, peanut, and tomato) have been designed to mimic the field applications with respect to timing, but have been applied at rates exceeding normal application to facilitate identification of metabolites.

The lactofen molecule is rapidly degraded in the environment and in plants. Therefore, the consistent result of all plant metabolism studies using lactofen has been: radiocarbon is distributed throughout the plant; much of the radiocarbon is irreversibly bound; little radiocarbon is found in the RAC (seeds, fruit); and very little terminal residue is identified as finite metabolites due to extensive degradation.

To demonstrate plant metabolic pathways and to prove the analytical methods can isolate, recover, and identify lactofen and its metabolites, plant samples were analyzed soon after application and well before normal harvest. It is from these early samples that the definition of the residue has been obtained. The regulated residue is defined as parent and four metabolites containing the diphenyl ether moiety. Parent lactofen is identified as PPG–844 and the metabolites are identified as PPG–847, PPG–947, PPG–1576, and PPG–2597. The regulated residue as defined has never been found in a RAC sample either from plant metabolism or from crop field studies. At maximum treatment rates in crop field trials, only one soybean seed sample was found to have residues of lactofen greater than the limit of detection, but less than the limit of quantitation. Even at exaggerated rates in metabolism or crop residue studies, residues are rarely above the limit of detection for any analyte. In addition, more than analyte has never been found above the limit of detection in a single RAC sample from crop field trials. See further discussion in the Magnitude of Residue section.

2. *Analytical method*. Adequate analytical methodology (gas chromatography) is available for detecting and measuring levels of lactofen and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the level set in the time-limited tolerance on cotton. The current method, RM–28D, has been validated by an independent laboratory on both cottonseed and peanuts and is still undergoing PMV trials at the EPA. In general, the analytical method has a limit of detection of 0.005 ppm and limit of quantitation of 0.01 ppm in crops.

3. *Magnitude of residues*. Lactofen is the active ingredient in COBRA Herbicide (EPA Reg. No. 59639–34) and STELLAR Herbicide (EPA Reg. No. 59639–92). Tolerances have been established for lactofen on cotton, soybeans, and snap beans. A tolerance is also pending for peanuts. Lactofen is a broad-spectrum broadleaf herbicide with the following use patterns:

Soybeans: pre-emergence and/or post-emergence, broadcast application with a PHI of 45 days.

Cotton: post-emergence, directed spray application with a PHI of 70 days.

Snap Beans: pre-emergence, soil application with a PHI of 55 days.

Peanuts: (pending) pre-emergence and/or post-emergence, broadcast application with a PHI of 70 days.

Due to relatively long pre-harvest intervals and extensive metabolism by plants, lactofen residues are rarely found in treated raw agricultural or processed commodities. Consequently, tolerances have been established based on the limit of quantitation for lactofen and its metabolites containing the diphenyl ether linkage. To date, tolerances have been established at 0.05 ppm based on a limit of quantitation of 0.01 ppm for lactofen and four plant metabolites.

B. Toxicological Profile

1. *Acute toxicity*. Lactofen (PPG–844) Technical has been placed in EPA Toxicity Category III for dermal toxicity and Category IV for the other four acute toxicity tests. It has also been found to be a weak skin sensitizer. Teratology and reproduction studies indicate that adverse effects, including embryotoxicity, occur only at doses that are also maternally toxic. This chemical therefore represents a minimal acute toxicity risk.

2. *Genotoxicity*. Lactofen Technical has been tested and produced negative results in a number of genotoxicity tests including unscheduled DNA synthesis in rat hepatocytes, DNA covalent binding in mouse liver, chromosomal aberration in CHO cells, and an Ames assay. In a second Ames assay lactofen was positive without metabolic activation at 5000 ug/plate and above. Overall lactofen is not considered a genetic hazard.

3. *Reproductive and developmental toxicity*. Pregnant rats were administered oral doses of 0, 15, 50 and 150 mg/kg/day Lactofen Technical on days 6–19 of gestation. Maternal toxicity (death, abortion and reduced body weight gain) was observed at 150 mg/kg/day. Developmental toxicity (reduced fetal weight, slightly reduced ossification, bent ribs and bent limb bones) was also observed at 150 mg/kg/day. The NOEL for this study was 50 mg/kg/day.

Two developmental toxicity studies were conducted in rabbits with Lactofen Technical. In the first study, pregnant rabbits were administered oral doses of 0, 5, 15 or 50 mg/kg/day Lactofen Technical on days 6–18 of gestation. Maternal toxicity (clinical signs and reduced weight gain) and developmental effects (increased embryonic death, decreased litter size and increased post-implantation loss) were reported at 15 and 50 mg/kg, however EPA concluded that the data were insufficient to establish a clear NOEL. The study was classified as core-supplementary. In the second rabbit developmental toxicity study, pregnant rabbits were exposed to 0, 1, 4 or 20 mg/kg/day oral doses on days 6–18 of gestation. Maternal toxicity (reduced food consumption) was observed at 20 mg/kg/day, while no developmental effects were observed at any dose. Therefore, the maternal NOEL was 4 mg/kg/day and the developmental NOEL was greater than 20 mg/kg/day.

Groups of male and female rats were administered 0, 50, 500 or 2000 ppm of Lactofen Technical for two generations. Adult systemic toxicity (mortality, reduced body weight, increased liver and spleen weight, decreased kidney weight and histological changes in the liver and testes) was observed at levels of 500 ppm and greater. Reproductive toxicity (lower pup survival rates, reduced pup weight and pup organ weight effects) was also observed at levels of 500 ppm and greater. The NOEL for both systemic and reproductive toxicity was 50 ppm (2.5 mg/kg).

Since lactofen causes teratogenic and reproductive effects only at levels which also produce systemic toxicity it is not considered a reproductive hazard.

4. *Subchronic toxicity*. In a 4–week oral toxicity study of Lactofen Technical in rats, a slight increase in spleen weight was the basis for a LOEL of 200 ppm (lowest dose tested). At doses of 1000 ppm or higher the following findings were reported: clinical signs of toxicity; decreased RBC, hemoglobin, hematocrit, and increased WBC; increased relative liver and spleen weights; and necrosis and pigmentation of hepatocytes. At 10,000 ppm severe toxic signs were observed by day 7 and all animals were dead or killed in extremis by day 11. Hypocellularity of the spleen, thymus and bone marrow was also observed in animals exposed to 10,000 ppm.

Histopathological changes in the liver and significant changes in clinical chemistry associated with the liver were observed in rats exposed to 1000 ppm Lactofen Technical in the diet for 90 days. Decreased RBC, hemoglobin and hematocrit values were also observed at 1000 ppm. The NOEL in this study was 200 ppm.

In a 90–day study in mice, the LOEL for Lactofen Technical was 200 ppm based on: increased WBC; decreased hematocrit, hemoglobin and RBC; increased alkaline phosphatase, SGOT, SGPT, cholesterol and total serum protein levels; increased weights or enlargement of the spleen, liver, adrenals, heart and kidney; histopathological changes of the liver, kidney, thymus, spleen, ovaries and testes observed at 1000 ppm.

Butler et al (1988) studied the effects of lactofen on peroxisome proliferation in mice exposed for seven weeks to dietary concentrations of 2, 10, 50 and 250 ppm. Liver-weight to body-weight ratio, liver catalase, liver acyl-CoA oxidase, liver cell cytoplasmic eosinophilia, nuclear and cellular size, and peroxisomal staining were increased by the tumorigenic dose of lactofen, i.e. 250 ppm. Lower doses of lactofen had little to no effect on these parameters. Thus, this study indicates that lactofen induces peroxisome proliferation and further, that 50 ppm, a dose which is not tumorigenic, would be considered a threshold dose for peroxisome proliferation produced by lactofen.

As noted in the study by Butler et al (1989), the NOEL for peroxisome proliferation in mice following a seven week exposure period is 50 ppm (7 mg/kg/day) and the LOEL is 250 ppm (36 mg/kg/day). A subchronic study conducted in chimpanzees (Couch and Erickson, 1986), indicated no effect on clinical chemistry or histological endpoints that would suggest liver toxicity or peroxisome proliferation at doses up to 75 mg/kg/day administered for 93 days. Therefore, Valent believes that 75 mg/kg/day is a clear NOEL for peroxisome proliferation observed in a species closely related to man.

5. *Chronic toxicity*. In an 18–month oncogenicity study in mice at doses of 10, 50 and 250 ppm Lactofen Technical, an increase in liver adenomas and carcinomas, cataracts and liver pigmentation was observed at 250 ppm. The lowest dose, 10 ppm, was the LOEL based on increased liver weight and hepatocytomegaly.

In a 2-year chronic feeding/oncogenicity study of Lactofen Technical in rats at doses of 500, 1000 or 2000 ppm in the diet, an increase in liver neoplastic nodules and foci of cellular alteration was observed in both sexes at 2000 ppm. The NOEL for systemic toxicity is 500 ppm based on kidney and liver pigmentation.

In a 1–year study in dogs exposed to 40, 200, or 1000(wk1–17)/3000 ppm(wk 18–52) ppm of Lactofen Technical, the NOEL was determined to be 200 ppm based on renal dysfunction and decreased RBC, hemoglobin hematocrit and cholesterol observed at 1000/3000 ppm.

Lactofen (PPG–844) Technical causes adverse health effects when administered to animals for extended periods of time. The effects include proliferative changes in the liver, spleen, and kidney; hematological changes; and blood biochemistry changes. Based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18–month mouse feeding study and an uncertainty factor of 1000, a reference dose (RfD) of 0.002 mg/kg/day has been established for lactofen. An uncertainty factor of 1000 was used since a NOEL was not be established.

The Toxicology Branch Peer Review Committee in EPA's Office of Pesticide Programs has determined that lactofen meets the criterion for a B2 (possible human) carcinogen since it caused an increase in liver tumors (adenomas and/or carcinomas) in two species. Based on

the mouse oncogenicity study, a human upper-bound potency estimate (Q1*) was calculated as 0.17 (mg/kg/day)–1.

The calculated human Q1* was based on the standard interspecies scaling factor of BW0.67 and recent EPA guidance indicates that BW0.75 is a more appropriate factor for general use. This change alone would result in a reduction of the calculated human potency factor and a reduction in the calculated carcinogenic risk by about 20%. In addition, evidence suggests that carcinogenic effects caused by lactofen in rodent livers may be due to peroxisomal proliferation as opposed to a direct genotoxic effect. This mechanism of action would more appropriately be regulated as a threshold effect (similar to RfD comparisons) as opposed to a non-threshold effect with a quantitative potency factor derived from low dose extrapolations. These changes in the hazard assessment process for lactofen would have a profound effect on the exposure and risk assessments for this chemical.

6. *Animal metabolism*. Rat metabolism studies have been conducted for lactofen and demonstrate that lactofen is almost completely eliminated (>95%) in excreta within three days of oral dosing. Generally about 60% of orally administered radioactivity (14C–lactofen) is found in the feces with lactofen itself being the major component. About 40% of radioactivity is recovered in urine and PPG–847 (hydrolyzed side chain) is the major metabolite. Other metabolites include PPG–947, PPG–1576, and PPG–2053.

C. Aggregate Exposure

Complete information to perform an aggregate exposure assessment may be available to the Agency, but is not available to Valent, and an extension of the lactofen cotton tolerance has been requested by Valent in order to allow EPA time to perform a complete aggregate exposure assessment. As discussed below, lactofen contributes insignificant chronic toxicity and carcinogenic risks as compared to the other diphenyl ethers.

1. *Dietary exposure*. (a) *Food*. Lactofen is approved for use in the production of commercial agricultural crops including soybeans, cotton, snap beans, and pine seedlings. Dietary exposures are expected to represent the major route of exposure to the public.

A chronic dietary assessment for lactofen has been conducted by the registrant using Anticipated Residue Contributions (ARC) for existing and proposed uses of lactofen. Since crop field trial data indicate that quantifiable residues of lactofen are rarely found in raw agricultural and processed commodities , ARCs were estimated based on the analytical method limit of detection (LOD) for each commodity. When available, analytical results for control samples were used to determine the method LOD for lactofen and its related metabolites. When all control samples contained no detectable residues, the limit of detection was determined to be 0.005 ppm. Mean anticipated residues were determined based on the sum of residues found above the LOD, or when no detectable residues were present for lactofen or any metabolite, one-half the greatest LOD for any analyte was used as the anticipated residue level. Anticipated residue levels also considered the percent of crop treated with lactofen as follows: 5% of soybeans, 2.5% of cotton, 4.5% of snap beans, and 5% of peanuts. The soybean and cotton values are based on 1995 marketing research data (Maritz) and the snap bean and peanut values are estimates for the future from the registrant. Note that a lactofen peanut tolerance is still pending at the Agency and no lactofen is used on this crop even though peanuts are included in the dietary exposure assessment. The assessment results are summarized below in the Safety Determination section.

EPA has performed chronic dietary exposure assessments for the related diphenyl ethers mentioned above in conjunction with tolerance approvals. For acifluorfen and fomesafen, recent assessments were performed with anticipated residues, but did not consider percent of crop treated. For oxyfluorfen, anticipated residues were considered for only some crops and the same is true for percent of crop treated. And for diclofop, neither anticipated residues nor percent of crop treated were considered. Therefore, the current dietary assessments performed by EPA are highly conservative, but not worst case. Additional time is necessary for the Agency to perform a consistent and integrated dietary exposure assessment for these related chemicals. The assessment results are summarized below in the Safety Determination section.

(b) *Drinking water*. Since lactofen is applied outdoors to growing agricultural crops, the potential exists for lactofen or its metabolites to leach into groundwater. Drinking water, therefore represents a potential route of exposure for lactofen and should be considered in an aggregate exposure assessment.

Based on available lactofen studies used in EPA's assessment of environmental risk, EPA required a prospective groundwater study for lactofen. Valent conducted a study using the maximum application rate applied to a site which was extremely vulnerable to leaching to a shallow aquifer. The water table was at a depth of 6 to 9 feet, the top two feet of soil were classified as loamy sand (78 - 82% sand), and the deeper soil was classified as sand (88 - 94% sand).

A final report was submitted in 1994 which indicates that lactofen degrades rapidly without downward movement in soil and will not contaminate even shallow groundwater beneath light, sandy soils. There were no reported or possible detections of lactofen (< 1 ppb) in lysimeter or monitoring well water samples with the exception of apparent detections (1.4 - 1.6 ppb) in two well water samples which were determined to be due to matrix interferences. Reanalysis to resolve the interference problem indicated that lactofen was not present at the 1 ppb level. Lactofen degrades to acifluorfen, which was also monitored in the study. Although acifluorfen was found to degrade somewhat more slowly than lactofen, it did not leach to groundwater during the study. Since acifluorfen results from lactofen degradation, but is not the only degradation product, concentrations are expected to be lower for acifluorfen than for lactofen. In fact, there were no reported or possible detections of acifluorfen (< 1 ppb) in lysimeter or monitoring well samples. This report has been placed in review at EPA, but a review has not been completed.

There is no established Maximum Concentration Level for residues of lactofen in drinking water under the Safe Drinking Water Act.

Based on this information, lactofen appears to represent an insignificant risk for exposure through drinking water.

2. *Non-dietary exposure*. Lactofen is currently approved only for the commercial production of agricultural crops including cotton, soybeans, snap beans, and pine seedlings. The potential for non-occupational exposure to the general public, other than through the diet or drinking water, is therefore insignificant.

D. Cumulative Effects.

There are several other pesticide compounds which are structurally related and may have similar effects on animals. Specifically, lactofen, acifluorfen, fomesafen, oxyfluorfen, and diclofop methyl are all diphenyl ethers which have caused liver tumors in

rodents. These chemicals are approved for food uses in the U.S. and could be considered in an aggregate exposure assessment. Dietary exposures to these other diphenyl ethers are expected to represent the major route of exposure to the public. It is premature to add the risk from these chemicals since exposure considerations as well as endpoint, pharmacokinetic, and pharmacodynamic considerations may indicate that it is inappropriate to add the risks. However, to meet the requirements of the FQPA of 1996, it is prudent to consider if it is likely that these chemicals violate the provisions of the new law. The information presented below indicates that while more study is necessary, it is unlikely that these materials violate the provisions of the act.

Summaries of the established reference doses, quantitative cancer potency factors, and cancer sites in animals for these structurally related chemicals are presented below.

Chemical	Reference Dose (mg/kg/day)	Cancer Potency Factor (mg/kg/day)$^{-1}$	Cancer Site
Lactofen	0.002	0.17	Liver
Acifluorfen	0.013	0.107	Liver, Stomach
Fomesafen	0.0025	0.19	Liver
Oxyfluorfen	0.003	0.13	Liver
Diclofop Methyl	0.002	0.231	Liver

This comparison indicates that reference doses determined from chronic toxicity studies and cancer potency factors for these related chemicals are on the same order of magnitude as for lactofen.

It should be noted that these related chemicals would benefit from the use of the EPA's new interspecies scaling factor as well as lactofen, and that the rodent liver tumor effects may also be due to peroxisome proliferation which would more appropriately be regulated as a threshold effect. The carcinogenic risk assessments performed to date are, therefore, highly conservative.

E. Safety Determination

1. *U.S. population.* Using the dietary exposure assessment procedures described above (and performed by Valent) for lactofen, and recent EPA assessments for related chemicals, chronic dietary exposures resulting from existing and proposed uses of lactofen and related chemicals were compared to the reference dose (RfD) for each chemical. The following contributions to the RfD were found for the U.S. Population and all of the subpopulations for which dietary consumption data are available:

Lactofen: less than 0.1% for all subpopulations.

Acifluorfen: less than 1% for all subpopulations.

Fomesafen: less than 1% for all subpopulations.

Oxyfluorfen: less than 1% for all subpopulations.

Diclofop: not available to Valent.

EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The current and proposed uses of these chemicals, even when considered collectively, represent a minimal chronic toxicological risk to the general public.

Carcinogenic risks were calculated by Valent using a potency factor (Q1*) for lactofen of 0.17 (mg/kg/day)$^{-1}$. The dietary carcinogenic risk resulting from existing and proposed uses of lactofen is calculated at 1.54 X 10^{-8} or less for several lifetime population groups. This is approximately 65 times lower than the acceptable level of one-in-a-million additional lifetime cancers. It should be noted that the proposed use on peanuts, which is not being considered in the current action, accounts for more than a third of the exposure contributing to the calculated carcinogenic risk. Therefore, these estimates of carcinogenic risk are conservative and are well within acceptable levels.

EPA has performed dietary carcinogenic risk assessments for the related diphenyl ethers mentioned above in conjunction with tolerance approvals. The following table summarizes the dietary risk assessment made by Valent for lactofen and the most recent dietary risk assessments performed by EPA for related chemicals.

Chemical	Data Source	Date	Carcinogenic Risk
Lactofen	Valent Report	8/20/96	1.54 X 10^{-8}
Acifluorfen	61 FR 16740	4/17/96	5.8 X 10^{-7}
Fomesafen	61 FR 31057	6/19/96	1.56 X 10^{-6}
Oxyfluorfen	60 FR 49816	9/27/95	1.8 X 10^{-6}
Diclofop methyl	51 FR 19176	5/28/86	1 X 10^{-5}

Regarding drinking water exposures, groundwater monitoring studies have been required for acifluorfen, fomesafen, and diclofop methyl as well as for lactofen. Detections in groundwater have been reported for acifluorfen and fomesafen. Complete information may be available to the Agency, but is not to available to Valent, and additional time is requested to allow time for EPA to adequately address the drinking water exposure issue. However, based on the lactofen groundwater study, lactofen exposures to the public through drinking water are expected to be insignificant compared to these other chemicals.

Regarding non-dietary exposures, the other diphenyl ethers are also used primarily for commercial agricultural production. However, some of these chemicals may involve some uses around the home which could lead to non-occupational exposure. Information about this small potential exposure is not available to Valent, but if a significant potential exists for non-occupational exposure, is should be considered in an aggregate risk assessment by EPA. Some exposures to residential pesticides are being evaluated by an industry task force, the Outdoor Residential Exposure Task Force (ORETF), of which Valent is a member.

In summary, this comparison shows that lactofen's contribution to aggregate cancer risk is insignificant compared to the other diphenyl ethers, based on

current registrant and EPA assessments. In addition, the conservative risks calculated by EPA for fomesafen and oxyfluorfen are slightly above the new standard set by FQPA and for diclofop methyl is significantly above the new standard. Valent believes that when these other diphenyl ethers are evaluated using anticipated residues, percent of crop treated, revised cancer potency factors, and up-to-date exposure methodology the projected risks will be much lower than 1 X 10^{-6} for all of these chemicals. Industry and EPA are also developing methodology for determining whether or not multiple exposures will occur and with what frequency for these and other chemicals. If multiple exposures do not occur, or occur with a low frequency, it is not appropriate to add risks. For these reasons, additional time will be necessary for the Agency to address the aggregate risk to the U.S. population for this group of related chemicals.

2. *Infants and children.* As stated above, dietary exposure assessments utilize less than 1% of the RfD for all subpopulations including infants and children. Reproduction and developmental effects have been found in toxicology studies for lactofen, however, the adverse effects were seen at levels that were also maternally toxic. This indicates that developing animals are not more sensitive than adults. FQPA requires an additional safety factor of up to 10 for chemicals which present special risks to infants or children. Lactofen does not meet the criterion for application of an additional safety factor for infants and children.

Information on the reproduction and developmental effects caused by the other diphenyl ethers is not available to Valent. Additional time is necessary for the Agency to evaluate the need for an additional safety factor related to these other chemicals. However, even if an additional safety factor were deemed necessary, the dietary exposures are still expected to be well below the established reference doses.

F. International Tolerances

There are no Codex Maximum Residue Limits (MRL) established for lactofen on cotton commodities, so there is not conflict between this proposed action and international residue limits.

II. Administrative Matters

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the document control number, [PF–677]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address give above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice 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 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

List of Subjects

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

Dated: December 4, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–31556 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5663–2]

Proposed De Minimis Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Golden, CO

AGENCY: Environmental Protection Agency.

ACTION: Correction to original notice and request for public comment.

SUMMARY: The original notice of proposed de minimis settlement published on September 17, 1996 (61 FR 48951) is corrected by adjusting the settlement figure for Energy Fuels Nuclear, Inc. from $326,800.73 to $184,800.41 and is hereby submitted for public comment. In accordance with the requirements of section 122(I)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed de minimis settlement under section 122(g), concerning the Colorado School of Mines Research Institute site in Golden, Colorado (Site). The proposed Administration Order on Consent (AOC) requires five (5) Potentially Responsible Parties to Pay an aggregate total of $215,640.36 to address their liability to the United States Environmental Protection Agency (EPA) related to response actions taken or to be taken at the Site.

OPPORTUNITY FOR COMMENT: Comments must be submitted on or before January 13, 1997.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Kelcey Land, Enforcement Specialist (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Colorado School of Mines Research Institute site de minimis settlement (EPA Docket No. CERCLA–VIII–96–17).

FOR FURTHER INFORMATION CONTACT: Kelcey Land, Enforcement Specialist, at (303) 312–6393.

SUPPLEMENTARY INFORMATION: Notice of section 122(g) de minimis settlement: In accordance with section 122(I)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the following five (5) parties, for the following amounts:

Energy Fuels Nuclear, Inc.....$184,800.41

Kennecott Corporation, Kennecott Holdings Corporation, and Kennecott Utah Copper Corporation $30,285.75
Lockheed Corporation $554.20

By the terms of the proposed AOC, these parties will together pay $215,640.36 to the Hazardous Substance Superfund. This payment represents approximately 0.035% of the total anticipated response costs for the Site upon which this settlement is based. In exchange for payment, EPA will provide the settling parties with a limited covenant not to sue for liability under sections 106 and 107(a) of CERCLA, including liability for EPA's past costs, the cost of the remedy, and future EPA oversight costs, and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act). The settlement amount that each PRP will pay, as shown above, depends upon whether they contributed radioactive hazardous substances or non-radioactive hazardous substances to the Site. The per pound cost for non-radioactive hazardous substances is $1.54. The per pound cost for radioactive hazardous substances is $3.08. Settlement amounts are calculated by multiplying these per pound costs by the number of pounds of hazardous substances a party sent to the Site (Base Amount), adding a premium of either 30% or 130% of the Base Amount, as specified by each PRP in the AOC, and adding a $200 administrative fee. For parties paying a 30% premium (Energy Fuels Nuclear, Inc.), there is an exception to the covenant not to sue if total response costs at the Site exceed $6,000,000. For parties paying a 130% premium (the Kennecot entities and Lockheed Corporation), there is an exception to the covenant not to sue if total response costs at the Site exceed $20,000,000. For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to this proposed de minimis settlement. A copy of the proposed AOC may be obtained from Kelcey Land (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 312–6393. Additional background information relating to the de minimis settlement is available for review at the Superfund Records Center at the above address.

It is So Agreed:

Dated: December 2, 1996.

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 96–31428 Filed 12–11–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5663–7]

Notice of Proposed Administrative De Minimis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Sidney Landfill Site, Towns of Masonville and Sidney, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Sidney Landfill Site (''Site'') in the Towns of Masonville and Sidney, Delaware County, New York. This Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Order on Consent (''Order''), is being entered into by EPA and the Sidney Central School District (the ''Respondent''). The Respondent contributed a minimal amount of hazardous substances to the Site and is eligible for a *de minimis* settlement under Section 122(g) of CERCLA. Under the Order, the Respondent shall pay EPA amounts totalling $40,701.95, toward the costs of the response actions that have been and will be conducted with respect to the Site.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 13, 1997.

ADDRESSES: Comments should be sent to the individual listed below. Comments should reference the Sidney Landfill Site and EPA Index No. II–CERCLA–96–0202. For a copy of the Order, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Brian E. Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3170.

Dated: November 25, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96–31562 Filed 12–11–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5663–9]

Correction of Typographical Error in Final Settlement Payment Amount for One Settling De Minimis Party and Correction of Calculation of Final De Minimis Settlement Payment Amounts for Two Settling De Minimis Parties; In the Matter of Conservation Chemical Company of Illinois, Inc., Gary, Indiana; Docket No. V–W–96–C–337

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On August 30, 1996, EPA entered into a final de minimis settlement with 153 de minimis potentially responsible parties (PRPs), pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), for past and estimated future response costs at the Conservation Chemical Company of Illinois Site in Gary, Indiana (''the CCCI Site''). Subsequently, EPA discovered a typographical error with regard to the final settlement amount stated for Jones Chemical, Inc., one of the settling de minimis PRPs listed in Appendix D to the Administrative Order on Consent, Docket Number: V–W–96–C–337 (''the de minimis Consent Order''). In addition, EPA received information that verified that Appleton Electric Company and Doehler-Jarvis, two settling PRPs, were entitled to credits under the terms of the de minimis Consent Order that reduced the amount of their initial calculated settlement payment amounts. EPA is giving notice that it intends to correct the typographical error in Appendix D with regard to Jones Chemical and correct the calculation of the final settlement amounts for Appleton Electric Company and Doehler-Jarvis to account for the verified credits. These corrections do not impact the interests of the other settling de minimis PRPs.

DATES: Comments on EPA's correction of the typographical error regarding the final settlement payment amount for Jones Chemical Inc., and the correction of the calculation of the final settlement payment amounts for Appleton Electric Company and Doehler-Jarvis, must be received on or before January 17, 1997.

ADDRESSES: Written comments relating to EPA's above-described corrections of the settlement amounts in Appendix D to the Administrative Order on Consent, Docket Number V–W–96–C–337, should be sent to Cynthia N. Kawakami, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–29A, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

ADDITIONAL INFORMATION: Copies of the revised Appendix D to the Administrative Order on Consent and the Administrative Record for this Site are available at the following address for review. It is strongly recommended that you telephone Ms. Beth Guria at (312) 886–5892 before visiting the Region 5 Office: U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch; 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

James Mayka,

Acting Director, Superfund Division.

[FR Doc. 96–31560 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–83005; FRL–5575–6]

Receipt of Request for Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver from testing.

SUMMARY: Regulations issued by EPA under section 4 of the Toxic Substances Control Act require that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received and will accept comments on a request from Rhone-Poulenc for a waiver to import 2,4-dichlorophenol. EPA will publish another Federal Register notice announcing its decisions on this request.

DATES: Submit written comments on or before December 27, 1996.

ADDRESS: Submit written comments in triplicate, identified with the docket number OPPTS–83005, to: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room G-099, 401 M St., SW., Washington, DC 20460. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information (CBI)''.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–83005. 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 below in this document.

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

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 (52 FR 2112, June 5, 1987), EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs. Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes. Under 40 CFR 766.32(b), a request for a waiver must be made 60 days before resumption of manufacture or importation of a chemical substance produced by a specific process if the chemical substance is not being manufactured, imported, or processed as of June 5, 1987.

Rhone-Poulenc requested a waiver under 40 CFR 766.32(a)(2)(i), in a letter to EPA dated October 29, 1996. Rhone-Poulenc plans to import 2,4-dichlorophenol (CAS No. 120–83–2), a substance subject to testing under 40 CFR part 766, solely for research and development purposes. Rhone-Poulenc will limit its import of 2,4-dichlorophenol to 100 kilograms (or less) per year.

A record has been established for this notice of receipt under docket number OPPTS–83005 (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 confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

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

The official record for this notice of receipt, 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.

Dated: December 6, 1996.

Frank D. Kover,

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

[FR Doc. 96–31554 Filed 12–11–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

December 6, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0709.

Title: Revision of Parts 22 and 90 to Facilitate Development of Paging Systems and Implementation of Section 309(J) of the Communications Act.

Form No.: N/A.

Type of Review: Reinstatement with change of a previously approved collection.

Respondents: Individuals or households; businesses or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 4,500.

Estimated Time Per Response: 0.08 hour.

Total Annual Burden: 360 hours.

Needs and Uses: On April 22, 1996, the Commission adopted an Order that prescribes interim paging rules to be effective upon publication in the Federal Register, until the final Report and Order and rules are adopted. The interim Order partially lifted the freeze on paging applications, and allowed applications to be filed by current private carrier paging and common carrier paging licensees for additional licenses. To insure that the applicants are incumbent licensees, they are required to submit a certification stating that they currently have an operating system, and that the application is for an addition or modification to the current system within 65 kilometers (40 miles) of the current operating transmission site and are the same channel as the current operating transmission site. On June 10, 1996, the Commission adopted an Order on Reconsideration of First Report and Order that allows the grant of some additional applications that were not contemplated in the Order adopted on April 22, 1996. These additional incumbents should also be allowed the opportunity to expand their systems.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31485 Filed 12–11–96; 8:45 am]

BILLING CODE 6712–01–P

[DA 96–1959]

Auction of Cellular Unserved Area Licenses (Auction No. 12)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice provides guidance on determining eligibility to participate in Auction No. 12 for certain cellular unserved service area licenses. The Wireless Telecommunications Bureau has received several inquiries concerning eligibility since announcing Auction No. 12. This Public Notice is intended to assist interested entities in ascertaining whether they are eligible to participate in Auction No. 12, and if so, on which licenses they may bid.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of Public Notice DA 96–1959, ''Auction of Cellular Unserved Area Licenses (Auction No. 12)—Wireless Telecommunications Bureau Provides Guidance on Eligibility for Cellular Unserved Service Area Auction,'' released November 22, 1996. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Public Notice

1. An auction of certain licenses for cellular unserved service areas is scheduled to begin on January 13, 1997. See Public Notice DA 96–1850, ''FCC Issues Procedures, Terms and Conditions for January 13, 1997 Auction of Cellular Phase I and Phase II Service Areas,'' released November 8, 1996 (Auction Public Notice). This auction will be the twelfth auction scheduled by the Commission and will be referred to as Auction No. 12. Eligibility is limited to those entities who previously filed an FCC Form 464 or 464–A within the time-frame designated in 47 CFR § 22.949 for a market and channel block whose license is being auctioned in this auction.

2. Any entity who timely filed an FCC Form 464 or 464–A who wishes to participate in the auction of these licenses also must submit an FCC Form 175 by December 16, 1996. Thus, the number of entities eligible to participate in this auction is limited. Further, the entities who are eligible to participate in this auction are able to bid only for the markets and channel blocks previously specified on their FCC Form 464s or 464–As. An applicant is required to list the markets and channel blocks in which it seeks to bid on the FCC Form 175. A list of licenses being auctioned and those eligible to apply for each license is provided in Attachment A to the Auction Public Notice.

3. Each applicant has an obligation to keep a current FCC Form 464 or 464–A on file with the Commission. Any applicant whose FCC Form 464 or 464–A is not current must file the appropriate amendments prior to filing the FCC Form 175. The Commission has requested that any applicant for Auction No. 12 not on the list of eligible participants attach an exhibit to its FCC Form 175 explaining its relationship to the entity on Attachment A through which it derives its eligibility to participate.

4. The following examples are provided for illustration:

Example 1

A Corp timely filed an FCC Form 464 for MSA 1, channel block B. After the issuance

of a Public Notice announcing an auction of cellular unserved area licenses, A Corp timely filed an FCC Form 175. In response to Item 11, ''Markets and Frequency Blocks/Channels for which you want to bid,'' A Corp selected the ''All'' Box on its FCC Form 175.

A Corp's application will be considered incomplete. An entity may only apply for bidding eligibility on licenses in which it has timely filed an FCC Form 464 or 464–A. In A Corp's situation, it can only seek bidding eligibility for MSA 1, channel block B. Furthermore, because the FCC Form 464 or 464–A filing deadline has passed for the licenses offered in the current auction, A Corp cannot obtain bidding eligibility for any license in the auction other than MSA 1, channel block B by now filing an FCC Form 464 or 464–A.

Example 2

X Corp timely filed an FCC Form 464 for RSA 1, channel block A; Y Corp timely filed an FCC Form 464 for RSA 2, channel block B. X Corp and Y Corp were wholly owned subsidiaries of Z Corp. After the issuance of a Public Notice announcing an auction of cellular unserved area licenses, Z Corp timely filed an FCC Form 175 to seek bidding eligibility for RSA 1, channel block A and RSA 2, channel block B. Attached to Z Corp's FCC Form 175 is an exhibit explaining Z Corp's relationship to X Corp and Y Corp.

Z Corp will be eligible to bid on the license for both RSA 1, channel block A and RSA 2, channel block B (provided Z Corp timely filed its upfront payment and has a sufficient bidding activity level to bid for both licenses). Z Corp was able to derive its eligibility to participate in the auction through the FCC Form 464s filed by X Corp and Y Corp.

5. For additional information, please contact Thomas Horan, Auctions Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31327 Filed 12–11–96; 8:45 am]

BILLING CODE 6712–01–M

FCC To Hold Open Commission Meeting Friday, December 13, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday December 13, 1996, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees (WT Docket No. 96–148) and Implementation of Section 257 of the Communications Act -- Elimination of Market Entry Barriers (GN Docket No. 96–113). Summary: The Commission will consider action concerning geographic partitioning and spectrum disaggregation for boardband PCS licensees.

2—Office of Engineering and Technology—Title: Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations. Summary: The Commission will consider a proposal to modify and update its experimental radio service regulations.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and video tapes fo this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460 or TTY (202) 418–1388; fax numbers (202) 418–2809 or (202) 418–7286. The meeting can be heard via telephone, for a fee, from National Narrowcast network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1800–962–0044.

December 6, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31721 Filed 12–10–96; 9:15 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

UTC Overseas, Inc.
476 Broadway, Suite 5001, New York, NY 10013
Officer: Brian Posthumus, President, Werner Knoop, Vice President

J & L Forwarding Co., Inc.
Two Executive Drive, Suite 720, Fort Lee, NJ 07024
Officer: Luisa E. Han, President, John K. Han, Secretary

Cargoplan International
24 West Evergreen Avenue, Philadelphia, PA 19118
Evelyn O. Aharon, Sole Proprietor

J & M International, Inc.
7020 S. Yale, Suite 207, Tulsa, OK 74136–5744
Officers: Joseph D. Fain, President, Tom K. Murray, Vice President

Primar International, Inc.
14335–A Interdrive West, Houston, TX 77032
Officers: Jesus A. Finol, President, Aaron Holloway, Vice President

Dated: December 9, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–31534 Filed 12–11–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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 3, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri, and Ameribanc, Inc., St. Louis, Missouri; to acquire and merge with Regional Bancshares, Inc., Alton, Illinois, and thereby indirectly acquire Bank of Alton, Alton, Illinois.

Board of Governors of the Federal Reserve System, December 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–31491 Filed 12-11-96; 8:45 am]

BILLING CODE 6210-01-F

[Docket No. R–0937]

Policy Statement on Payments System Risk; Modified Procedures for Measuring Daylight Overdrafts; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement; correction.

SUMMARY: This document corrects the announced effective date of recent amendments to the Policy Statement on Payments System Risk, which established daylight overdraft posting times for payments associated for Treasury investments resulting from electronic federal tax payments. These amendments were effective under the Small Business Regulatory Enforcement Fairness Act of 1996, on December 9, 1996. The amendments to the policy statement as published at 61 FR 58691, however, incorrectly stated that they were effective November 18, 1996, the date of publication in the Federal Register.

EFFECTIVE DATE: Effective November 18, 1996, the effective date for the amendments to the policy statement is corrected to be December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Bettge, Manager (202/452–3174), Heidi Richards, Senior Financial Services Analyst (202/452–2598), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

By order of the Board of Governors of the Federal Reserve System, December 9, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–31577 Filed 12–11–96; 8:45 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System*.

TIME AND DATE: 3:00 p.m., Tuesday, December 17, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Proposals regarding actuarial assumptions in the Federal Reserve System benefit plans.
3. Proposal regarding selection of a financial auditor for the Office of Employee Benefits.
4. Proposed committee for the Office of Employee Benefits.
5. Any items carried forward from a previously announced meeting.

* * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 10, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–31761 Filed 12–10–96; 3:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0477]

Elf Atochem North America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Elf Atochem North America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide/polyether block copolymers prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol) for use in the manufacture of rubber articles intended for repeated use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by January 13, 1997.

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

FOR FURTHER INFORMATION CONTACT: 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4528) has been filed by Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 19103–3222. The petition proposes to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of polyamide/polyether block copolymers prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol) for use in the manufacture of rubber articles intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets

Management Branch (address above) for public review and comment. Interested persons may, on or before January 13, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: November 25, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–31574 Filed 12–11–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Manufacturer Audit Guidelines and Dispute Resolution Process 0905–ZA–19

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

INFORMATION: Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the Public Health Service Act (the ''PHS Act''), ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible (covered) entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services (''HHS'') in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(5) of the PHS Act identifies certain requirements for covered entities concerning potential double price reductions and drug diversion. A covered entity must permit the manufacturer of a covered outpatient drug to audit the records of the covered entity directly pertaining to the entity's compliance with the requirements of section 340B(a)(5) (A) and (B) as to drugs purchased from the manufacturer. These audits must be conducted in accordance with guidelines established by the Secretary, acting through the Health Resources and Services Administration, Bureau of Primary Health Care, the Office of Drug Pricing (the ''Department''). Section 340B(a)(5)(C) states that the Secretary shall establish guidelines relating to the number, scope and duration of the audits. The Department has defined these terms and provided suggested audit steps.

Further, the Department anticipates that disputes may arise between covered entities and participating manufacturers regarding implementation of the provisions of section 340B. To resolve these disputes in an expeditious manner, the Department has developed a voluntary dispute resolution process.

The purpose of this notice is to inform interested parties of final program guidelines concerning manufacturer audit guidelines and the dispute resolution process.

FOR FURTHER INFORMATION CONTACT: Director, Office of Drug Pricing, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, West Towers, 10th Floor, Bethesda, Maryland 20814, Phone: (301) 594–4353.

EFFECTIVE DATE: January 13, 1997.

SUPPLEMENTARY INFORMATION:

(A) Background

Proposed manufacturer audit guidelines and the proposed informal dispute process were announced in the Federal Register at 59 FR 30021 on June 10, 1994. A comment period of 30 days was established to allow interested parties to submit comments. The ODP received comments from 12 sources including pharmaceutical manufacturers, a covered entity, organizations representing pharmaceutical manufacturers or covered entities, and the American Institute of Certified Public Accountants.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing this final notice. Changes were also made to increase clarity and readability.

(B) Comments and Responses—Manufacturer Audit Guidelines

Comment: A number of commenters addressed the requirement that a manufacturer establish reasonable cause and obtain approval from the Department before conducting an audit. While some commenters believe that the statute gives manufacturers the right to routinely conduct an audit as a normal business practice without the need for Departmental approval, other commenters indicated that manufacturers should be required to provide objective documentation that a violation has occurred before being granted permission to audit.

Response: Section 340B(a)(5)(C) provides that audits will be performed in accordance with procedures established by the Secretary relating to the number, duration, and scope of the audits. These audits must pertain directly to the entity's compliance with the prohibitions against drug diversion and the generation of duplicate drug rebates and discounts with respect to drugs of the manufacturer. See Section 340B(a)(5)(A) & (B). In order to ensure that the audits pertain to compliance with the prohibitions in the aforementioned subparagraphs, it is appropriate to require manufacturers to submit an audit work plan for the Department's review and to establish reasonable cause. Although the Department will not require pre-approval of the plan, this will ensure that the audits are performed where there are valid business concerns and are conducted with the least possible disruption to the covered entity. Significant changes in quantities of specific drugs ordered by a covered entity and complaints from patients/other manufacturers about activities of a covered entity may be a basis for establishing reasonable cause.

Comment: Omit the requirement to submit an audit plan for the Department's approval.

Response: The requirement for approval of an audit plan has been dropped. The Department's review of the audit workplan is necessary to ensure that audit work performed is relevant to the audit objectives while protecting patient confidentiality and information of the covered entity which is considered proprietary. If after this review the Department has concerns regarding the audit plan it will work with the manufacturer to incorporate mutually agreed-upon revisions to the plan.

Comment: Commenters indicated that audits would not be meaningful without

a clear definition of a ''patient of the entity.''

Response: Because sufficient criteria must be provided by which auditors (and others) can determine if consumers of drugs purchased at the mandated prices are eligible to receive covered drugs, a definition of ''patient of the entity'' is necessary. ODP has addressed this issue by means of Federal Register final notice dated October 24, 1996 (61 FR 55156)

Comment: Establish a timeframe or deadline for the various steps in the process. The commenters are concerned that the process could be unreasonably delayed should the Department, the covered entity, or the dispute resolution committee not act in a timely manner. For example, an audit cannot begin until the Department grants permission and approves the audit workplan, while a covered entity's refusal to respond to an audit report would preclude the next step in the process from taking place. The suggestions for timeframes included to shorten from 60 to 30 days the timeframe for covered entities to respond to a manufacturer's audit findings and apply a 30-day timeframe for each step except for the act of performing the actual audit.

Response: There should be timeframes applicable to the actions required by the covered entities and the Department. The following timeframes have been incorporated into the guidelines:

- The Department will review an audit work plan submitted by a manufacturer within 15 days of submission;
- The requirement for covered entities to respond to audit findings and recommendations within 60 days has been reduced to 30 days;

Comment: Access to records should include the records of any organization employed by the covered entity to purchase or dispense drugs or file Title XIX claims on the entity's behalf.

Response: The auditors must have access to all records necessary for identifying and determining the eligibility of the ultimate consumer of drugs purchased at the discount price and whether Medicaid rebates were also claimed for those drugs. The guidelines have been revised to indicate that any organization purchasing or dispensing covered drugs or filing Title XIX claims on behalf of a covered entity is subject to the same audit requirements as the covered entity.

Comment: There were concerns with the Department's March 1994 Guideline Letter concerning the contracted pharmacy mechanism. These commenters believe that unforeseen business relationships and activities by covered entities under these guidelines could result in new patterns of fraud and abuse.

Response: The Department has addressed the contracted pharmacy mechanism in a separate Federal Register final notice on August 23, 1996 at 61 FR 43549.

Comment: Compliance with the requirements outlined in the Government Auditing Standards will significantly increase the cost of performing audits and require the use of independent accountants rather than internal audit staff. It was suggested that manufacturers use their own internal auditing standards or those of the Institute of Internal Auditors.

Response: Conducting audits in accordance with the Government Auditing Standards will provide assurances that audits will be performed in accordance with generally accepted auditing standards relating to professional qualifications of the auditors, independence, due professional care, field work, and reporting of the audit findings. Compliance with these standards will also ensure audit uniformity and consistency and adequacy of documentation to permit independent review in cases where disputes arise.

Comment: The guidelines should stipulate the record retention requirements for covered entities (i.e., indicate how long records must be maintained for possible audit).

Response: Covered entities should maintain records to demonstrate the distribution and use of covered drugs for a period of not less than 3 years.

Comment: There should be greater audit latitude and cooperation between manufacturers and entities as allowed by the ''Medicaid Agreement.''

Response: The ''Medicaid Agreement'' permits manufacturers to audit the Medicaid utilization information reported by the State. In this instance, manufacturers are auditing information received by the State and are permitted to develop mutually beneficial procedures with the State. This is a very different situation from the audits permitted by section 340B. Pursuant to section 340B authority, a manufacturer may audit an entity whose only connection to the State or Federal government is in the form of a grant or reimbursement that it receives. In this instance, the manufacturer is permitted to audit only pursuant to guidelines established by the Secretary.

Comment: In order to maximize profits, covered entities could require patients to purchase covered drugs from them, thus infringing on patients' rights to choose their own providers.

Response: Patients of covered entities have the right to fill their prescriptions at the pharmacy of their choice. Of course, if the patient chooses to have the prescription filled at a location other than with the covered entity, discount pricing cannot be guaranteed.

Comment: The guidelines should focus only on the number, duration, and scope of audits.

Response: The guidelines stipulate that (1) audits are to be performed only when there is a reasonable cause to believe that there has been a violation of section 340B(a)(5) (A) or (B); (2) audits are to be conducted with the least possible disruption to the operations of the covered entity with only one audit being permitted during the same time period; and (3) the scope of the audits must be sufficient to evaluate the covered entity's compliance with the aforementioned statutory prohibitions.

Comment: The guidelines are unfairly burdensome and shift the Secretary's responsibility for enforcing the statute to the manufacturers.

Response: In accordance with the intent of the statute, the audits should be performed only when there is reasonable cause for their performance. Further, the statute also states that the audits should be conducted at the expense of the Government or the manufacturer. We believe that the party which demonstrates a reasonable cause for the audit should commission the audit. However, in cases where more than one manufacturer has demonstrated reasonable cause for an audit, then the Government may perform the audit in order to protect the confidentiality of the manufacturers' proprietary information.

Comment: Some of the proposed audit steps are duplicative; therefore, the proposed audit steps at section II b, c, e, f, g should be excised or moved to streamline the proposed guidelines.

Response: The guidelines have been reorganized to provide a section on ''Procedures To Be Followed'' and a section on ''Suggested Audit Steps.'' This clearly distinguishes the procedures to be followed by the manufacturer from the suggested procedures to be performed by the manufacturer's auditors.

Comment: In cases where the Government elects to perform its own audit, the resulting audit report should be made available to the manufacturers.

Response: Audit reports prepared by Government auditors are public documents. A copy of the audit report will be made available to the manufacturers upon request. Requests

should be addressed to: Director, HRSA, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Towers, 10th Floor, Bethesda, MD 20814.

Comment: Because audits will be permitted only when the manufacturer can demonstrate that there is ''reasonable cause'' to believe that a violation of section 340B(a)(5) has occurred, ''reasonable cause'' should be defined.

Response: The guidelines have been revised to provide a definition of ''reasonable cause.''

Comment: A covered entity should be given an opportunity to respond to a manufacturer's request for an audit before the Department determines whether an audit may be performed and should be permitted to review and comment on the manufacturer's proposed audit workplan before it is approved by the Department.

Response: The guidelines provide for a 30 day period before the manufacturer submits to the Department an audit work plan in which the manufacturer and the covered entity must attempt in good faith to resolve the matter. When the manufacturer submits its audit work plan, it has already discussed the matter with the covered entity; therefore, we do not believe there is a need for the covered entity to comment on a manufacturer's submission of an audit workplan. The Department, at its discretion, may contact the covered entity as part of the review process of the proposed manufacturer's audit. Likewise, we do not believe that there is a need for the covered entity to review and comment on the manufacturer's proposed workplan once it has been reviewed by the Department.

Comment: The guidelines should be clarified to indicate that the manufacturer's independent public accountant should perform the audit. This is necessary to comply with the ''independence standard'' contained in the Government Auditing Standards.

Response: The guidelines have been modified to indicate that a manufacturer's auditor shall be an independent public accountant employed by a manufacturer to perform the audit.

Comment: Refer to reviews as ''attestation engagements'' rather than ''audits,'' and perform them as agreed-upon procedures in accordance with the Statement on Standards for Attestation Engagements No. 3, Compliance Attestation. The procedures to be performed could be jointly developed and agreed upon by the Department, the covered entity, manufacturer, and the independent accountant.

Response: Although some of the work to be performed by the independent public accountant or government auditor may involve some attestation procedures, the statute calls for an audit of the covered entity's records. Therefore, the term audit has been used in the preparation of the guidelines. Further, we agree that the opinions and views of all interested parties should be considered in the preparation of the guidelines. This has been achieved through the publication of the proposed guidelines in the Federal Register, requesting public comment.

Comment: The notice should include the guidelines to be followed by Federal auditors.

Response: Federal auditors will perform audits in accordance with the Government Auditing Standards. The Notice has been clarified.

Comment: Covered entities should have the right to submit newly compiled or discovered information following the manufacturer's audit for consideration by the review committee.

Response: The guidelines provide that when a covered entity disagrees with the audit report's findings and recommendations, the covered entity should provide its rationale for the disagreement to the manufacturer. The manufacturer and the covered entity must make a good faith effort to resolve the issue before requesting review using the dispute resolution process. Newly compiled or discovered information can be provided to the manufacturer during this period of good faith effort. If the parties are still unable to reach agreement, the newly compiled or discovered information can be submitted to the Department along with the other information that was developed as part of the audit. The Department will consider the auditor's findings and recommendations as well as the covered entity's rationale for disagreeing during the review process.

Comment: All covered entity records and information identified in the audit process should be held in strict confidence by the manufacturer.

Response: Confidential patient information and proprietary information will be protected.

Comment: Manufacturers should not be required to continue to sell to a covered entity at the mandated price once an audit has been initiated, particularly since reasonable cause has already been demonstrated.

Response: Manufacturers must continue to sell at the statutory price during the audit process. Once the audit has been completed and the manufacturer believes that there is sufficient evidence to indicate prohibited entity activity, then the manufacturer may bring the claim to the Department through the informal dispute process. Not until the entity is found guilty of prohibited activity and a decision is made to remove the entity from the covered entity list, will the manufacturers no longer be required to extend the discount.

Comment: Each manufacturer, wronged by the same business practices of the same entity, must wait its turn to audit the entity and pursue its case through the dispute process in order to recover. This could result in a failure to enforce the statute.

Response: The guidelines have been revised to permit the Department, if deemed necessary, to provide for corrective action as to other manufacturers wronged by prohibited entity activity.

Comment: Include the hospital prohibition against participation in any group purchasing arrangement as a permissible audit subject.

Response: The statute clearly limits the audit subjects to potential entity diversion (section 340B(a)(5)(B)) and entity activity that could generate a rebate on a drug that was discounted under the Act (section 340B(a)(5)(A)).

Comment: Provide for access to different records depending upon the record keeping system of the entity.

Response: The notice has been revised to permit access to primary records which would be included in a reasonable audit trail.

Comment: There is a requirement that an informational copy of the audit be provided to the Department and the Inspector General. Why cannot the entire report be provided to these offices?

Response: The guidelines have been revised to require that the entire report be submitted to the Department and the Office of the Inspector General.

Comment: The guidelines should not preclude the entity and the manufacturer from both voluntarily developing mutually beneficial audit procedures.

Response: The guidelines have been revised to include a statement that the guidelines do not preclude the entity and the manufacturer from both voluntarily developing mutually beneficial audit procedures.

Comment: The auditor should be able to confirm with the Department that the entity has provided its Medicaid provider number.

Response: The guidelines have been revised to permit the auditor to confirm with the Department that the entity being audited does not generate a Medicaid rebate while accepting 340B

discounts (e.g., has provided its Medicaid provider number, does not bill Medicaid, or utilizes an all-inclusive rate billing system). Manufacturers are free to challenge a hospital's eligibility as a covered entity by corresponding with the Department.

Comment: The Department must act independently to assure compliance.

Response: The Department will investigate all documentation submitted regarding both entity and manufacturer noncompliance and, when appropriate, take the necessary steps to remove the entity from ''covered entity'' status or terminate the Pharmaceutical Pricing Agreement which the manufacturer signed with HHS, thus preventing further participation in the program.

Comment: Set a specific time limit for a manufacturer to have audit personnel at the entity facility with the possibility of an extension for good cause.

Response: Because of the many variables (e.g., size of the covered entity and scope of the audit), it would be impossible to set specific time limits. However, if an entity believes that auditors are exceeding a reasonable time period, it may notify the Department for assistance.

Comment: You fail to require entities to allow audits.

Response: Please refer to the section entitled, ''Supplemental Information, Manufacturer Audit Guidelines,'' where we begin the discussion with the statement, ''Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act.'' Section 340B(a)(5)(C) provides that a covered entity shall permit the manufacturer of a covered outpatient drug to audit the records of the entity that pertain to the entity's compliance with section 340B(a)(5).

Comment: Guidelines regarding scope should be expanded to include procedures to assure that manufacturers not have access to information that identifies specific patients or transaction records concerning the products of other manufacturers.

Response: The guidelines require that audits be performed in accordance with the *Government Auditing Standards* (GAS) developed by the Comptroller General of the United States. These standards require auditors to prepare the audit reports in a manner that protects privileged and confidential information. Confidential patient information and/or proprietary information which auditors may access in the performance of an audit will not be disclosed to the manufacturer.

Comment: In the new section III(b), change the word ''access'' to ''obtain an understanding of,'' and in section III(e) change the word ''determine'' to ''test.''

Response: We have revised the notice accordingly.

(C) Revised Manufacturer Audit Guidelines

Set forth below are the final manufacturer audit guidelines, revised based upon an analysis of the comments above.

Manufacturer Audit Guidelines

Covered entities which choose to participate in the section 340B drug discount program shall comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity. The participating entity shall permit the manufacturer of a covered outpatient drug to audit its records that directly pertain to the entity's compliance with section 340B(a)(5) (A) and (B) requirements with respect to drugs of the manufacturer. Manufacturer audits shall be conducted in accordance with guidelines developed by the Secretary, as required by section 340B(a)(5)(C). Not only will the records of any organization working with a covered entity to purchase or dispense covered drugs, or to prepare Medicaid reimbursement claims for the covered entity be subject to the same audit requirement, but also any primary record that could be part of a reasonable audit trail.

This notice does not include the complete audit guidelines to be used by Government auditors in cases where the Government performs its own audit. Federal auditors shall perform audits in accordance with the Government Auditing Standards. The Government auditors' authority to audit the covered entity's compliance with the requirements of section 340B(a)(5) (A) and (B) shall not be limited by the manufacturer's audit guidelines.

The following is the ''Compliance Audit Guide'' concerning manufacturer audit guidelines as developed by the Secretary pursuant to section 340B(a)(5)(C): (These guidelines do not preclude the entity and the manufacturer from voluntarily developing mutually beneficial audit procedures.)

I. General Guidelines

The manufacturer shall submit a work plan for an audit which it plans to conduct of a covered entity to the Department. (See section III for suggested audit steps.) The manufacturer's auditor shall be an independent public accountant employed by the manufacturer to perform the audit. The auditor has an ethical and legal responsibility to perform a quality audit in accordance with Government Auditing Standards, Current Revision, developed by the Comptroller General of the United States. Patient confidentiality requirements also must be observed. At the completion of the audit, the auditors must prepare an audit report in accordance with the reporting standards for performance audits in Government Auditing Standards, Current Revision. The cost of a manufacturer audit shall be borne by the manufacturer, as provided by section 340B(a)(5)(C) of the PHS Act.

(a). Number of Audits

A manufacturer shall conduct an audit only when it has documentation which indicates that there is reasonable cause. ''Reasonable cause'' means that a reasonable person could believe that a covered entity may have violated a requirement of section 340B(a)(5) (A) or (B) of the PHS Act (i.e., accepting a 340B discount on a covered outpatient drug at a time when the covered entity has not submitted its Medicaid billing status to the Department or transferring or otherwise reselling section 340B discounted covered drugs to ineligible recipients).

Consistent with Government auditing standards, the organization performing the audit shall coordinate with other auditors, when appropriate, to avoid duplicating work already completed or that may be planned. Only one audit of a covered entity will be permitted at any one time. When specific allegations involving the drugs of more than one manufacturer have been made concerning an entity's compliance with section 340B(a)(5) (A) and (B), the Department will determine whether an audit should be performed by the (1) Government or (2) the manufacturer.

(b). Scope of Audits

The manufacturer shall submit an audit workplan describing the audit to the Department for review. The Department will review the workplan for reasonable purpose and scope. Only those records of the covered entity (or the records of any organization that works with the covered entity to

purchase, dispense, or obtain Title XIX reimbursement for the covered drug) that directly pertain to the potential 340B violation(s) may be accessed, including those systems and processes (e.g., purchasing, distribution, dispensing, and billing) that would assist in determining whether a 340B violation has occurred.

(c). Duration of Audits

Normally, audits shall be limited to an audit period of one year and shall be performed in the minimum time necessary with the minimum intrusion on the covered entity's operations.

II. Procedures To Be Followed

(a). The manufacturer shall notify the covered entity in writing when it believes the covered entity has violated provisions of section 340B. The manufacturer and the covered entity shall have at least 30 days from the date of notification to attempt in good faith to resolve the matter.

(b). The manufacturer has the option to proceed to the dispute resolution process described later in the notice without an audit, if it believes it has sufficient evidence of a violation absent an audit. If the matter is not resolved and the manufacturer desires to perform an audit, the manufacturer must file an audit work plan with the Department. (See section **FOR FURTHER INFORMATION** for address.) The manufacturer must set forth a clear description of why it has reasonable cause to believe that a violation of section 340B(a)(5) (A) or (B) has occurred, along with sufficient facts and evidence in support of the belief. In addition, the manufacturer shall provide copies of any documents supporting its claims.

(c). The Department will review the documentation submitted to determine if reasonable cause exists. If the Department finds that there is reasonable cause to believe that a violation of section 340B(a)(5) (A) or (B) has occurred, the Department will not intervene. In cases where the Department determines that the audit shall be performed by the Government, the Department will so advise the manufacturer and the covered entity within 15 days of receipt of the audit work plan.

(d). The filing of a audit work plan does not affect the statutory obligations of the parties as defined in section 340B of the PHS Act. During the audit process, the manufacturer must continue to sell covered outpatient drugs at the section 340B ceiling price to the covered entity being audited, and the covered entity must continue to comply with the requirements of section 340B(a)(5).

(e). Upon receipt of the manufacturer's audit work plan, the Department, in consultation with an appropriate audit component, will review the manufacturer's proposed workplan. As requested by GAS, the audit workplan shall describe in detail the following:

(1). audit objectives (what the audit is to accomplish), scope (type of data to be reviewed, systems and procedures to be examined, officials of the covered entity to be interviewed, and expected time frame for the audit), and methodology (processes used to gather and analyze data and to provide evidence to reach conclusions and recommendations);

(2). skill and knowledge of the audit organization's personnel to staff the assignment, their supervision, and the intended use of consultants, experts, and specialists;

(3). tests and procedures to be used to assess the covered entity's system of internal controls;

(4). procedures to be used to determine the amounts to be questioned should violations of section 340B(a)(5) (A) and (B) be discovered; and

(5). procedures to be used to protect patient confidentiality and proprietary information.

(f). Within 15 days of receipt of the proposed audit workplan, the Department shall review the work plan. If after this review the Department has concerns about the work plan, it will work with the manufacturer to incorporate mutually agreed-upon revisions to the plan. The covered entity will have at least 15 days to prepare for the audit.

(g). At the completion of the audit, the auditors must prepare an audit report in accordance with reporting standards for performance audits of the GAS. The manufacturer shall submit the audit report to the covered entity. The covered entity shall provide its response to the manufacturer on the audit report's findings and recommendations within 30 days from the date of receipt of the audit report. When the covered entity agrees with the audit report's findings and recommendations either in full or in part, the covered entity shall include in its response to the manufacturer a description of the actions planned or taken to address the audit findings and recommendations. When the covered entity does not agree with the audit report's findings and recommendations, the covered entity shall provide its rationale for the disagreement to the manufacturer.

(h). The manufacturer shall also submit copies of the audit report to the Department (see section **FOR FURTHER INFORMATION CONTACT** for the address) and the Office of Inspector General, Office of Audit Services, PHS Audits Division at Room 1–30, Park Building, 12420 Parklawn Drive, Rockville, MD 20857.

(i). If a dispute concerning the audit findings and recommendations arises, the parties may file a request for dispute resolution with the Department. All dispute resolution procedures developed by the Department shall be followed.

III. Suggested Audit Steps

Suggested audit steps include the following:

(a). Review the covered entity's policies and procedures regarding the procurement, inventory, distribution, dispensing, and billing for covered outpatient drugs.

(b). Obtain an understanding of internal controls applicable to the policies and procedures identified above (step a) when necessary to satisfy the audit objectives.

(c). Review the covered entity's policies and procedures to prevent the resale or transfer of drugs to a person or persons who are not patients of the covered entity.

(d). Test compliance with the policies and procedures identified above (step c) when necessary to satisfy the audit objectives.

(e). Review the covered entity's records of drug procurement and distribution and test whether the covered entity obtained a discount only for those programs authorized to receive discounts by section 340B of the PHS Act.

(f). If a covered entity does not use an all inclusive billing system (per encounter or visit), but instead bills outpatient drugs using a cost-based billing system, determine whether the covered entity has provided its pharmacy Medicaid provider number to the Department and test whether the covered entity billed Medicaid at the actual acquisition cost. The auditor is permitted to contact the ODP (at the number in the **FOR FURTHER INFORMATION CONTACT** section) to determine if the entity—(1) has provided its pharmacy Medicaid provider number, (2) does not bill Medicaid for covered outpatient drugs, (3) uses an all-inclusive rate billing system, or (4) is an entity clinic eligible for the discount pricing but located within a larger medical facility not eligible for the drug discounts and has provided the ODP a separate pharmacy Medicaid provider number or an agreement with the State Medicaid Agency regarding an operating mechanism to prevent duplicate discounting.

(g). Where the manufacturer's auditors conclude that there has been a violation of the requirements of section 340B(a)(5)(A) or (B), identify (1) the procedures or lack of adherence to existing procedures which caused the violation, (2) the dollar amounts involved, and (3) the time period in which the violation occurred.

(h). Following completion of the audit field work, provide an oral briefing of the audit findings to the covered entity to ensure a full understanding of the facts.

(D) Comment and Responses—Informal Dispute Resolution

Comment: The guidelines should include a mechanism to verify or ''dispute'' the accuracy of the Department's list of covered entities.

Response: The notice has been revised to include, as a type of dispute covered by the informal dispute mechanism, the accuracy of the master list of covered entities.

Comment: A dispute review committee consisting of only ODP and other PHS employees could result in conflict-of-interest concerns. The dispute review committee should be an independent body (e.g., an administrative law judge), and there should be a mechanism to provide for non-PHS members in cases where the dispute involved ODP.

Response: The Department is overseeing the implementation of section 340B of the PHS Act, and as such, is offering a voluntary dispute resolution mechanism to expedite this process. No manufacturer or covered entity is required to avail itself of this process before resorting to other available measures. Further, parties which do participate in the dispute resolution process will have an appeal opportunity with a HRSA review official or committee.

Comment: The penalties for covered entities that violate section 340B(a)(5) requirements are not adequate. For entities to merely repay discounts (plus interest) which they obtained and to which they were not entitled is not an effective deterrent. It was suggested that entities that have violated statutory requirements pay the cost of the audits, pay various amounts up to 150 percent of the improperly obtained discount (plus interest) and/or be banned from continued participation in the program. Further, it was suggested that an entity's failure to respond in a timely basis to a manufacturer's audit findings should result in a ''summary judgment'' against the entity.

Response: Section 340B(a) is clear concerning entity penalties for reselling or transferring discounted drugs, for generating duplicate discounts and rebates and who must bear the cost of auditing. Section 340B(a)(4) defines ''covered entity'' as one which meets the requirements of paragraph (5). This paragraph prohibits drug diversion and double price reductions. If an entity is found guilty of either of these activities, the entities may be found by the Department no longer to be covered under section 340B. Section 340B(a)(5)(D) outlines the monetary penalty for violations of these prohibitions and provides that entities must pay to the manufacturer the amount of discount received. Although section 340B provides for no other penalty, copies of the audit results will be submitted to the Office of Inspector General for review and possible further investigation. Section 340B(a)(5)(C) clearly provides that manufacturer audits are performed at the manufacturer expense. We agree that some type of penalty is necessary for an entity which does not respond in a timely fashion to a manufacturer audit results. We have revised the audit guidelines to allow for the manufacturer to submit to the Department a request for dispute resolution for entity non-response within given timeframes.

Comment: Please clarify the meaning of ''final determination'' as used in Part III of the Notice entitled, ''Penalties.''

Response: A ''final determination'' under the Dispute Resolution procedure is reached when review by the Administrator of the Health Resources and Services Administration (HRSA) is completed and the HRSA Administrator or appointee has made a decision on the issue(s) involved.

Comment: It is not clear when an administrative decision can be appealed by a covered entity to the Federal courts.

Response: Covered entities or manufacturers are encouraged to participate in this voluntary process for the resolution of disputes regarding section 340B. It is expected that once a covered entity or a manufacturer submits a request for informal dispute resolution, the process will be completed before pursuing other remedies which may be available under applicable principles of law. Entities may wish to seek legal advice concerning the exhaustion of administrative remedies regarding a voluntary administrative process. Section III of the Guidelines has been clarified.

Comment: Additional appeal procedures may be problematic for covered entities or manufacturers who must exhaust their administrative remedies before seeking remedies in a court of law.

Response: The dispute resolution process is a voluntary process. Manufacturers or entities are only encouraged to participate in the process before seeking other remedies.

Comment: The term ''PHS'' is not defined. It is unclear whether this means the ODP or some other office within the PHS.

Response: The term ''PHS'' means the Public Health Service in its entirety. The guidelines have been revised to reflect that the Department will be implementing these guidelines through the ODP.

Comment: A party who is unable to resolve a dispute can submit a written request for a review of the dispute. Time deadlines should be included to state when that written request can be submitted.

Response: The guidelines have been changed to include such deadlines.

Comment: Time deadlines and penalties for non-response must be included for various steps in the dispute process. First, upon receipt of a request for a review, the chairperson of the review committee should send a letter to the party alleged to have committed a violation. Time deadlines should be included on when the chairperson must send this letter. Second, the activities of the review committee should also have deadlines. Third, a deadline for the submission of additional information should be included.

Response: The guidelines have been changed to include such deadlines.

Comment: The penalties do not preclude the imposition by the Government of other penalties or remedies under other statutes such as the Federal False Claims Act.

Response: The guidelines have been revised to clarify this issue.

(E) Revised Informal Dispute Resolution Process

Set forth below are the final informal dispute resolution guidelines, revised based upon the analysis of the comments above.

Dispute Resolution Process

The Department, acting through the Office of Drug Pricing (ODP), is proposing a voluntary process for the resolution of certain disputes between manufacturers and covered entities concerning compliance with the provisions of section 340B of the PHS Act. Covered entities or manufacturers are not required to enter this informal process for resolution of disputes regarding section 340B. However, the Department expects parties to utilize the

process before resorting to other remedies which may be available under applicable principles of law.

I. Types of Disputes Covered

Disputes resolved by these procedures include:

(a) A manufacturer believes a covered entity is in violation of the prohibition against resale or transfer of a covered outpatient drug (section 340B(a)(5)(B) of the PHS Act), or the prohibition against duplicate discounts or rebates (section 340B(a)(5)(A) of the PHS Act).

(b) A covered entity believes that a manufacturer is charging a price for a covered outpatient drug that exceeds the ceiling price as determined by section 340B(a)(1) of the PHS Act.

(c) A manufacturer is conditioning the sale of covered outpatient drugs to a covered entity on the entity's provision of assurances or other compliance with the manufacturer's requirements that are based upon section 340B provisions.

(d) A covered entity believes that a manufacturer has refused to sell a covered outpatient drug at or below the ceiling price, as determined by section 340B(a)(1) of the PHS Act.

(e) A manufacturer believes that a covered entity is dispensing a covered outpatient drug in an unauthorized service (e.g., inpatient services or ineligible clinics within the same health system).

(f) A manufacturer believes that a covered entity has not complied with the audit requirements under section 340B(a)(5)(c) of the PHS Act or the audit guidelines as set forth in this notice.

(g) A covered entity believes that the auditors of the manufacturer have not abided by the approved workplan or audit guidelines.

(h) A covered entity is unable to obtain covered outpatient drugs through a wholesaler because the manufacturer will only sell section 340B discounted drugs directly from the manufacturer to the entity.

(i) A manufacturer or covered entity wants to verify the accuracy of the master list of covered entities.

II. Dispute Resolution Process

Prior to the filing of a request for dispute review with the Department, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of the good faith attempt to resolve the dispute. Such evidence includes documentation of meetings, letters, or telephone calls between the disputing parties that concern the dispute.

If the dispute has not been resolved after a good faith attempt, a party may submit a written request for a review of the dispute to the Director of the ODP within 30 days. [See address in **FOR FURTHER INFORMATION CONTACT** section.]

The party requesting the review may not rely only upon allegations but is required to set forth specific facts showing that there is a genuine and substantial issue of material fact in dispute that requires a review.

The request for review shall include a clear description of the dispute, shall identify all the issues in the dispute, and shall contain a full statement of the party's position with respect to such issue(s) and the pertinent facts and reasons in support of the party's position. In addition to the required statement, the party shall provide copies of any documents supporting its claim and evidence that a good faith effort was made to resolve the dispute. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

The filing of the dispute does not affect any statutory obligations of the parties, as defined in section 340B of the PHS Act. During the review process, for example, a manufacturer must continue to sell covered outpatient drugs at or below the section 340B ceiling price to all covered entities, including the covered entity involved in the dispute. Only when the entity is found guilty of prohibited activity and a decision is made to remove the entity from the list of covered entities, is the manufacturer no longer required to extend the discount.

The Director, Bureau of Primary Health Care, shall appoint a committee to review the documentation submitted by the disputing parties and to make a proposed determination. A minimum of three individuals shall be appointed (one of whom shall be designated as a chairperson) either on an ad hoc, case-by-case basis, or as regular members of the review committee. The chairperson shall be from the ODP and the committee members shall be from other sections of PHS (e.g. chief pharmacist, auditor).

Upon receipt of a request for a review, the chairperson of the review committee, within 30 days, will send a letter to the party alleged to have committed a violation. The letter will include (1) the name of the party making the allegation(s), (2) the allegation(s), (3) documentation supporting the party's position, and (4) a request for a response to or rebuttal of the allegations within 37 calendar days of the receipt of the letter (7 days from the date of the postmark of the letter being allowed for mailing and processing through the organization).

Upon receipt of the response or rebuttal, the review committee will review all documentation. The request and rebuttal information will be reviewed for (1) evidence that a good faith effort was made to resolve the dispute, (2) completeness, (3) adequacy of the documentation supporting the issues, and (4) the reasonableness of the allegations. If the documentation meets these requirements, the review committee will consider the matter.

The reviewing committee may, at its discretion, invite parties to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

The reviewing committee will propose to dismiss the dispute, if it conclusively appears from the data, information, and factual analyses contained in the request for a review and rebuttal documents that there is no genuine and substantial issue of fact in dispute. Within 30 days, a written decision of dismissal will be sent to each party and will contain the committee's findings and conclusions in detail, and, if the committee decided to dismiss, reasons why the request for a review did not raise a genuine and substantial issue of fact.

With all other proposed findings, within 30 days, the review committee will prepare a written document containing the findings and detailed reasons supporting the proposed decision. The document is to be signed by the chairperson and each of the other committee members. The committee's written decision will be sent with a transmittal letter to both parties. If the committee finds the covered entity guilty of prohibited activity and a decision is made to remove the entity from the covered entity list, then the manufacturers will no longer be required to extend the discount. If the covered entity or the manufacturer does not agree with the committee's determination, the covered entity or the manufacturer may appeal within 30 days after receiving such a determination to the Administrator of the Health Resources and Services Administration, who will appoint a review official or committee. The review official or committee will respond to appeal requests within 30 days from the receipt of the request.

III. Penalties

If the final determination is that a manufacturer has violated the provisions of section 340B of the PHS Act or the PHS Pharmaceutical Pricing Agreement, the manufacturer's agreement with HHS could be terminated or other actions taken, as

deemed appropriate. If the final determination is that an entity has violated section 340B prohibitions against the resale or transfer of covered outpatient drugs or the prohibition against duplicate discounts and rebates (or billing Medicaid more than the actual acquisition cost of the drug), the entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug for the period of the violation, as provided by section 340B(a)(5)(D) of the PHS Act. After the dispute is resolved, any disputed amounts must be paid or credited to an account balance no later than 30 days following a final determination. The entity may also be excluded from the drug discount program, if the conduct warrants such a sanction. Such penalties do not preclude the imposition by the Government of other penalties or remedies under other statutes such as the Federal False Claims Act. A copy of the findings may be sent to the Office of the Inspector General for further action. If it is documented that several manufacturers have been wronged by the same prohibited entity behavior, corrective action will be afforded such manufacturers. (The reporting and recordkeeping requirements of this document are subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, and have OMB clearance through 9/30/97 (OMB Control No. 0915–0176). The Paperwork Reduction Act of 1995 added disclosure requirements to the list of items needing OMB approval. The disclosure requirements in the audit guidelines include: section II(a)—the manufacturer shall notify the covered entity in writing when it believes the covered entity has violated provisions of section 340B; section II(g)—the manufacturer shall submit the audit report to the covered entity, and the covered entity shall provide its response to the manufacturer on the audit report's findings * * *; and section III(h) the manufacturer shall provide an oral briefing of the audit findings to the covered entity. The disclosure requirements in these sections will not be in force until OMB approval has been obtained.

Dated: December 6, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 96–31541 Filed 12–11–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Aging Special Emphasis Panel (Teleconference).

Date of Meeting: December 19, 1996.

Time of Meeting: 10:30 a.m. to adjournment.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Purpose/Agenda: To review a grant application.

Contact Person: Dr. James P. Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

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 review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 6, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–31585 Filed 12–11–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–86]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be 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: February 10, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451—7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Frank Price, 202–708–2094 ext. 4572 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rental Rehabilitation Program Renewal Application.

OMB Control Number, if applicable: 2506–0080.

Description of the need for the information and proposed use: Although the Rental Rehabilitation Program was terminated October 1, 1991, Public Law 98–181 (97 Stat. 1153), Section 17, that originally authorized the Rental Rehabilitation Program still imposes data collection and reporting requirements upon HUD and grantees. The information will be used by HUD to account for program grant funds and to satisfy statutory reporting requirements.

Agency form numbers, if applicable: HUD–40014, 40014–B, 44021, and 40070.

Members of affected public: State and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents—225; frequency of response—for HUD–40014, HUD–40014–B, and HUD–40021 once per project, and for HUD–40070 once annually per grantee; hours of response—19.5 hours per grantee.

Status of the proposed information collection: Reinstatement, with change, or a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–31569 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–82]

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 13, 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: November 20, 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: National Survey of Rehabilitation Enforcement Practices.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed Use: With the growing rehabilitation needs of the existing building stock in the nation's cities, there is a need to examine compliance alternatives to the building rehabilitation process that maintain an equivalent level of safety. This nationwide survey will assess the differences in building code enforcement as it relates to rehabilitation and to also identify successful compliance in encouraging rehabilitation. This information will provide data to further facilitate the process of altering rehabilitation enforcement practices nationwide.

Form Number: None.

Respondents: State, Local, or Tribal Government, Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	2,250		1		.60		1,350

Total Estimated Burden Hours: 1,350.

Status: New.

Contact: Jacqueline A. Kruszek, HUD, (202) 708–4370 x141; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 20, 1996.

[FR Doc. 96–31565 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–83]

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 13, 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. Lackery, 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 21, 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: Record of Employee Interview.

Office: Secretary.

OMB Approval Number: 2501–0009.

Description of the Need for the Information and Its Proposed Use: Form HUD–11 is utilized by HUD in recording interviews with construction workers and in the conduct of labor standards investigations.

Form Number: HUD–11.

Respondents: Individuals or Households, State, Local, or Tribal Government, and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11	20,000		1		.25		5,000
Recordkeeping	1,000		1		5		5,000

Total Estimated Burden Hours: 10,000.

Status: Reinstatement, without changes.

Contact: Richard S. Allan, HUD, (202) 708–0370; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–31566 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–84]

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 13, 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: November 21, 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: Default Status Report on Multifamily Housing Projects.

Office: Housing.

OMB Approval Number: 2502–0041.

Description of the Need for the Information and Its Proposed Use: Mortgages use this report to notify HUD that a project owner has defaulted and that an assignment of acquisition will result if HUD and the mortgagor do not develop a plan for reinstating the loan. The report triggers HUD's negotiation with the mortgagor.

Form Number: HUD–92426.

Respondents: Not-for-profit institutions and the Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2,000		3		.25		1,500
Recordkeeping	500		1		2.00		1,000

Total Estimated Burden Hours: 2,500.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–31567 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–85]

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: Comment due date: January 13, 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 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 21, 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: Life-Cycle Cost Analysis of Utility Combinations in Public Housing.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0024.

Description of the Need for the Information and its proposed use: The Department will use the information collected to analyze the selection of the most cost effective utilities, fuels, related mechanical equipment, and methods of purchase for public housing projects.

Form Number: HUD–51994.

Respondents: State, Local, or Tribal Government and not-for-profit institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–51994	238		1		6		1,428

Total Estimated Burden Hours: 1,428.

Status: Reinstatement, with changes.

Contact: William C. Thorson, HUD, (202) 708–4703 x4043; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 96–31568 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3918–N–08]

Privacy Act of 1974, as Amended; Proposed Amendment to a System of Records.

AGENCY: Office of the Secretary (HUD).

ACTION: Notification of proposed amendment to one of the existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Housing and Urban Development is giving notice that it intends to amend the Privacy Act's Single Family Case Files (HUD/Dept–46) system of records.

DATES: Comments due: January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are

not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/Dept–46 is being amended to correct an error made in a November 9, 1995 Federal Register notice (60 FR 56609). On November 9, 1995 HUD/Dept–46 was amended to include a new routine use disclosure to allow the release of mortgage origination and default/claim information to financial institutions and computer software companies for the purpose of conducting automated underwriting. A previous amendment was made to this same system of records on June 12, 1995 to include a new routine use disclosure for the release of relevant sales information to prospective purchasers for sale of mortgages, loans or insurance premiums or charges (60 FR 30893). The addition of the June 12th routine use disclosure was inadvertently omitted in the November 9, 1995 Federal Register notice. This amendment corrects the error and publishes all routine use disclosures for HUD/Dept–46.

The amended portion of the system notice is set forth below. Previously the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the ''Federal Register Privacy Act Issuances, 1993.''

Title 5 U.S.C. 552(a)(e) (4) and (1) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, Management of Federal Information Resources, dated February 8, 1996.

Authority: 5 U.S.C. 552a, 88 Stat. 1986; sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C. December 2, 1996.

Steven M. Yohai,

Chief Information Officer, Office of Information Technology.

HUD/DEPT–46

System Name:

Single Family Case Files.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

See Routine Uses paragraphs of prefatory statement. Other routine uses include:

a. To welfare agencies for fraud investigation.

b. To the Department of Veterans Affairs for coordination with HUD in processing construction complaints.

c. To congressional delegations to provide information concerning status of complaints.

d. Complainants and attorneys representing them for review of complainant file for status and other information.

e. Builders and attorneys representing them to review complainant files for status information.

f. To holders of subordinate or junior mortgages to determine the outstanding balance due to HUD on a Secretary-held mortgage.

g. To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

h. To financial institutions and computer software companies for automated underwriting, credit scoring and other risk management evaluation studies.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, Disposing of Records in the System and Safeguards:

* * * * *

[FR Doc. 96–31570 Filed 12–11–96; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management—Alaska

[AK–962–1410–00–P]

Notice for Publication AA–6674–A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag Inc., Regional Corporation, as Successor in Interest to Karluk Natiove Corporation, for approximately 5,891 acres. The lands involved are in the vicinity of Karluk, Alaska.

Seward Meridian, Alaska

T. 29 S., R. 30 W.,
T. 31 S., R. 33 W.,
T. 32 S., R. 33 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 13, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–31530 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–$$–P

[AK–962–1410–00–P; AA–6674–A]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag Inc., Regional Corporation, as Successor in Interest to Karluk Native Corporation, for approximately 5,891 acres. The lands involved are in the vicinity of Karluk, Alaska.

Seward Meridian, Alaska

T. 29 S., R. 30 W.,
T. 31 S., R. 33 W.,
T. 32 S., R. 33 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 13, 1997 to file

an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–31544 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–$$–P

[MT–921–07–1320–01–P; MTM 86091]

Notice of Invitation—Coal Exploration License Application MTM 86091

AGENCY: Bureau of Land Management, Montana State Office

Members of the public are hereby invited to participate with Western Energy Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Rosebud County, Montana:

T. 1 N., R. 40 E., P.M.M.,
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½.
671.00 acres.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Western Energy Company, c/o Western SynCoal Company, P.O. Box 7137, Billings, Montana 59103–7137. Such written notice must refer to serial number MTM 86091, and be received no later than 30 days after publication of this Notice in the Federal Register or 10 calendar days after the last publication of this Notice in the Billings Gazette, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Billings Gazette.

The Proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Western Energy Company, is 2 available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: December 2, 1996.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 96–31500 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–07–1320–01; MTM 80697]

Notice of hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Hearing.

SUMMARY: Notice is hereby given that a public hearing will be held at 10:00 a.m., Tuesday, January 14, 1997, in the conference room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Western Energy Company has requested the Bureau of Land Management to reschedule a coal lease sale for Coal Lease Application MTM 80697. The Bureau of Land Management requests additional public comments on the fair market value and maximum economic recovery of certain coal resources it proposes to reoffer for a competitive lease sale. A Decision Record was signed on May 16, 1995, which allows for coal leasing.

The land included in Coal Lease Application MTM 80697 is located in Rosebud County, Montana, and is described as follows:

T. 1 N., R. 39 W., P.M.M.,
Sec. 2: S½NW¼, N½NE¼SE¼.
T. 1 N., R. 40 E., P.M.M.,
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 8: E½, SW½SE¼;
Sec. 14: S½N¼, NW½.
T. 2 N., R. 40 E., P.M.M.,
Sec. 32: All.
2,061.00 acres.

FOR FURTHER INFORMATION CONTACT: Ed Hughes (telephone 406–255–2830), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: December 2, 1996.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 96–31502 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–DN–P

[AK–910–0777–51]

Notice of Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Tuesday, January 21, 1997 from 9 a.m. to 5 p.m. and Wednesday, January 22, 1997 from 8:30 a.m. until 4:00 p.m. The purpose of the meeting is to discuss mining issues on the Fortymile Wild and Scenic River. The meeting will be held at the BLM Northern District Office, 1150 University Avenue, Fairbanks, Alaska. Public comments regarding mining issues in the Fortymile will be taken from 3–4 p.m. Tuesday, January 21. Written comments may be submitted at the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Ave., #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson or Janet Malone at (907) 271–5555.

Dated: December 1, 1996.

Tom Allen,

State Director.

[FR Doc. 96–31545 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–JA–M

[MT–920–05–131000P; MTM 83298]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MTM 83298, Fallon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: November 25, 1996.

Karen L. Carroll,

Chief, Fluids Adjudication Section.

[FR Doc. 96–31572 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–DN–P

[AZ–040–1430–07–00; AZA 29336]

Notice of Realty Action; Noncompetitive Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following lands in Graham County, Arizona, have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 23 E.,
Sec. 13, NE¼SW¼SW¼, N½N½N½SE¼SW¼SW¼.
T. 6 S., R. 25 E.,
Sec. 6, NW¼SW¼NE¼SE¼, SW¼SW¼NE¼SE¼, NE¼SE¼NW¼SE¼, SE¼SE¼NW¼SE¼, NW¼NW¼SE¼SE¼;
Sec. 15, W½NE¼NE¼SW¼, E½E½NW¼NE¼SW¼, NE¼NE¼SW¼NE¼SW¼, N½NW¼SE¼NE¼SW¼;
Sec. 25, SW¼NE¼SE¼, NW¼SE¼SE¼, N½N½SW¼SE¼SE¼.

The areas aggregate 55.625 acres.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Graham County for cemetery purposes. If a determination is reached that the subject parcel contains no known mineral values, the mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale are available for review at the Safford Field Office, Bureau of Land Management, 711 14th Avenue, Safford, Arizona 85546.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Field Office Manager, Safford District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: December 4, 1996.

Frank L. Rowley,

Acting Field Office Manager.

[FR Doc. 96–31550 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–32–M

(UT–054–1220–00–24–1A)

Notice of Partial Closure and Restriction on Public Land

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that, effective December 15, 1996 and until further notice, Antelope Springs Cave will be closed, by means of a locked gate, to all public use from April 1, to September 30 each year. At all other times of the year, use will be by permit only. Permits will be available, at no charge, from the Bureau of Land Management, House Range Resource Area.

Persons that are exempt from the closure include any Federal, State, or local officer, or member of any organized rescue or fire fighting force in the performance of an official duty, or any person authorized by the Bureau.

The purpose of the closure is to protect the cave resources including, habitat for a colony of Townsend's big eared bats (*Corynorhinus townsendii*).

The authority for this closure is the Code of Federal Regulations, Title 43 Subpart 8364.1.

FOR FURTHER INFORMATION CONTACT: Rex Rowley, House Range Resource Area Manager. P.O. Box 778 Fillmore, UT 84631 or Phone 801–743–3100.

Dated: December 3, 1996.

Jerry W. Goodman,

District Manager.

[FR Doc. 96–31504 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–DQ–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT:

Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 18 N., R. 6 E.,
Supplemental plat of the NE ¼ of section 2, accepted October 3, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.
T. 11 S., R. 35 E.,
Retracement and metes-and-bounds survey, (Group 1258) accepted November 6, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Bishop Resource Area.
T. 35 N., R. 2 W.,
Dependent resurvey, subdivision of sections, and metes-and-bounds survey, (Group 1109) accepted November 8, 1996, to meet certain administrative needs of the US Forest Service, Shasta-Trinity National Forest.
T. 7 N., R. 13 E.,
Supplemental plat of the E ½ of section 20 and the W ½ of section 21, accepted November 12, 1996 to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.
T. 34 N., R. 1 W.,
Supplemental plat of the SE ¼ of section 30, accepted November 22, 1996, to meet certain administrative needs of the US Forest Service, Shasta-Trinity National Forest.
T. 3 N., R. 11 E.,
Supplemental plat of a portion of sections 19 and 20, accepted November 27, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: December 2, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–31551 Filed 12–11–96; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 Et Seq.

Notice is hereby given that a proposed consent decree in *United States* v. *Armco Inc.,* Civil Action No. C2–95–698, was lodged on November 26, 1996, with the United States District Court for the Southern District of Ohio.

The proposed consent decree provides for the performance of the remedial action at the Fultz Landfill Superfund Site (the ''Site''), located near Cambridge, Ohio, and for payment of the United States' costs incurred in overseeing the remedial action. Under the consent decree, the United States will provide the settling defendants with a covenant not to sue for past costs and future costs incurred by the United States, and for injunctive relief under Sections 106 and 107 of CERCLA and Section 7003 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act), as amended, 42 U.S.C. 6973 (''RCRA''), in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Armco Inc.,* DOJ Ref. #90–11–3–856. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Ohio, 280 N. High Street, 4th Floor, Columbus, Ohio, 43215; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $32.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–31549 Filed 12–11–96; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 C.F.R. 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *William Davis, et al.,* Civ. Action No. 90–0484–P, was lodged in the United States District Court for the District of Rhode Island on November 26, 1996. The proposed Consent Decree resolves the United States' claims against defendant, United Technologies Corporation, and 53 third and fourth party defendants, under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9606(a) and 9607(a), concerning response actions at the Davis Liquid Waste Superfund Site located in Smithfield, Providence County, Rhode Island (the ''Site'').

Under the terms of the Consent Decree, the settling parties are required to perform the source control component of the remedy selected by the Environmental Protection Agency (''EPA'') for the Site, as modified by the explanation of significant differences issued on July 19, 1996. In addition, the settling parties are required to pay $13.5 million to the Superfund in partial reimbursement of the United States' past and future response costs. In return, the United States will grant the settling parties certain covenants not to sue with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *William Davis, et al.*, Civ. Action No. 90–0484–P, DOJ #90–11–2–137B.

The proposed Consent Decree may be examined at the local Administrative Record repository in the Town Clerk's office in the Smithfield Town Hall, 64 Farnum Pike, Smithfield, Rhode Island 02917; at the Office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island 02903; at the Region I Office of the U.S. Environmental Protection Agency, 90 Canal Street, Boston, Massachusetts 02203; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $110.00 for a full copy or $39.75 for a copy without appendices (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–31548 Filed 12–11–96; 8:45 am]

BILLING CODE 4410–15–M

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interconnection Technology Research Institute (''ITRI'')

Notice is hereby given that, on November 20, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interconnection Technology Research Institute (''ITRI''), for itself and on behalf of its members, has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ITRI advised that Amoco Chemical Co., Naperville, IL; Atotech USA, State College, PA; Circuitest Services, Nashua, NH; AMP Circuits & Packaging, Riverhead, NY; Ciba Polymers Division, Los Angeles, CA; Continental Circuits Corp., Phoenix, AZ; Electro Scientific Industries (ESI), Portland, OR; Electrochemicals, Inc., Maple Plain, MN; EMPF, Indianapolis, IN; Hughes Electronics Corporation, Tucson, AZ; Isola USA, Fremont, CA; Jet Propulsion Laboratory, Pasadena, CA; Lucent Technologies, Richmond, VA; Matsushita Electronic Materials (MEM), San Jose, CA; Motorola; Inc., Schaumburg, IL; Nextek, Huntsville, AL;

Nortel Technology, Ontario, CANADA; NSWC Crane, Crane, IN; Perfectest, Redmond, WA; Phinney Associates, Groton, MA; Polyclad Laminates, Inc., Franklin, NH; Qualitek, Int., Inc., Addison, IL; ROITech, Santa Clara, CA; Sheldahl, Longmont, CO; T.I.M.E., Inc., Miamisburg, OH; Toranaga Industries, Carlsbad, CA; W.L. Gore & Associates, Inc., Elkton, MD; and Xetel Corporation, Austin, TX have become members to the venture. Advanced Controls, Inc., Irvine, CA; AT&T, Richmond, VA; Century Laminators, Inc., Anaheim, CA; Diceon Electronics, Inc., Irvine, CA; Electronic Industries Holding, Inc., Vadnais Heights, MN; Litton Systems, Inc., Springfield, MO; NEMPC/EMPF, Indianapolis, IN; Precision Diversified Industries, Plymouth, MN; and West Coast Circuits, Inc., Watsonville, CA are no longer members.

On December 19, 1994, ITRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 1, 1995 (60 FR 6295).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–31546 Filed 12–11–96; 8:45 am]

BILLING CODE 4410–11–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1995—Clean Heavy-Duty Diesel Engine II

Notice is hereby given that, on November 7, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lucas Limited Diesel Systems Division, Kent, England (October 10, 1996) and Detroit Diesel Corporation, Detroit, MI (February 16, 1995) have become parties to the group research project. (Detroit Diesel Corporation has been a participant since the effective date of the project, but there was an administrative delay in obtaining written authorization to notify the Department of Justice and Federal Trade Commission of its participation.) No other changes have been made in either the membership or planned activity of the group research project. Membership remains open, and the members intend to file additional written notification disclosing all changes in membership.

On March 5, 1996, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on April 10, 1996 (61 FR 15971–15972).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–31547 Filed 12–11–96; 8:45 am]

BILLING CODE 4410–11–M

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Tuesday, December 3, 1996 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide seven appeals from the National Commissioners' decisions pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., John R. Simpson, and Michael J. Gaines.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 4, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 96–31754 Filed 12–10–96; 2:55 pm]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meeting With Interested Vendors for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a meeting to discuss the continued privatization of reproduction services for still pictures, aerial film, maps, and drawings. On March 6, 1995, NARA began to test new procedures for the delivery of reproduction services for records which NARA customers request from Still Picture Branch (NNSP), the Cartographic and Architectural Branch (NNSC), and the Nixon Presidential Materials Staff (NLNP). NARA permitted vendors to set up work stations in its building located in College Park, MD, where the still photographs and cartographic and architectural records are housed and made available. The three NARA units referred customer requests for reproduction of these media to the vendors, who determined fees, collected payments, performed the copying work, and mailed the reproductions to the customers. The purpose of this one-year trail program was to: (1) Verify the degree to which the privatization of the reproduction order fulfillments of NNSP, NNSC, and NLNP could improve customer service; and (2) ascertain the extent to which digital scanning can satisfy requirements from NARA's customers. At the end of the first year, based on a satisfactory review of the program's overall performance, NARA decided to extend the program for a second year, though with some modifications. Beginning March 6, 1997, the next anniversary date, NARA will open the program to interested vendors for a third year. All vendors interested in this program, including vendors already participating, are invited to attend the next scheduled meeting on January 21, 1997, where copies of a draft Memorandum of Agreement specifying the terms of the program will be distributed. A follow-up meeting has also been scheduled for February 13, 1997, to answer any remaining questions from vendors.

DATES: The next meeting will be held on Tuesday, January 21, 1997, at 10:00 a.m. The follow-up meeting will be held on Thursday, February 13, 1997, at 10:00 a.m.

ADDRESSES: The meetings will be held in Archives II, lecture rooms D and E,

located at 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William T. Murphy, Nontextual Archives Division, 301–713–7083; fax 301–713–6904.

Geraldine N. Phillips,

Acting Deputy, Assistant Archivist for the National Archives.

[FR Doc. 96–31543 Filed 12–11–96; 8:45 am]

BILLING CODE 7515–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1997, 33.4 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.6 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 4, 1996.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–31505 Filed 12–11–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22375; 811–8566]

Bando McGlocklin Small Business Lending Corporation; Notice of Application

December 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Bando McGlocklin Small Business Lending Corporation.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on December 3, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 31, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, P.O. Box 190, Pewaukee, Wisconsin 53072.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end management investment company that is organized as a corporation under the laws of Wisconsin. On June 13, 1994, applicant registered under the Act and filed a registration statement on Form N–2. Applicant did not file a registration statement under the Securities Act of 1933 and has never made a public offering of its securities. Applicant is a wholly-owned subsidiary of Bando McGlocklin Capital Corporation (''BMCC''). BMCC is a registered investment company and has requested an order to deregister.[1]

2. On November 20, 1996, applicant's board of directors and BMCC as applicant's sole shareholder approved applicant's dissolution pursuant to a plan of liquidation. On November 30, 1996, applicant distributed all of its assets, in the amount of $1,244,197. All of applicant's unknown or contingent obligations will be assumed by BMCC, including expenses related to the liquidation. Such expenses are estimated to be $4,000.

3. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

4. Applicant has filed articles of dissolution with the State of Wisconsin.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31496 Filed 12–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38022; File No. SR–CBOE–96–72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Interest Rate Options and RAES Order Size

December 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 26, 1996, the Chicago Board Options Exchange, Inc., (''CBOE'' 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 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 CBOE proposes to amend Exchange Rule 23.7, ''RAES'', to

[1] Investment Company Act Release No. 22326 (Nov. 12, 1996) (notice). After it has deregistered, BMCC intends to rely on the exemption provided by section 3(c)(6) of the Act. Section 3(c)(6) in relevant part excludes from the definition of investment company any company primarily engaged, directly or through majority-owned subsidiaries, in the business or purchasing or otherwise acquiring mortgages or other liens on and interests in real estate.

increase the maximum size of interest rate option orders eligible for entry into the CBOE's Retail Automated Execution System (''RAES'') from 10 or fewer contracts to 100 or fewer contracts.

The text of the proposal 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

The purpose of the proposed rule change is to amend CBOE Rule 23.7 (ii) to increase the maximum size of orders in CBOE interest rate options eligible for execution through RAES from 10 or fewer contracts to 100 or fewer contracts. According to the CBOE, the proposed change is designed to better serve the needs of CBOE public customers and the Exchange by expanding the number of public customer orders for interest rate options that are able to realize the benefits of automatic execution, which include assured execution, faster turnaround time and more efficient transaction processing and reporting. In addition, the proposal is designed to keep the CBOE competitive with other markets with regard to the trading of interest rate derivatives.

The proposed increase in the maximum size of RAES-eligible interest rate option orders will apply to all classes of interest rate options.[1] According to the CBOE, much of the trading in interest rate derivatives currently occurs in markets where transaction sizes are larger than are eligible for automatic execution through RAES at the CBOE. The CBOE states that the primary users of interest rate options are institutional customers.

Because the TYX interest rate contract offered at the CBOE represents approximately one-tenth (1/10th) of the value of the underlying government securities, the current eligible order limit of ten contracts is essentially equivalent in value to only one U.S. Treasury Bond option. The Exchange believes that the proposed increase in the maximum size of orders for CBOE interest rate options, such as the TYX, that are eligible for execution though RAES (essentially a ''10-lot'' in the Treasury Bonds themselves), will provide a more meaningful limit for the primary users of interest rate options, institutional customers.

CBOE believes that the proposed rule change will not impose any significant burdens on the operation and capacity of RAES, but instead will increase the efficiency of the Exchange's operations by expanding the number of orders that are eligible for automatic execution and by reducing manual processing.[2] Finally, the CBOE believes that the rule change will not have a negative impact on the capacity, security or integrity of RAES.

By expanding the maximum size of orders in CBOE interest rate options eligible for execution through RAES from 10 to 100 or fewer contracts, the Exchange believes that the proposed rule change will better serve the needs of the CBOE's public customers and the Exchange members who make a market for such customers. The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after 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 reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Magaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31497 Filed 12–11–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Currently, the CBOE offers four interest rate options, including the following: IRX (3-month Treasury Bill); FVX (5-year Treasury Note); TNX (10-year Treasury Note); TYX (30-year Treasury Bond).

[2] See Securities Exchange Act Release No. 33476 (January 13, 1994), 59 FR 3140 (January 20, 1994) (File No. SR-Amex-93–33) (order approving the American Stock Exchange, Inc.'s expansion of AUTO–EX order eligibility size to 99 contracts for Japan Index options).

[3] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–38021; File No. SR–MBSCC–96–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Satisfying Daily Margin Requirements

December 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on October 7, 1996, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will eliminate the depository receipt as a method of satisfying participants fund deposit requirements and instead will require participants that use securities to satisfy their daily margin requirements to deliver the securities in book-entry form to MBSCC's account at any entity approved by MBSCC which shall hold the securities on behalf of MBSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate the use of the depository receipt as a method of satisfying participants fund deposit requirements. Instead, MBSCC will require that any participant who uses securities to satisfy such requirement to deliver the securities to MBSCC's account at any entity approved by MBSCC (''book-entry method'').

The depository receipt method involves the joint endorsement by the participant and the custodian of a receipt evidencing the pledge of specified securities. There are several potential risks associated with depository receipts that would be eliminated with the use of the book-entry method of pledging securities. Such risks include: (1) Forgery, (2) unauthorized individuals executing on behalf of the participant or the custodian, (3) improper segregation of the pledged securities from other securities, (4) unauthorized releases of the pledged securities, and (5) the possibility that the custodian would not release the securities to MBSCC upon MBSCC's proper demand for such a release. For this year to date, MBSCC asserts that the average daily dollar value of securities pledged using the depository receipt method to satisfy daily margin requirements is $1.05 billion. MBSCC will be responsible for the payment of any fees associated with the establishment of a pledge account at a trust company approved by MBSCC's board of directors for use in connection with the book-entry method.

MBSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations promulgated thereunder because the rule change will enhance MBSCC's ability to protect itself and its participants against loss.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–96–06 and should be submitted by January 3, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31498 Filed 12–11–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by MBSCC.

[3] 15 U.S.C. 781–1 (1988).

[4] 17 CFR 200.30–3(a)(12) (1996).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 30, 1996 [FR 61, page 46016–46017].

DATES: Comments must be submitted on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Coles, Office of Information Management Programs, (202) 366–054, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Highway Performance Monitoring System (HPMS).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2125–0028.

Form Number: N/A.

Affected Public: 50 States, DC, Commonwealth of Puerto Rico, plus four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Abstract: Public comment is requested regarding the burden associated with collection of information. The data for the Highway Performance Monitoring System (HPMS) are collected under authority of 23 U.S.C. 307, which places the responsibility on the Secretary of Transportation for management decisions which affect transportation 23 CFR 1.5 provides the Federal Highway Administrator with authority to request information to administer the Federal-Aid Highway Program. Estimates of future highway needs of the Nation are mandated by Congress on a biennial basis [23 U.S.C. 307(e)]. Additionally, HPMS data serve as the information source for the ''Highway Safety Performance'' report prepared by the Federal Highway Administration (FHWA) pursuant to Section 207 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The HPMS data collected are essential to FHWA and Congress in evaluating effectiveness of the Federal-aid highway programs, providing mileage components of apportionment formulae, and evaluating highway safety programs. The information is used by FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems.

Estimated Annual Burden: The total annual burden is 93,680 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 6, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–31489 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice of No. PE–96–58]

Petitions for Waiver; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for waivers received.

SUMMARY: This notice contains the summary of a petition requesting a waiver from the interim compliance date required of 14 CFR part 91, § 91.867. Requesting a waiver is allowed through § 97.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 23, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28680, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, D.C., on December 9, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Waiver

Docket No.: 28680.

Petitioner: Kiwi International Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 91867.

Description of Relief Sought: To allow Kiwi International Air Line, Inc. to operate for five months after December 31, 1996, without the required number of Stage 3 aircraft in its fleet.

[FR Doc. 96–31579 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish changes in the residential moving expense and dislocation allowance schedule for the States of Alabama, Alaska, Arizona, California, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Virginia, Washington, and Wisconsin as provided for by section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), 42 U.S.C. 4601–4655, implemented at 49 CFR 24.302. The Uniform Act applies to all programs or projects undertaken by Federal agencies or with Federal

financial assistance that cause the displacement of any person.

EFFECTIVE DATE: The provisions of this notice are effective January 13, 1997, or on such earlier date as an agency elects to begin operating under this schedule.

FOR FURTHER INFORMATION CONTACT: Ronald E. Fannin, Office of Real Estate Services, (202) 366–2042; or Reid Alsop, Office of the Chief Counsel, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act established a program, which includes the payment of moving and related expenses, to assist persons who move because of Federal or federally assisted projects. The FHWA is the lead agency for implementing the provisions of the Uniform Act, and has issued governmentwide implementing regulations at 49 CFR part 24.

The following 17 Federal departments and agencies have, by cross reference, adopted the governmentwide regulations. (The governmentwide regulations also apply to other agencies within DOT that are covered by the Uniform Act.):

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Veterans Affairs
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority

Section 202(b) of the Uniform Act provides that as an alternative to being paid for actual moving and related expenses, a displaced individual or family may elect payment for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency. The governmentwide regulations at 49 CFR 24.302 provide that the FHWA will develop, approve, maintain and update this schedule, as appropriate.

The purpose of this notice is to update the current schedule published on June 14, 1991 (56 FR 27549). The schedule is being updated to reflect the increased costs associated with moving personal property and is developed from data provided by State highway agencies. This update increases the schedule amounts in the States of Alabama, Alaska, Arizona, California, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Virginia, Washington, and Wisconsin. The following exceptions and limitations apply to this schedule:

1. The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.00.

2. An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the agency's discretion.

3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $50.00.

4. An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

The schedule continues to be based on the ''number of rooms of furniture'' owned by a displaced individual or family and was developed from data provided by State highway agencies. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses), an agency should increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if the equivalent of two rooms worth of possessions is located in the basement. In addition, an agency may elect to pay for items stored outside the dwelling unit by adding the appropriate number of rooms.

Authority: 42 U.S.C. 4622(b) and 4633(b); 49 CFR 1.48 and 24.302.

Issued on: December 2, 1996.

Rodney E. Slater,

Federal Highway Administrator.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE

State	Occupant owns furniture (1) and (2)									Occupant does not own furniture (3)	
	Number of rooms of furniture								Each add. room		
	1	2	3	4	5	6	7	8		First room	Each add. room
Alabama	250	400	550	650	750	850	950	1050	100	225	40
Alaska	525	750	975	1200	1400	1575	1750	1925	150	350	50
American Samoa	250	350	450	550	625	700	775	850	75	200	25
Arizona	500	600	700	800	900	1000	1100	1200	100	300	50
Arkansas	250	350	450	550	625	700	775	850	75	200	25
California	500	650	800	950	1150	1350	1550	1750	175	325	50
Colorado	250	400	550	650	750	850	950	1050	100	225	35
Connecticut	250	400	550	650	750	850	950	1050	100	225	35
Delaware	250	400	550	650	750	850	950	1050	100	225	35
DC	250	400	550	650	750	850	950	1050	100	225	35
Florida	450	600	775	950	1075	1200	1325	1450	125	300	50
Georgia	450	650	850	1000	1200	1350	1500	1600	125	250	35
Guam	250	350	450	550	625	700	775	850	75	200	25

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE—Continued

State	Occupant owns furniture (1) and (2)									Occupant does not own furniture (3)	
	Number of rooms of furniture								Each add. room	First room	Each add. room
	1	2	3	4	5	6	7	8			
Hawaii	400	550	750	900	1000	1150	1300	1400	100	300	50
Idaho	250	350	450	550	625	700	775	850	75	200	25
Illinois	250	400	550	650	750	850	950	1050	100	225	35
Indiana	250	400	550	650	750	850	950	1050	100	225	35
Iowa	300	450	550	650	750	850	950	1050	100	250	25
Kansas	250	400	550	650	750	850	950	1050	100	225	35
Kentucky	400	550	700	850	1000	1150	1300	1450	150	300	50
Louisiana	250	350	450	550	625	700	775	850	75	200	25
Maine	350	450	550	650	725	800	875	950	75	200	25
Maryland	350	500	650	800	925	1050	1175	1300	100	225	35
Massachusetts	250	400	550	650	750	850	950	1050	100	225	35
Michigan	300	475	650	700	825	925	1050	1150	100	275	40
Minnesota	250	400	550	650	750	850	950	1050	100	225	35
Mississippi	400	500	600	700	800	900	1000	1100	100	300	50
Missouri	300	400	500	600	700	800	900	1000	100	200	25
Montana	325	450	575	725	825	900	1000	1100	100	250	35
Nebraska	300	420	540	660	750	840	930	1020	90	240	30
Nevada	360	540	720	900	1080	1260	1440	1620	180	300	60
New Hampshire	250	350	450	550	625	700	775	850	75	200	25
New Jersey	250	400	550	650	750	850	950	1050	100	225	35
New Mexico	250	400	550	650	750	850	950	1050	100	225	35
New York	350	500	650	750	850	950	1050	1150	100	300	100
North Carolina	250	400	550	650	750	850	950	1050	100	225	35
North Dakota	300	425	550	650	750	850	925	1025	100	250	35
N. Mariana Is	250	350	450	550	625	700	775	850	75	200	25
Ohio	250	400	550	650	750	850	950	1050	100	225	35
Oklahoma	350	500	650	800	925	1050	1175	1300	100	250	35
Oregon	300	500	700	825	950	1075	1200	1325	125	275	40
Pennsylvania	250	400	550	650	750	850	950	1050	100	225	35
Puerto Rico	250	350	450	550	625	700	775	850	75	200	25
Rhode Island	400	500	600	700	800	900	1000	1100	100	300	25
South Carolina	500	575	775	900	1075	1225	1350	1500	150	350	50
South Dakota	350	500	650	800	900	1000	1100	1200	100	300	40
Tennessee	250	350	450	550	625	700	775	850	75	200	25
Texas	250	350	450	550	625	700	775	850	75	200	25
Utah	250	350	450	550	625	700	775	850	75	200	25
Vermont	250	350	450	550	625	700	775	850	75	200	25
Virgin Islands	250	350	450	550	625	700	775	850	75	200	25
Virginia	300	500	600	700	800	900	1000	1100	100	225	35
Washington	450	600	750	900	1050	1200	1350	1500	150	300	50
West Virginia	250	400	550	650	750	850	950	1050	100	225	35
Wisconsin	350	500	650	750	850	950	1050	1150	125	325	60
Wyoming	250	350	450	550	625	700	775	850	75	200	25

Exceptions: See supplementary information.
(1) Person whose residential move is performed by agency, $50.
(2) Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.
(3) Occupant of dormitory, $50.

[FR Doc. 96–31582 Filed 12–11–96; 8:45 am]
BILLING CODE 4910–22–P

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162 for the Agency to commence a proceeding to determine the existence of a defect related to motor vehicle safety.

In a letter dated May 17, 1966, Mary Walsh-Dempsey, an attorney in Scranton, Pennsylvania, petitioned NHTSA to initiate a defect investigation on 1976 Chevrolet C10 trucks concerning blade separation of the engine cooling fan installed as original equipment and sold as a replacement part. The petitioner identified the fan by part number 336032 (subject fan). As an evidence of the alleged defect, the petitioner cites a September 1993 incident in which David Lewis was struck by a piece of fan blade, resulting in his death.

The subject fan is a flexible blade engine cooling fan commonly referred to as a ''flex fan.'' The flex fan was used by automobile manufacturers as a way to reduce the operating load on engines. The flexible metal blades, which are attached to the fan hub or ''spider'' by rivets, are designed to flex or ''flatten out'' as the engine speed is increased,

thus reducing the load on the engine. However, these fans may be susceptible to fatigue failure of the blade from blade flexing and/or various stresses induced by certain engine applications.

Since the mid-seventies, NHTSA has investigated failures of flex fans on several occasions. The largest investigation, Office of Defects Investigation (ODI) case C7–24, involved Ford Motor Company (Ford) vehicles and resulted in ten safety recalls by Ford. American Motors also conducted a safety recall as a result of this case. A review of the ODI files reveals there have been two investigations, Engineering Analyses (EA8–013 and E81–011), and two Defect Petitions (DP85–022 and DP86–03), specific to flex fan failures in General Motors (GM) vehicles. The investigations were closed and the petitions were denied based on evidence showing a low failure rate for the fans involved. EA8–013 and DP86–03 were conducted on the subject fan. This fan was used on approximately 2.6 million vehicles that were produced without air conditioning and with heavy duty cooling systems. The model years and models in which the fans were used are 1973 through 1979 Chevrolet and GMC C/K 10, 20, and 30 series light duty trucks and the 1975 Chevrolet and GMC ''G'' van (subject vehicles).

Since February 24, 1986, when DP86–03 was closed, there have been 49 incidents of alleged failure in the subject fan. These incidents occurred between May 1986 and March 1996. Reports on all of these incidents were provided by the petitioner and GM. There are no reports of blade separation in the subject fan in the ODI database, which contains records received after January 1, 1981. The estimated registered vehicle population of the subject vehicles for calender years 1986 through 1996 is 16.4 million, yielding a very low failure rate of .29 per one hundred thousand vehicle years of exposure.

The subject vehicles are very old and range in age from 17 to 23 years. Vehicle maintenance history and any damage to the fan from collision accidents must also be considered when analyzing the alleged failures. However, because this information is unavailable, an evaluation of the number of reported incidents attributable to such factors cannot be made.

After reviewing the petition and its supporting materials, as well as information furnished by GM and information within the agency's possession from previous investigations and other related actions, NHTSA has concluded that further investigation of the subject vehicles concerning the alleged fan failure is not likely to lead to a decision that the vehicles contain a safety defect. This is primarily based on the very large number of exposure years and the very low failure rate. Further commitment of agency resources to this matter is not warranted. The agency has accordingly denied the petition.

Authority: 49 U.S.C. 30162 (d); CFR 1.50 and 501.8.

Issued on: December 9, 1996.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 96–31584 Filed 12–11–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Ex Parte No. 558]

Railroad Cost of Capital—1996

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1996 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 1996. The decision solicits comments on: (1) The railroads' 1996 cost of debt capital; (2) the railroads' 1996 current cost of preferred stock equity capital; (3) the railroads' 1996 cost of common stock equity capital; and (4) the 1996 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than December 30, 1996. A service list will then be prepared and issued by January 14, 1997. Statements of the railroads are due by March 14, 1997. Statements of other interested persons are due by April 11, 1997. Rebuttal statements by the railroads are due by April 25, 1997.

ADDRESSES: Send an original and 10 copies of statements and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 927–6171. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Surface Transportation Board, 1201 Constitution Avenue, N.W., Room 2215, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 2, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–31540 Filed 12–11–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33299]

Fillmore Western Railway Company; Acquisition and Operation Exemption; Burlington Northern Railroad Company

Fillmore Western Railway Company (FWRY) has filed a verified notice of exemption under 49 CFR 1150.31: (1) To acquire and operate approximately 63.5 miles of rail line; and (2) to acquire incidental trackage rights over approximately 1 mile of rail line, a total of approximately 64.5 miles of rail line owned by the Burlington Northern Railroad Company and located in the State of Nebraska.[1] The proposed transaction was to be consummated not sooner than November 25, 1996, the effective date of the exemption.

The lines involved in the acquisition are described as follows: Fairmont, Nebraska-Milligan, between milepost 8.1 and milepost 23.0; Fairmont, Nebraska-Bruning, between milepost 1.7 and milepost 24.5; East Strang Junction, Nebraska-Tobias, Nebraska-Daykin, between milepost 17.9 at East Strang Junction and milepost 23.2/28.4 at Tobias, and on to milepost 36.2 at Daykin; and, West Strang Junction, Nebraska-Shickley, between milepost 37.5 and milepost 45.0.

The incidental trackage rights to be acquired are over a segment of track at Fairmont between milepost 112.8 and milepost 113.8.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] FWRY has confirmed that the total route miles being acquired is 64.5 miles (rather than 65.8 miles).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33299, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: T. Scott Bannister, 1300 Des Moines Building, 405 6th Avenue, Des Moines, Iowa 50309.

Decided: December 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–31539 Filed 12–11–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–55 (Sub-No. 533X)]

CSX Transportation, Inc.; Abandonment Exemption; in Hamilton County, OH

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc. of a 1.25-mile portion of its Louisville Division, Cincinnati Terminal Subdivision, between milepost 7.11, near Mitchell Street, and milepost 5.86, at the end of track at Dane Avenue, in Cincinnati, Hamilton County, OH, subject to labor protective conditions and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 13, 1997. Formal expressions of intent to file an OFA [1] under 49 CFR 1152.27(c)(2) and requests for interim trail use/rail banking under 49 CFR 1152.29 must be filed by December 23, 1996; petitions to stay must be filed by December 27, 1996; requests for a public use condition under 49 CFR 1152.28 must be filed by January 2, 1997; and petitions to reopen must be filed by January 6, 1997.

ADDRESSES: Send pleadings referring to STB Docket No. AB–55 (Sub-No. 533X) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (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 News & Data, 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: November 25, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–31538 Filed 12–11–96; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Administration of the 1997 U.S. Based Training Program for Overseas Educational Advisers; Request for Proposals

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop two sets of training programs for USIA-affiliated overseas educational advisers to take place in late spring and fall of 1997, respectively. The basic function of an overseas educational adviser is to provide accurate, objective information to foreign audiences on U.S. study opportunities at accredited academic institutions, and to guide students and professionals in selecting a program appropriate to their needs. Participants will be drawn from educational advisers working at USIA-affiliated overseas educational advising centers. The training program is intended for two separate groups of ten participants. Each program must be at least two weeks in duration and must include workshops on advising issues of concern, an internship or other form of substantive professional stayover at a U.S. academic institution(s), and attendance at either the national NAFSA: Association of International Educators Conference or one of its regional fall conferences. USIA anticipates awarding up to $150,000 to one organization to administer this program.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number *E/ASA–97–08.*

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, January 13, 1997. Faxed documents will not be accepted, nor will documents postmarked January 13, 1997 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. The grant should begin on or about March 3, 1997.

FOR FURTHER INFORMATION, CONTACT: Advising and Student Services, E/ASA, Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–5434, Fax: (202) 401–1433. Email: pbecskeh○usia.gov, to request a Solicitation Package which includes supplementary information; required application forms; and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Under the heading ''International Exchanges/Training,'' select ''Request for Proposals (RFPs).''

Please read ''About the Following RFPs'' before downloading.

Please specify USIA Program Officer Peter Becskehazy on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASA–97–08,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The training program's objectives are twofold: To strengthen and develop the skills of overseas educational advisers; and to build a corps of knowledgeable advisers who are skilled as trainers and can advance the field of educational advising in their home countries with new and current expertise, techniques and knowledge of applicable technology. Each component of the training program should be designed to provide detailed, hands-on learning in areas such as facilitating access to U.S. higher education, communicating cross-culturally, and managing an advising center. Special attention should be given to the use of technology, both as a necessary advising skill, and as a potential tool to develop new and creative advising approaches. Similarly, a significant emphasis should be placed on outreach, partnership and cost-sharing strategies and skills development.

Guidelines

1. Participants

For the purposes of this RFP, eligible advisers are defined as those who have demonstrated the skills associated with the four major components of overseas educational advising: (1) Basic knowledge of the U.S. and home country educational systems; (2) basic knowledge of the U.S. higher education application process; (3) demonstrated educational advising and cross-cultural communication skills; and (4) demonstrated office management skills as they relate to an overseas advising center. In addition, each must demonstrate leadership and a commitment to the profession.

Ten participants are expected for each separate training program. Participants will be selected by USIA based on nominations from overseas posts. The grant recipient will be consulted during the selection process and have input into, but not responsibility for, final selections. To be eligible, an adviser must have two to five years of experience and a demonstrated commitment to the field of overseas advising. Based on the nominations received, USIA will assign advisers to either the spring or fall session in such a way that each group is similar in terms of years of experience and skill level.

2. Program Design

USIA invites organizations to submit creative and flexible program plans which can be tailored, in close consultation with E/ASA, to the selected advisers' individual needs. However, the proposal should still include an overall project framework which identifies objectives, an implementation plan and measurable, expected outcomes. Possible topics to incorporate in the program include: Degree equivalency and accreditation; international student admissions; financial aid; standardized testing; ESL programs; immigration and visa issues; fields of study, cultural adjustment/U.S. societal diversity; specialized Internet usage; distance learning; proposal writing; fundraising; public relations and marketing; determining appropriate fees for students and others, given each host country's environment; trends in advising center self-sufficiency; and training and management of volunteer staff.

3. Training/Program Phases

The program should include attendance at, and active participation in, either the spring national NAFSA conference or a fall regional conference where workshops and seminars address various issues of current interest to international educators and overseas advisers and where the opportunity to brainstorm and to share information plays an important part. The USG supports the conference participation of the 10 advisers, providing their travel and accommodations, and arranges presentations and/or participation in panels and workshops. In 1997, the national conference is scheduled for May 20–23 in Vancouver, BC. The regional conferences typically occur in October or November. In addition, each program should include an internship experience at a U.S. college or university. Ideally, advisers should be on campus while classes are in session to optimize their experience through interaction with students.

4. Logistics

The recipient organization will be responsible for arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all advisers, making lodging and local transportation arrangements, orienting and debriefing advisers, preparing any necessary support material, locating host campuses and working with host institutions and experts in the field of higher education and overseas advising to achieve maximum program effectiveness through hands-on applications and training and direct involvement in the administration of practices and policies in institutions of higher education.

5. Evaluation/Follow-Up

The proposal must include a detailed evaluation and follow-up plan. Special emphasis should be given to designing a program which incorporates outcome measurement strategies that assess its ultimate effectiveness.

6. Visa/Insurance/Tax Requirements

The program must comply with J–1 visa regulations. Participant health and accident insurance will be provided the overseas advisers by USIA; the recipient organization will be responsible for enrolling participants in USIA's insurance program and providing any necessary assistance should medical care be needed. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

7. Printed Materials

Drafts of all printed material developed for this program should be submitted to E/ASA for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. USIA requests that it receive the copyright use and be allowed to distribute any of this material if it sees fit to do so.

Proposed Budget

Applicants must submit a comprehensive line item budget based on the budget guidelines in the PSI for the entire program. USIA's grant assistance, up to $150,000 in total, is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete formatting instructions. For clarification, applicants should provide separate sub-budgets for each training component.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses, auditing costs;

(4) Participant program costs; i.e. international/domestic travel, per diem, conference attendance, resource materials.

Please refer to the Solicitation Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Area Offices. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit a thorough knowledge and understanding of current issues facing international educators and display originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan for the professional development of overseas educational advisers.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of educational information issues and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 9, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–31552 Filed 12–11–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for

comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be on or before February 10, 1997.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0002.

Title and Form Number: Income-Net Worth and Employment Statement, VA Form 21–527.

Type of Review: Revision of a currently approved collection.

Need and Uses: The form is used by the claimant to submit a supplemental claim for disability pension or disability compensation based on individual unemployability. The information is necessary to determine eligibility to these benefits. The form is being revised to request additional information for purposes of Electronic Funds Transfer (EFT).

Current Actions: The information is used by the VBA to determine eligibility and benefit rates for veterans' disability pension and compensation based on individual unemployability.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 104,440.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–7079 or FAX (202) 275–4884.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31506 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 10, 1997.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0209.

Title and Form Number: Application for Work-Study Allowance, VA Form 22–8691.

Type of Review: Revision of a currently approved collection.

Need and Uses: The form is needed to identify those veteran-students who wish to apply for the supplemental VA work-study allowance and to assist VA in selecting eligible applicants.

Current Actions: The information solicited on the form is necessary to identify and select eligible veterans, selected reservists, and survivors or dependents to receive work-study benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,641 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 27,848.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–7079 or FAX (202) 275–4884.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31507 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0086.

Title and Form Number: Request for Determination of Eligibility and Available Loan Guaranty Entitlement, VA Form 26–1880.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information furnished on the form is necessary for the VBA to make a determination on whether or nor the applicant is eligible for Loan Guaranty benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 117, 093 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 468,372.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31508 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0236.

Title and Form Number: Application for Education Loan, VA Form 22–8725.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: This form requests information needed to determine eligibility for an education loan. A complete report of the applicant's financial resources and education-related expenses is required to compute the amount of an education loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 40 minutes per application.

Frequency of Response: Annually.

Estimated Number of Respondents: 50.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31509 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0089.

Title and Form Number: Statement of Dependency of Parents, VA Form 21–509.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Need and Uses: The form is used to gather the necessary information needed to determine eligibility to benefits for dependent parents. Without the information, it would not be possible for the VBA to authorize benefits to or for dependent parents.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director Information Management Service.

[FR Doc. 96–31510 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0176.

Title and Form Number: Monthly Record of Training and Wages, VA Form 20–1905c.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Need and Uses: The requested information is used to verify the training history and to determine the continuing entitlement to benefits. The form reports the number of hours spent each month on each unit of training.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 12,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31511 Filed 12–11–96; 8:45 am]

BILLING CODE 8320–01–M

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None assigned.

Title: PMC (Presidential Memorial Certificate) Insert.

Type of Review: New collection.

Need and Uses: The PMC Insert will be used by the recipient to notify the NCS if the original certificate contains an error, or arrives in an unacceptable condition, or to request additional certificates for other family members. The information will be used by the NCS to promptly reissue or provide additional certificates.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,080 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 32,400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: November 26, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–31512 Filed 12–11–96; 8:45 am]

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Federal Register

Thursday
December 12, 1996

Part II

Department of Justice

Office of Justice Programs

Fiscal Year 1996 Missing and Exploited Children's Program Final Program Plan and Announcement of Discretionary Competitive Assistance Grant; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

[CJP (OJJDP) No. 1107]

ZRIN No. 1121–ZA54

Notice of the Fiscal Year 1996 Missing and Exploited Children's Program Final Program Plan and Announcement of Discretionary Competitive Assistance Grant

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final program plan and announcement of a discretionary assistance grant.

SUMMARY: The Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to the Missing Children's Assistance Act (42 U.S.C. 5771–5780) is authorized to support research, demonstration, or services programs to educate parents, provide information, aid communities, increase knowledge, address the needs of missing children and their families, and establish or operate statewide clearinghouses to assist in locating and recovering missing children. OJJDP published its Title IV Missing and Exploited Children's Program Fiscal Year 1996 Proposed Program Plan in the Federal Register on July 17, 1996, for a 60-day period of public comment. The Office received three letters commenting on the Proposed Plan. All comments have been considered in the development of the Final Program Plan for the Title IV Missing and Exploited Children's Program for Fiscal Year (FY) 1996.

DATES: Applications under this program must be received by 5 p.m. e.s.t., February 10, 1997.

ADDRESSES: Applications must be received by mail or hand-delivered to: Office of Juvenile Justice and Delinquency Prevention, Missing and Exploited Children's Program, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, Maryland, 20850. Application kits can be obtained by contacting the Juvenile Justice Resource Center at the above address or at 301–251–5535.

FOR FURTHER INFORMATION CONTACT: Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., 7th Floor, Washington, D.C., 20531.

SUPPLEMENTARY INFORMATION:

Comments on Proposed Fiscal Year 1996 Program Plan

One letter contained several comments on the Proposed Plan, while the other two letters provided just one comment each. One of the single-comment letters commented on Goal 1 of the Proposed Plan, Increase Awareness of Problems Relating to Missing and Exploited Children, and one expressed interest in the proposed Parent Resource Support Network Program.

The following is a summary of the substantive comments on the Proposed Plan and OJJDP's responses. Each comment was made by a single respondent.

Comment: Support was expressed for OJJDP's goal of ''increasing awareness of problems relating to missing and exploited children'', with a suggestion that this goal would be furthered by the inclusion of parents of children who are victims of violent crimes.

Response: OJJDP agrees and will include parents of children who are victims of violent crime in this goal.

Comment: Strong support was given to the proposed Parent Resource Support Network Program.

Response: The Final Program Plan includes establishment of this Network through a competitive award.

Comment: With regard to the establishment of a Parent Resource Support Network, a data bank of missing children should be established by the grantee. The grantee should work closely with the National Center for Missing and Exploited Children (NCMEC).

Response: The successful applicant will be expected to establish a working relationship with NCMEC because NCMEC serves as the national clearinghouse and resource center for missing and exploited children under a cooperative agreement with OJJDP. Cooperation between the Parent Resource Support Network and NCMEC will eliminate service duplication and enhance coordination of the national response to missing children cases. Applicants for the award to establish the Parent Resource Support Network may address the need for access to a missing children data base in their applications.

NCMEC currently has procedures that its case managers use to provide followup information to parents of missing children. In addition, OJJDP plans to work with its grantees, other missing children agencies or organizations, and interested parties to develop protocols for State clearinghouses, nonprofit organizations, and NCMEC and to incorporate joint followup procedures and to provide information to parents of missing children and to law enforcement officials.

Comments: Three specific recommendations were made concerning the proposed Parent Resource Support Network: (a) Develop a computerized listing of all parents of missing children; (b) fund an annual conference for the parents of missing children; and (c) provide detailed information about how the money is to be spent for training and technical assistance.

Response: (a) Absent compelling evidence, OJJDP believes that the development of an computerized listing of parents of missing children would duplicate ongoing NCMEC efforts and would not be a prudent use of OJJDP funding.

(b) Because of the limited amount of available funds, OJJDP believes that a national conference for missing children parents would not be the best use of Title IV funding.

(c) Because the provision of accurate and appropriate advice is critical to the goals of the Parent Support Network, Missing Children program staff will have significant involvement with the grantee in curriculum development and the delivery of training. The successful applicant will set aside funds for training purposes.

Comment: Concern was expressed over the continuing need to rely on figures from the 1988 National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway (NISMART) Children.

Response: Under an OJJDP grant, Temple University was awarded a competitive cooperative agreement in F.Y. 1995 to undertake the second NISMART study. The study is scheduled to be completed by 1999.

Comment: More information is needed about NCMEC's operations. The fact that so much program responsibility has been placed in the hands of one agency requires a —system of checks and balances— to assure NCMEC serves both missing children and their parents and law enforcement.

Response: As stated in the proposed plan, OJJDP will continue funding NCMEC in FY 1996, the third year of funding under a competitively awarded cooperative agreement. NCMEC's activities are carried out under the terms of that agreement. Some information maintained by NCMEC is confidential and not available for dissemination. NCMEC's access to various databases and its strong working relationships with law enforcement agencies

improves its capacity to assist in the recovery of missing children and ability to deliver services to parents.

Further, NCMEC's quarterly fiscal and program reports are available to the public and NCMEC provides additional information through annual reports and other publications. Interested parties should contact NCMEC at 703–235–3900. In addition, OJJDP program staff provide ongoing oversight of NCMEC expenditures and activities. NCMEC provides services that Title IV establishes as the responsibility of a national resource center and clearinghouse. OJJDP believes that NCMEC has always carried out these responsibilities conscientiously, responsibly, and in a manner intended to serve the best interests of Americas missing children and their families.

Introduction to the Fiscal Year 1996 Program Plan

In 1995, local law enforcement reported 969,264 persons as missing to the FBI's National Crime Information Center Missing Person File. The FBI estimates that 85–90 percent of these reports represented persons under the age of 18. Many of these children were runaways, others are taken by noncustodial parents and used as pawns in contentious domestic situations, and still others are abducted by nonfamily members. Whatever the reason, each day in America too many children are reported missing to law enforcement.

Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Missing Children's Assistance Act of 1984, established the Missing and Exploited Children's Program in the Office of Juvenile Justice and Delinquency Prevention (OJJDP). In addition to providing assistance for research, demonstration, and service programs, the Missing Children's Assistance Act authorizes the use of Title IV funds to establish and support a national resource center and clearinghouse dedicated to missing and exploited children issues.

Fiscal Year 1996 Title IV funding is focused primarily on programs that are national in scope. The Office will continue to support the National Center for Missing and Exploited Children (NCMEC), which serves as the national clearinghouse and resource center. Since 1984 NCMEC has assisted in the recovery of more than 32,000 children, disseminated millions of publications, promoted information sharing through their online communications network linking 49 State clearinghouses, and provided technical assistance to parents, state and local missing children service agencies, and law enforcement professionals. OJJDP recently awarded NCMEC additional funding to enhance the technical capacity of State clearinghouses communications network through the provision of new computers, scanners, and software.

As the competitively funded Title IV Training and Technical Assistance grantee, Fox Valley Technical College (FVTC) of Appleton, Wisconsin will offer training courses pertaining to investigation of child abuse and of missing and exploited children and provide technical assistance to jurisdictions upon request. FVTC annually trains more than 4,000 prosecutors and professionals from law enforcement and child services agencies. FVTC also facilitated OJJDP's national training workshop for State clearinghouses and nonprofit organizations held in September 1996.

OJJDP has entered into a cooperative agreement with the Association of Missing and Exploited Children Organizations (AMECO) to develop national standards for nonprofit organizations that serve missing and exploited children and their families. AMECO will develop a standardized intake form, produce a quarterly newsletter covering missing and exploited children issues, and set standards for nonprofit agency efforts to locate and return missing children.

Under an interagency agreement with the FBI, OJJDP is providing funding to support new research by the Bureau's Child Abduction Serial Killer Unit (CASKU) to broaden law enforcement's understanding of homicidal pedophiles. This information will be used in FBI and OJJDP training initiatives. CASKU will also provide research-based information regarding investigative and interview strategies to law enforcement agencies.

Several important initiatives for missing children were initiated in FY 1995. OJJDP formed the Federal Agency Task Force for Missing and Exploited Children to complement the investigative work of the Morgan P. Hardiman Task Force, which was created by the 1994 Crime Act to assist State and local law enforcement with the most difficult missing and exploited children cases. The Federal Agency Task Force also focuses on broad coordination and policy issues. In May 1996, the Federal Agency Task Force released Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies. The Directory contains information regarding services ranging from the immediate delivery of specialized forensic and investigative services at the scene of an abducted child investigation to longer term training and prevention programs that improve community safety and enhance investigative resources of available Federal, State, and local law enforcement agencies.

Fiscal Year 1996 Title IV funds will support the establishment of a support network to assist parents of missing children. This program, which is described in the request for proposals that follows this Plan, will further OJJDP's strategic vision of programs that provide services on a national scope.

Grant Program Announcement: Parent Resource Support Network

Purpose: To provide information, advice, and technical assistance to parents who are searching for a missing child.

Background: The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway (NISMART) Children (Finkelhor, Hotaling, and Sedlak, 1990) estimated that in 1988 there were 4,600 nonfamily child abductions, 354,000 family child abductions, and 450,000 runaway children. NISMART also estimated that 200–300 stereotypical kidnappings take place annually of which an estimated 43 to 147 resulted in the murder of the child. Although these categories of missing children should be treated individually, a common factor links them: The victim parents who are searching for their children.

Research indicates that almost all families of missing children rely primarily on law enforcement personnel for information, support, and intervention following a child's disappearance. Indeed, State and local law enforcement agencies have the primary responsibility to investigate missing children cases. However, in an era of dwindling budgets and high violent crime rates, law enforcement agencies are hard pressed to concentrate resources on investigating missing children cases. Particularly for longer-term cases, this concentration of resources on violent crime often unintentionally places parents in a self-help status.

OJJDP has conducted several focus groups composed of parents representing the categories of stereotypical kidnaping, nonfamily abductions, and family abductions. The focus group members discussed government's response to their missing child incidents and suggested areas for enhancement. A common theme expressed in these focus groups was the need for a system to put victim parents in touch with one another. Victim parents cited support and advice from

other victim parents as both useful and credible.

Parents of missing children often express an interest in supporting other parents who are going through the ordeal of locating and recovering a missing child. These parents are determined to make their personal tragedies and experiences meaningful and actively seek opportunities to help other parents. They represent a reservoir of experience and caring that goes largely untapped. This program seeks to tap that reservoir to provide support to families of missing children.

Program Strategy: OJJDP will award a single cooperative agreement. The successful applicant will be expected to develop a recruiting and screening strategy, a case management system to track referrals and assistance provided, and a training curriculum for parent volunteers.

Eligibility Requirements: Applicants must be a State agency or local unit of local government, or a private nonprofit organization.

Goal: To support parents of missing children through the provision of accurate and appropriate information and other technical assistance services.

Objectives: The selected grantee will:

1. Develop a structure composed of parent volunteers who will provide support and technical assistance to other parents whose children are or have been missing.

2. Assist parents with support through information and advice regarding available programs and services.

3. Ensure that appropriate support through information and advice has been received by parents who are seeking assistance.

Selection Criteria: Applications will be rated by a peer review panel on the extent to which they meet the criteria below.

Problem(s) To Be Addressed (10 points)

Applicants must clearly identify the need for this project and demonstrate an understanding of the program concept.

Goals and Objectives (10 points)

Applicants must establish goals and objectives for this program that are clearly defined, measurable, and attainable.

Project Design (35 points)

Applicants must present a clear workplan that contains program elements directly linked to the achievement of the project objectives. Applicants must explain in clear terms how parent volunteers will be recruited, screened, trained, and matched with victim parents. The workplan must indicate significant milestones in the project, the nature of products to be delivered, and due dates for products.

Management and Organizational Capability (35 points)

Applicants' management structure and staffing must be adequate and appropriate for the successful implementation of the project. Applicants must present a workplan that identifies responsible individuals, their time commitment, major tasks, and milestones. Key staff should have significant experience in missing children issues. Special preference shall be given to applicants who demonstrate working relationships with OJJDP's Title IV national resource center and clearinghouse and its training and technical assistance grantees.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective for the proposed activities.

Format: The narrative may not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double spaced on one side of the paper in a standard 10- or 12-point font.

Award Period: This project will be funded for 18 months and may be renewed for another 18 months based on grantee performance and availability of funds.

Award Amount: Up to $125,000 is available for the first 18 months of this project.

Delivery Instructions: All application packages should be mailed or delivered to the Office Of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 1600 Research Boulevard, Mail Stop 2K, Rockville, Maryland 20850; 301–251–5535.

Note: In the lower left hand corner of the envelope, you must clearly write ''Parent Support Network.''

Due Date: Applicants are responsible for ensuring that the original and five copies of the application package are mailed or delivered by 5 p.m. EST on February 10, 1997.

Contact: For further information call Michael Medaris, Program Manager, Missing and Exploited Children's Program, 202–616–3637, or send an e-mail inquiry to medarism@ojp.usdoj.gov.

References

D. Finkelhor, G. Hotaling, and A. Sedlak. 1990. Missing, Abducted, Runaway, and Thrownaway (NISMART) Children in America, First Report: Numbers and Characteristics, National Incidence Studies. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

C. Hatcher, C. Barton, L. Brooks. 1993. Families of Missing Children Final Report. Washington, DC: Office of Juvenile Justice and Delinquency Prevention

L. Girdner and P. Hoff. 1994. Obstacles to the Recovery and Return of Parentally Abducted Children: Research Summary. Washington DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

National Center for Missing and Exploited Children. 1993. Nonprofit Services Provider's Handbook: Building an Effective Organization Serving Missing and Exploited Children and Their Families. Arlington, Va.

National Center for Missing and Exploited Children. 1995. Recovery and Reunification of Missing Children: A Team Approach. Arlington, Va.

Dated: December 6, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–31487 Filed 12–11–96; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Thursday
December 12, 1996

Part III

Securities and Exchange Commission

17 CFR Part 200, et al.

Rulemaking for the EDGAR System; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 232, 239, 240 and 249

[Release Nos. 33–7369; 34–38023; 39–2344; IC–22374; File No. S7–28–96]

RIN 3235–AG96

Rulemaking for the EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') today is proposing minor and technical amendments to its rules governing the submission of filings and other documents through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. These rule proposals follow, and in some cases reflect, the recent completion of the process whereby domestic issuers and third parties filing with respect to those issuers have become subject to mandated electronic filing.

DATES: Comments should be received on or before January 13, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–28–96; this file number should be included in the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James R. Budge, Division of Corporation Finance at (202) 942–2950, or Ruth Armfield Sanders, Division of Investment Management at (202) 942–0633, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment amendments to the following rules relating to electronic filing on the EDGAR system: Rule 200.30–1,[1] Rule 200.30–5,[2] Item 601(c) of Regulation S–B and Regulation S–K,[3] Rule 405 of Regulation C,[4] Rules 10,[5] 11,[6] 13,[7] 101,[8] 102,[9] 201,[10] 202,[11] 303,[12] 304,[13] 307[14] and 311[15] of Regulation S–T,[16] Forms S–2,[17] S–3,[18] S–8,[19] F–2[20] and F–3[21] under the Securities Act of 1933 (''Securities Act''),[22] Rule 0–1,[23] Rule 12b–25,[24] Rule 13d–2,[25] Rule 13e–4,[26] Schedule 14A,[27] Rule 14e–1,[28] and Form 12b–25[29] under the Securities Exchange Act of 1934 (''Exchange Act''),[30] and Rule 0–2[31] under the Trust Indenture Act of 1939.[32] The proposals also would add new Rules 14, 100 and 601 to Regulation S–T, create a new Form DF, and eliminate the EDGAR transition rules found in Rules 901, 902 and 903 of Regulation S–T.[33]

I. Background

Beginning April 26, 1993, the Commission has required many of the documents filed with it pursuant to the federal securities laws to be submitted electronically via the EDGAR system.[34] Domestic registrants were scheduled to become subject to mandated electronic filing in a series of discrete phase-in groups. Following the completion of a congressionally-mandated test period, which included electronic filing by several phase-in groups, the Commission certified that the system satisfied all statutory requirements and announced a schedule for the completion of the transition to mandated electronic filing for all domestic registrants and persons filing with respect to those registrants.[35] On May 6, 1996, the last group of domestic registrants became subject to mandated electronic filing requirements. The Commission has determined to review its rules governing electronic filing and update them, as needed, both to recognize the completion of the transition from a paper to an electronic filing system, and to reflect the experience gained with electronic filing over the last several years.

II. Proposed Rule Changes

The Commission is proposing for public comment a number of minor and technical changes to its rules governing electronic filing on the EDGAR system. These proposals are explained in detail below. Comment is solicited with respect to each proposal. Commenters should address whether the proposed changes are necessary and whether there are any alternatives to the proposed approaches that would better address the issues raised.

A. Elimination of EDGAR Transition Rules

Rules 901, 902 and 903 of Regulation S–T were adopted primarily to govern the phase-in of registrants and provide guidance in situations where one party to a transaction was a phased-in electronic filer and another party was a paper filer. With the end of the phase-in period, however, these transition rules are no longer needed, since all domestic registrants and persons filing with respect to them are now required to file electronically.[36] The Commission therefore proposes to eliminate these rules, retaining in other rules in Regulation S–T the provisions outlining who is subject to mandated electronic filing, as well as the paper copy submission requirements.[37]

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[1] 17 CFR 200.30–1.

[2] 17 CFR 200.30–5.

[3] 17 CFR 228.601(c) and 229.601(c), respectively.

[4] 17 CFR 230.405.

[5] 17 CFR 232.10.

[6] 17 CFR 232.11.

[7] 17 CFR 232.13.

[8] 17 CFR 232.101.

[9] 17 CFR 232.102.

[10] 17 CFR 232.201.

[11] 17 CFR 232.202.

[12] 17 CFR 232.303.

[13] 17 CFR 232.304.

[14] 17 CFR 232.307.

[15] 17 CFR 232.311.

[16] 17 CFR Part 232.

[17] 17 CFR 239.12.

[18] 17 CFR 239.13.

[19] 17 CFR 239.16b.

[20] 17 CFR 239.32.

[21] 17 CFR 239.33.

[22] 15 U.S.C. 77a *et seq.*

[23] 17 CFR 240.0–1.

[24] 17 CFR 240.12b–25.

[25] 17 CFR 240.13d–2.

[26] 17 CFR 240.13e–4.

[27] 17 CFR 240.14a–101.

[28] 17 CFR 240.14e–1.

[29] 17 CFR 249.322.

[30] 15 U.S.C. 78a *et seq.*

[31] 17 CFR 260.0–2.

[32] 15 U.S.C. 77aaa, *et. seq.*

[33] 17 CFR 232.901, 232.902 and 232.903, respectively.

[34] The rules initiating mandated electronic filing were adopted as interim rules in: Release No. 33–6977 (February 23, 1993) (58 FR 14628) (containing a general description of the EDGAR system, Regulation S–T (the electronic filing regulation), and the rules applicable to filings processed by the Division of Corporation Finance); Release No. IC–19284 (February 23, 1993) (58 FR 14848) (relating to rules specific to investment companies and institutional investment managers); and Release No. 35–25746 (February 23, 1993) (58 FR 14999) (relating to rules specific to public utility holding companies).

[35] Release No. 33–7122 (December 19, 1994) (59 FR 67752).

[36] For transactions involving a foreign private issuer and a domestic registrant, see the discussion below relating to foreign private issuers.

[37] See proposed Rule 100 of Regulation S–T and the proposed changes to Rule 101 of Regulation S–T. The definition of ''electronic filer'' in Rule 11 of Regulation S–T, Rule 405 of Regulation C, Exchange Act Rule 0–1, and Trust Indenture Act Rule 0–1 would be updated to reflect these changes.

The note currently found in Rule 901 of Regulation S–T that explains that domestic electronic filers cannot electronically file beneficial

B. New Rule 601 of Regulation S–T Governing Foreign Private Issuers

Foreign private issuers and foreign governments are not subject to mandated electronic filing requirements, unless they are acting in concert with, or as a third party filer with respect to, a domestic registrant. Foreign private issuers' electronic filing responsibilities currently are outlined in Rule 901, which, as stated above, has been proposed to be eliminated. Thus, a new rule is being proposed that will outline the electronic filing obligations of foreign private issuers and foreign governments.[38] The rule would indicate that these entities generally are not required to file electronically, unless they are filing jointly with a domestic registrant or acting as a third party filer with respect to such a registrant.

The new rule also would provide that these entities may choose to file electronically in most situations where electronic filing is not required. Some types of documents filed by foreign private issuers currently are not supported by the EDGAR system, including filings made in connection with the multi-jurisdictional disclosure system. The staff has undertaken a review of documents not yet available for electronic filing with the intention of recommending enhancement of form processing capabilities where appropriate. Should EDGAR be programmed to accept all types of filings made by foreign private issuers? Are some more important than others for inclusion in the database?

Notwithstanding the requirement to file electronically when filing in connection with a domestic registrant, the proposed rule would codify a staff interpretation that where a foreign private issuer engages in an exchange offer, merger or other business combination transaction with a domestic registrant and the foreign private issuer files a registration statement under the Securities Act with respect to the transaction, the registration statement and other documents relating to the transaction may be filed in paper, provided that the domestic registrant will not be a reporting entity at the conclusion of the transaction. Comment is solicited specifically with respect to this codification. Should these types of transactions be required to be filed in electronic format? Are there other transactions involving foreign private issuers that should qualify for this treatment, such as tender offers made by such issuers with respect to a domestic electronic registrant?

C. Rule 10 of Regulation S–T

Current Rule 10(b) of Regulation S–T[39] includes a note that strongly urges persons about to become subject to mandated electronic filing to submit a Form ID to obtain EDGAR access and security codes between three and six months prior to their first required electronic filing. This instruction is proposed to be amended to emphasize that issuers making initial public offerings, as well as third parties with newly-arising filing obligations, should submit a Form ID early to be ready to make their initial filing in electronic format.

D. Rule 11 of Regulation S–T

Rule 11(m) of Regulation S–T[40] provides a definition of ''official filing'' for purposes of the electronic filing regulation. That definition states that an ''official filing'' is the microfiche copy, prepared in compliance with the Commission's administrative regulations and other requirements, of filings made with the Commission, regardless of filing medium. The Commission recently has changed its practice of making microfiche copies of electronic filings, and therefore it is desirable to change the definition to reflect current practices. For purposes of Regulation S–T, it is proposed that the term ''official filing'' mean any filing that has been received and accepted by the Commission, regardless of filing medium.

E. Rule 13 of Regulation S–T

In 1994, the Commission adopted an amendment to Rule 13[41] to address concerns raised about the ability of paper filers to comply with filing requirements by mailing for filing on a Saturday, Sunday or holiday, while electronic filers were constrained to file on days when the Commission was open for business.[42] The rule states that ''[w]here the Commission's rules, schedules and forms provide that a document may be 'mailed for filing with the Commission' at the same time it is published, furnished, sent or given to security holders or others, an electronic filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur on a business day of the Commission, as soon as practicable on the next business day.''

The staff has interpreted this language to allow issuers and others to electronically file with the Commission proxy materials promptly on the next business day following distribution to security holders where it is impracticable to file electronically such materials on the same business day of the Commission (between the hours of 8 a.m. and 5:30 p.m.) on which the distribution first occurs.[43] While this provision would provide relief to filers in all time zones, it is of particular value to proxy contest participants (and/or their counsel) based on the West Coast because it allows them to file proxy materials promptly on the next business day where material is prepared too late in the afternoon to effect an electronic transmission before the 5:30 p.m. Eastern time deadline on the day the materials are first distributed to security holders. The Commission proposes to amend Rule 13 to codify this interpretation. Is there any reason why this interpretation should not be codified? What interests, if any, would be adversely affected by this change?

F. Proposed New Rule 14 of Regulation S–T—Notification of Delayed Filing

While electronic filing has in many ways given filers more control over the timing of their filings, the EDGAR rules recognize that circumstances beyond a filer's control sometimes will prevent the timely electronic filing of a document. The temporary hardship exemption set out in Rule 201 and the filing date adjustment provisions of Rule 13 were designed to aid filers experiencing such electronic filing difficulties. The filing date adjustment mechanism has been more widely used.

In order to reduce the burden on the staff and filers associated with filing date adjustments, the Commission is proposing to add a new provision whereby filers may preserve the timeliness of certain filings without staff intervention.[44] Proposed new Rule 14 of Regulation S–T would provide that where an electronic filer in good faith attempts to file in a timely manner a report or schedule pursuant to sections 13(a), 13(d), 13(g), 15(d) or 16(a) of the

ownership reports with respect to foreign private issuers would be retained in revised Rule 101 of Regulation S–T. The provisions delegating authority to the Division of Corporation Finance and the Division of Investment Management to change phase-in dates are also being eliminated.

[38] Proposed Rule 601 of Regulation S–T.

[39] 17 CFR 232.10(b).

[40] 17 CFR 232.11(m).

[41] The amendment added paragraph (d) to Rule 13. Rule 13 is proposed to be reorganized, with paragraph (d) being redesignated, as revised, as paragraph (a)(4).

[42] Release No. 33–7122.

[43] See Henry Lesser (November 28, 1995).

[44] This was a recommendation in the report of the Task Force on Disclosure Simplification, issued March 5, 1996.

Exchange Act,[45] but is unable to do so because of unanticipated technical difficulties beyond the filer's control,[46] the report or schedule would be deemed timely filed if two conditions were met. First, the report or schedule would be required to be filed electronically no later than two business days following the applicable due date, and second, a new Form DF (for Delayed Filing) would be required to be filed electronically no later than the date the report or schedule is filed.[47] The new procedure would operate similarly to Rule and Form 12b–25,[48] which provide for the delayed filing of Exchange Act reports for reasons not related to technical difficulties.[49] Use of Form DF would not effect a filing date adjustment; rather, as with Form 12b–25, a filing made pursuant to this procedure would be deemed timely even though not filed until after its due date.[50]

Proposed new Form DF would be a one page document that identifies the filer, the filer's Central Index Key (''CIK'') number, the document that could not be timely filed, and the Commission file number for the filing, if one is available. It also would include a short statement setting out the nature of the difficulty[51] and a certification to the effect that notwithstanding good faith efforts, the filer was prevented from making a timely filing because of technical difficulties beyond its control. Form DF would be required to be filed electronically and made public in order to provide information to users as to the nature of the delay.

This procedure could be used only in connection with Exchange Act periodic and annual reports, Schedules 13D[52] and 13G,[53] and Section 16 reports submitted voluntarily on the EDGAR system. While filing date adjustments would continue to be available on a case-by-case basis, they would be much less frequently granted with respect to these documents under the proposed scheme. The procedure would not be available for Securities Act filings and other transactional filings, such as tender offer documents;[54] the temporary and continuing hardship exemptions would still be available for such filings where the enumerated standards are satisfied.

For the proposals to work as contemplated, filers would need to be vigilant as to the status of their filings. The Commission reiterates that it is the filer's responsibility to determine whether its filings have been appropriately prepared, transmitted and accepted by the Commission.[55] Under the proposals, a filer would have two business days to act to preserve the timeliness of its filings. If it appears in advance that two business days would be insufficient to complete the electronic filing process, the filer should consider obtaining relief pursuant to a temporary or continuing hardship exemption rather than using the proposed procedure. If a filer began to rely on this procedure but could not meet the two business day deadline because of continuing electronic difficulties, it might wish to consult the staff with regard to the possibility of a continuing hardship exemption to afford it more time, under Rule 202(d) of Regulation S–T.[56]

Comment is specifically solicited as to whether this procedure would be workable for filers and provide an appropriate measure of relief without impairing the information needs of the investing public. Should the procedure be limited to the types of filings enumerated above, or should it be broadened to cover other types of documents, such as a prospectus filed pursuant to Rule 424[57] or Form 144[58] under the Securities Act? Is the two business day time period the one that should be used, or should it be longer (three or four business days) or shorter (one business day or the due date)? Should the time that the Form DF should be filed be fixed as proposed, or should a different timetable be established, such as requiring the form to be filed no later than the business day following the underlying document's due date or requiring it to be filed no earlier than the associated report's due date and no later than the date the report is filed. Does the proposed approach to allow filing of Form DF until, but no later than, the time the related report is filed provide adequate flexibility? Should filers be able to file Form DF after the related filing is made, so long as it is filed no later than one or two business days following the related filing's due date?

G. Rule 101 of Regulation S–T

1. Exemption for Form 10–K as First Electronic Filing

During the phase-in period, issuers were given an automatic exemption from electronic filing for their first required filing after becoming electronic filers if that document was a Form 10–K[59] or 10–KSB.[60] Now that all domestic issuers have become subject to the electronic filing requirements, this provision no longer is needed, since reporting entities will already have had the advantage of the one-time exemption and any new issuer's first filing will not be an annual report on either of these forms. Consequently, the Commission proposes to eliminate this provision. Comment is solicited as to whether there is any continued need for this exemption.

2. Proxy Materials and Annual Reports to Security Holders Furnished by Registrants Subject to Reporting Obligations Under Section 15(d) of the Exchange Act

Form 10–K and Form 10–KSB both require issuers reporting under section

[45] 15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) and 78p(a), respectively. This new procedure would be available only to filers whose documents are subject to review by the Division of Corporation Finance.

[46] In order to qualify for this proposed procedure, the filing difficulties experienced by the filer must be technical in nature, unanticipated and beyond the filer's control. Consequently, this standard would not be satisfied where a document is late because a filing agent made an error as to when a document should be filed or because a filer failed to build into its planning schedule sufficient time to convert a document to an electronic format. If adopted, the staff would monitor the use of this procedure, and if abused, its availability could be restricted or discontinued.

[47] It is anticipated that most registrants would file the Form DF at the same time they filed the underlying report electronically. However, a filer could file the Form DF earlier to notify the public that its report shortly would be filed in electronic format, serving a function similar to Form 12b–25 (17 CFR 249.322).

[48] Rule 12b–25 is found at 17 CFR 240.12b–25.

[49] Form 12b–25 would continue not to be available for use where the reason for the delay related to the preparation and transmission of an electronic filing. Pertinent provisions of Rule 12b–25 (17 CFR 240.12b–25) and Form 12b–25 would be amended to reflect the addition of this new procedure.

The proposal also would include a provision similar to that found in Rule 12b–25 indicating that registrants would not be eligible to use any registration statement form under the Securities Act, the use of which is predicated on timely filed reports, until the report and Form DF were filed electronically in compliance with Rule 14 of Regulation S–T.

[50] It is anticipated that if this procedure is adopted, filing date adjustments will be granted more sparingly.

[51] This requirement would be similar to those found in Form TH and Form 12b–25 and would provide the staff the means to monitor the use of the proposed procedure.

[52] 17 CFR 240.13d–101.

[53] 17 CFR 240.13d–102.

[54] It generally is staff policy not to grant filing date adjustments for Securities Act registration statements or other transactional filings because shareholder rights may be affected.

[55] See Release No. 33–7122, Section III.

[56] If a filer submitted a report in paper under cover of Form TH later than one business day following its due date, the timeliness of the document would not be preserved.

[57] 17 CFR 230.424.

[58] 17 CFR 239.144.

[59] 17 CFR 249.310.

[60] 17 CFR 249.310b. This exemption is found in Rule 101(a)(1)(iii) of Regulation S–T (17 CFR 232.101(a)(1)(iii)).

15(d) of the Exchange Act to furnish to the Commission for its information any annual report to security holders covering the registrant's last fiscal year and every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders. This information is not deemed filed unless it is being incorporated by reference into the Exchange Act report itself.

These submission requirements were intended to be covered under Rule 101 of Regulation S–T, but they are not specifically addressed in that rule. As is true for proxy materials submitted by companies registered under section 12, the proxy soliciting materials submitted pursuant to these provisions should be submitted electronically. This should be done by submitting them using the same EDGAR form type as used for other definitive proxy statements, DEF 14A, or DEFA14A for definitive additional materials, as outlined in the EDGAR Filer Manual. No fee will be charged for these proxy filings. Consistent with the requirements to furnish annual reports to security holders under the proxy rules, registrants have the option to submit their annual report to security holders pursuant to these provisions either in paper or in electronic format.[61] If electronic submission is chosen, the document should be sent using the ARS form type. The Commission proposes to amend Rule 101(a) and 101(b) to clarify the electronic treatment of these documents. Commenters should address whether this information should be treated in the same manner as comparable materials submitted by section 12 reporting companies, as proposed, or whether they should be treated differently, such as allowing the proxy materials to be furnished in paper? Commenters should provide reasons for any special treatment that might be afforded these documents.

3. Schedules 13D and 13G

Current rules require that the first electronic amendment to a paper-filed Schedule 13D or Schedule 13G restate the entire text of the schedule.[62] The purpose of this requirement is to ensure that a complete and current copy of these schedules is placed on the electronic database so that financial observers do not need to refer to paper filings for a complete version of the filings. However, it has been the staff's position that if the first electronic amendment is to report a reduction in beneficial ownership that relieves the filer from further reporting obligations, the amendment needs not include a restatement of the entire text of the schedule, but only the amended portions. The Commission proposes to codify this position. A restatement requirement in connection with this type of amendment is burdensome to filers and provides little benefit to those who follow beneficial ownership transactions because the filer's reporting obligation terminates upon filing the amendment. Comment is sought as to whether restatement in these cases is necessary and whether the requirement to restate should be retained.

4. Certain Material Filed Pursuant to Exchange Act Rule 16b-3(b)(2)(ii)

Rule 16b–3(b)(2)(ii)[63] has required an issuer to furnish in writing to the holders of record of the securities entitled to vote for an employee benefit plan, and file with the Commission, substantially the same information concerning the plan that would be required by the rules and regulations in effect under Section 14(a) of the Exchange Act[64] at the time, where votes or consents were not solicited in a manner substantially in compliance with the Commission's proxy rules. These filings have been required to be made in paper pursuant to Rule 101(c) of Regulation S–T. Since this filing requirement recently has been eliminated by the Commission, effective August 15, 1996,[65] the corresponding Regulation S–T provision is proposed to be eliminated as well.[66]

5. Filings Made in Connection With Securities Act Exemptions

The Commission recently eliminated Regulations B and F,[67] which provided for exemptions under the Securities Act. Consequently, references in Rule 101(c) of Regulation S–T to filings made pursuant to those regulations are proposed to be removed.

6. Certain Material Filed Pursuant to Investment Company Act Sections 23(c), 24(e) and 24(f)

The Regulation S–T list of mandated electronic submissions does not expressly include documents filed with the Commission pursuant to sections 23(c), 24(e), and 24(f) of the Investment Company Act, although these submission requirements were intended to be covered under Rule 101 of Regulation S–T. The Commission proposes to clarify that, pursuant to Regulation S–T, submissions under Sections 23(c), 24(e) and 24(f)[68] of the Act must be made electronically.[69]

H. Hardship Exemptions

1. Confirming Copy Legends

Rule 202 of Regulation S–T provides for exemptions from electronic filing, pursuant to delegated authority, for documents, portions of documents, or groups of documents where the electronic filer would incur undue burden and expense to convert the material to an electronic format. Paragraph (d) of that rule allows the staff to grant such exemptions for a limited period of time premised on an undertaking to submit an electronic version of the material at the end of the stated period. However, unlike Rule 201 (for temporary hardship exemptions), Rule 202(d) does not include a requirement that the electronic version be identified as a confirming electronic copy of what was filed in paper pursuant to the exemption by including a legend to that effect on the first page of the document. The Commission proposes to add such a requirement to be consistent with other similar provisions and to alert users of the information to the fact that the information previously had been filed in paper.

2. Sanctions

The Commission also is proposing to modify the language found in Rule 202(d) of Regulation S–T and in the instructions to Forms S–2, S–3, S–8, F–2 and F–3[70] to reflect the fact that failure to submit a confirming electronic copy pursuant to a Rule 202(d) hardship exemption renders the registrant ineligible to use the form. Rule 303 of Regulation S–T also would be revised

[61] Investment companies currently are required to file electronically with the Commission copies of their annual, semi-annual and other periodic reports to security holders. See Rule 101(a)(iv) of Regulation S–T (17 CFR 232.101(a)(iv)) and Investment Company Act Rule 30b2–1 (17 CFR 270.30b2–1).

[62] Rule 101(a)(2)(ii) of Regulation S–T (17 CFR 232.101(a)(2)(ii)) and Rule 13d–2(c) (17 CFR 240.13d–2(c)).

[63] 17 CFR 240.16b-3(b)(2)(ii).

[64] 15 U.S.C. 78n(a).

[65] See Release No. 34–37260 (May 31, 1996) (61 FR 30376).

[66] Technical amendments to citations in paragraphs (a)(1)(ii) and (c)(6) of Rule 101 also are being proposed.

[67] Regulation B and Regulation F were eliminated in Release No. 33–7300 (May 31, 1996).

[68] While Form 24F–2 (17 CFR 274.24) is among the filings which must be submitted electronically, filers should be aware that there is no need to replicate electronically items such as boxes and vertical lines appearing in the paper version of this form.

[69] See proposed change to Rule 101(a)(1)(iv) of Regulation S–T (17 CFR 232.101(a)(1)(iv)).

[70] 17 CFR 239.12, 239.13, 239.16b, 239.32 and 239.33, respectively.

by broadening its language to provide that documents filed in paper under Rule 202(d) could not be incorporated by reference if a required confirming electronic copy is not submitted with respect to that document. Similarly, the tender offer rules would be amended to indicate that tender offer periods would be tolled so long as all required confirming electronic copies have not been submitted to the Commission.[71] These changes are consistent with the treatment associated with temporary hardship exemption requirements and codify current staff interpretation.

3. Exhibits

a. Exhibit Index. Rule 102 of Regulation S–T and Item 601 of Regulations S–K and S–B currently require filers to indicate in a filing's exhibit index whether a confirming electronic copy of a paper-filed exhibit has been submitted by placing the letters ''CE'' next to the item in the index. The language in the rules is limited to confirming electronic copies submitted pursuant to a temporary hardship exemption, but should encompass any document originally filed in paper pursuant to any type of hardship exemption for which a required confirming electronic copy has been submitted. The Commission proposes to amend these rules accordingly.

b. Technical Procedures. The electronic filing rules contemplate under certain circumstances paper filing of exhibits in connection with an otherwise electronic filing. Filers may do this pursuant to either a temporary hardship exemption or a continuing hardship exemption, depending on the type of hardship involved. In every case involving a temporary hardship exemption, the filer is required within six business days following the paper filing to submit a confirming electronic copy of the material filed in paper.[72] Persons making filings in paper pursuant to a continuing hardship exemption may be required to file a confirming electronic copy of the paper-filed material after a designated period of time.[73] Confirming electronic copies generally correspond to entire filings that were made in paper pursuant to a hardship exemption and are submitted complete, identified to the electronic system as only a copy of a previously-filed paper document. Where the subject of the hardship exemption is an exhibit only, the standard protocol cannot be followed because exhibits cannot be filed standing alone—they must be a part of a filing.

Persons who have an obligation to submit electronic confirming copies of an exhibit filed in paper pursuant to a hardship exemption must submit the exhibit electronically by filing an amendment to the document to which the exhibit relates. The CONFIRMING-COPY tag should not be used in the submission header. A statement should be included in the amendment explaining that the amendment is solely to submit an electronic copy of an exhibit previously filed in paper pursuant to a hardship exemption. It is proposed that this be codified in the rules by adding an instruction to Rule 201 and Rule 202 of Regulation S–T.

I. Proxy Statement Performance Graph

Electronic filers subject to the requirement to furnish a stock performance comparison graph in their proxy statements pursuant to Item 402(*l*) of Regulation S–K[74] are required to satisfy that obligation in their electronic filings in the same manner as applicable to other types of omitted charts or graphs, that is, by describing the graph in tabular form.[75] Filers also are required to supplementally furnish a copy of the graph to the staff. In order to reduce the burden on proxy filers, the Commission is proposing to eliminate the requirement that the graph be supplementally sent to the staff. Of course, registrants would continue to be required to produce a copy of the graph, as sent to security holders, upon staff request, pursuant to Rule 304(c).[76]

The staff of the Division of Investment Management has encouraged investment company filers to follow the provisions of Rule 304(d) in their preparation of the line graph required by Item 5A of Form N–1A.[77] Therefore, the Commission also is proposing to revise Rule 304(d) so that it expressly applies to these investment company registrants.

J. Annual Report Provisions Inapplicable to Investment Companies

Currently, Rule 303(b) of Regulation S–T[78] does not expressly state whether its requirements concerning incorporation by reference to reports to security holders apply to investment companies. The Commission proposes to revise the rule to make it clear that the rule does not apply to investment company filers, codifying staff interpretation.

Also, the Commission is proposing a clarifying amendment to Schedule 14A. The Schedule would be revised to make it clear that investment companies need not submit electronically annual or quarterly reports to security holders, or any portion thereof, incorporated by reference into a proxy statement, if the report was filed electronically.[79] This revision also would codify staff interpretation.

K. Computational Materials To Be Filed Under Cover of Form SE

Certain issuers of asset-backed securities file large amounts of computational materials with a Form 8–K, pursuant to two no-action letters.[80] These materials often are voluminous and difficult to convert to an acceptable electronic format. Typically, filers of such materials have been granted hardship exemptions from filing them electronically. In order to reduce compliance costs both to the issuers and the staff, the Commission proposes to amend Rule 311 of Regulation S–T to add this type of supporting documentation to the list of items that may be filed in paper under cover of Form SE without the need for staff action. The Form 8–K itself, as well as any required term sheets, should be filed electronically. The Commission solicits comment as to whether it would be useful to the public to have computational materials on the EDGAR database and whether there is any feasible method available or under development for converting this information into an acceptable EDGAR format.

L. Financial Data Schedules

The Commission is proposing to codify the principles outlined in two staff interpretive positions relating to Financial Data Schedules. First, a note would be added stating that issuers of asset-backed securities (as defined in Form S–3, except that the securities need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a)

[71] See proposed changes to Rule 13e–4 and Rule 14e–1.

[72] Rule 201(b) of Regulation S–T [17 CFR 232.201(b)].

[73] Rule 202(d) of Regulation S–T.

[74] 17 CFR 229.402(*l*).

[75] Rule 304(d) of Regulation S–T [17 CFR 232.304(d)].

[76] 17 CFR 232.304(c). Paragraph (b)(2) also is proposed to be amended to conform its language with the changes made to Rule 304 in Release 33–7289 (May 9, 1996) [61 FR 24652], relating to use of electronic media for delivery purposes.

[77] 17 CFR 274.11A.

[78] 17 CFR 232.303(b).

[79] See proposed amendment to Note D.4 to Schedule 14A.

[80] Distribution of Certain Written Materials Relating to Asset-Backed Securities, (February 17, 1995) and Mortgage and Asset-Back Securities—Furnishing Information to Customers, (May 20, 1994).

or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.[81] This is consistent with the existing requirement that Financial Data Schedules be submitted only when updated financial statements are filed. Comment is solicited as to whether this note should be expanded to cover issuers of asset-backed securities that do not satisfy the definition of asset-backed securities for technical reasons. A second note would be added to the effect that a registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag in the Financial Data Schedule for the period in which the stock split occurs includes a footnote that indicates that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.[82]

In addition, the rules governing the submission of Financial Data Schedules provide that where a filer submits a document in paper pursuant to a temporary hardship exemption, and the document would have been accompanied by a Financial Data Schedule if filed in electronic format, the filer must submit the Financial Data Schedule with the confirming electronic copy of the filing. Since documents may be filed in paper pursuant to a continuing hardship exemption on the condition that the issuer file an electronic version within a stated time period,[83] the Commission is proposing to amend its rules to reflect its position that registrants must submit a Financial Data Schedule with the required confirming electronic copy of a document filed in paper pursuant to any hardship exemption where the underlying document would have included the schedule had it been filed originally in electronic format.

M. Red Ink Requirements

The Commission recently eliminated its requirements to print designated information in red ink.[84] Consequently, it is proposed that Rule 307 of Regulation S–T be revised to reflect this change.

[81] See Ford Motor Credit Company (April 14, 1995).

[82] See AFLAC/AFLAC Incorporated (April 10, 1996).

[83] Rule 202(d) of Regulation S–T.

[84] Release No. 33–7300.

III. Other Electronic Submission, Processing and Retrieval Issues

A. Expansion of Current System

While most documents required to be submitted to the Commission now must be sent electronically, certain filings and other types of communications still are required to be provided in paper format. Now that the EDGAR system has been fully implemented, as initially conceived, the Commission also seeks comment as to whether it may be appropriate to expand the system to require, or permit, electronic filing of any of the other documents currently excluded from the system pursuant to Rule 101(c) of Regulation S–T. Three examples of such submissions are requests for confidential treatment, no-action and interpretive requests, and filings made in connection with exempt offerings.

1. Confidential Treatment Requests

Requests for confidential treatment were not initially considered for electronic submission because of their special processing requirements, as well as a desire to minimize the risk that confidential information might be inadvertently disseminated publicly as a result of filer error. A specially secured internal database would be required to ensure that the submissions were not made available to the public. Comment is solicited as to whether filers would find it advantageous to be able to submit confidential treatment material in electronic format.

2. Internet Access to No-Action and Interpretive Letters

Questions have been raised about whether there are better ways to afford the public electronic access to no-action and interpretive letters. Correspondence with the staff relating to no-action and interpretive requests generally is not made public until final disposition. Upon disposition, however, these documents are made public and can be found electronically through commercial services, but they are not available on EDGAR or the Commission's Internet Web Site. Comment is requested about whether it would be useful to filers and to the public to make no-action and interpretive letters available on EDGAR or the Commission's Internet Web Site. This, of course, would require the submission of correspondence to the staff in some electronic format, either through the EDGAR system or in a word processing or ASCII format on diskette, depending on the medium chosen. Confidentiality concerns similar to those discussed in connection with confidential treatment requests would need to be addressed for correspondence received by the Commission prior to final disposition. What benefits would accrue to persons submitting no-action and interpretive requests if an electronic medium for submission were developed? If an electronic method for processing no-action and interpretive requests were created, should it be voluntary or mandatory?

3. Exempt offerings

Filings made pursuant to exempt offerings, such as offering statements[85] filed under Regulation A,[86] have not been required to be filed electronically, in part because many of the filings were sent to the Commission's regional offices, which do not receive filings via the EDGAR system, and in part to relieve small issuers of the compliance costs associated with electronic filings. Comment is sought, from the perspective of filers and users of the information, about whether Regulation A documents should be required, or permitted, to be filed electronically.

Comment is solicited as to whether other documents currently excluded from electronic filing, such as shareholder proposal correspondence, applications for relief from periodic reporting requirements under Exchange Act section 12(h) or promotional and sales material, should be permitted or mandated to be submitted electronically. In addition, are there any documents currently allowed to be filed electronically on a voluntary basis that should be made mandated electronic filings, such as the annual report to security holders or Forms 3, 4 and 5? While no action mandating electronic filing of the documents outlined in Rule 101(c) is being proposed at this time, the Commission will take any comments into consideration as it plans future enhancements to the EDGAR system. Systems allowing voluntary submission of certain documents may be developed if supported by commenters. Of course, the Commission will not mandate electronic filing of any these documents without first issuing specific proposals to that effect.

B. Identification of Information in Submission Headers

The Commission recently has issued a release proposing amendments to its rules and Form S–3[87] and F–3[88] that would include non-voting as well as

[85] Form 1–A [17 CFR 239.90].

[86] 17 CFR 230.251–230.263.

[87] 17 CFR 239.13.

[88] 17 CFR 239.33.

voting common equity in the computation of the required $75 million aggregate market value of common equity held by non-affiliates of the registrant.[89] During the course of that rulemaking process, it became apparent that it would be desirable to identify the ''public float'' of Exchange Act reporting companies electronically so that the staff and the public could readily search such companies by that criterion. The Commission solicits comment on whether the EDGAR system should be modified to include a <FLOAT> tag in the submission header used in connection with Exchange Act annual reports filed by domestic issuers.[90] Are there any other items of information whose identification in submission headers would benefit the public? This change would be effected in connection with a future upgrade of the EDGAR system and the adoption of a revised EDGAR Filer Manual.

IV. General Request for Comment

Comment is solicited with respect to each of the foregoing proposals from the perspective both of filers and of public users of information filed with the Commission. Interested persons should submit comment letters in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC., 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–28–96. This file number should be included on the subject line if E-mail is used. Comment is requested with respect to any competitive burdens that might result from the adoption of any of the rule proposals. All comments will be considered by the Commission in complying with its responsibility under section 23(a) of the Exchange Act.[91] Comments received will be available for inspection and copying in the Commission's public reference room, 450 Fifth Street, NW., Washington, DC. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Cost-Benefit Analysis

Commenters are requested to address the costs and benefits of the rule proposals, and to provide any available support for such views, in order to aid the Commission in its own evaluation of their costs and benefits. It is anticipated that the proposed rule changes will not impose significant costs on filers, since the proposals generally are codifications and/or clarifications of current filing practices. The benefit of the proposals would be to clarify existing rules and make the filing community at large more aware of current practices and interpretations.

VI. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including a statement of the factual basis therefor, is attached to this release as Appendix A.

VII. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget (''OMB'') and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 (''the Act'')(44 U.S.C. 3501 et seq.). It is anticipated that the proposals would add 100 burden hours annually, attributable to the information collection requirements of proposed Form DF.[92] These burden hours would be derived from 500 respondents per year dedicating two-tenths of an hour to prepare each response on the form.

The Commission solicits comment: Concerning whether the proposed information collection on Form DF is necessary; on the accuracy of the Commission's estimates of the burden of proposed Form DF; on the quality, utility and clarity of the information to be collected; on how the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, with reference to File No. S7–6–96. the Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

The rule amendments outlined above are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35(A) of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935,[93] Section 319 of the Trust Indenture Act of 1939,[94] and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.[95]

List of Subjects in 17 CFR Parts 200, 228, 229, 230, 232, 239, 240, and 249

Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 200.30–1 [Amended]

2. By amending § 200.30–1 by removing paragraph (m).

§ 200.30–5 [Amended]

3. By amending § 200.30–5 by removing paragraph (j) and by redesignating paragraphs (k) and (l) as paragraphs (j) and (k).

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26) 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

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[89] Release No. 33–7326 (August 30, 1996) (61 FR 47706).

[90] The public float currently is required to be disclosed in the body of the annual report itself. If this programming change were effected, a registrant only would be required to restate that figure in the submission header of the filing.

[91] 15 U.S.C. 78w(a).

[92] The information collection will be entitled ''Form DF.''

[93] 15 U.S.C. 79a et seq.

[94] 15 U.S.C. 77aaa et seq.

[95] 15 U.S.C. 80a–1 et seq.

5. By amending § 228.601 by revising the second sentence of instruction 3 to paragraph (a), by designating the note to paragraph (c)(1)(ii) as ''Note 1 to paragraph (c)(1)(ii)'', by adding Note 2 to paragraph (c)(1)(ii), by revising paragraph (c)(1)(v), and by adding a note to paragraph (c)(2)(iii) to read as follows:

§ 228.601 (Item 601) Exhibits.

(a) * * *

Instructions to Item 601(a)

* * * * *

(3) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation ''CE'' (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(c) *Financial Data Schedule* (1) *General.* * * *

(ii) * * *

Note 2 to paragraph (c)(1)(ii): Issuers of asset-backed securities (as that term is defined in the general instructions to Form S–3 (§ 239.13 of this chapter), except that they need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.

* * * * *

(v) A Financial Data Schedule shall be submitted only in electronic format. Where a registrant submits a filing, otherwise required to include a Financial Data Schedule, in paper pursuant to a hardship exemption under Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter, respectively), the Financial Data Schedule shall not be included with the paper filing, but shall be included with the required confirming electronic copy.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iii) * * *

Note to paragraph (c)(2)(iii): A registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag for the period in which the stock split occurs includes a footnote indicating that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

6. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

7. By amending § 229.601 by revising the second sentence of instruction 4 of ''Instructions to Item 601'', by designating the note to paragraph (c)(1)(ii) as ''Note 1 to paragraph (c)(1)(ii)'', by adding Note 2 to paragraph (c)(1)(ii), by revising paragraph (c)(1)(v), and by adding a note to paragraph (c)(2)(iii) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Instructions to Item 601

* * * * *

(4) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation ''CE'' (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

* * * * *

(c) *Financial Data Schedule* (1) *General.* * * *

(ii) * * *

Note 2 to paragraph (c)(1)(ii): Issuers of asset-backed securities (as that term is defined in the general instructions to Form S–3 (§ 239.13 of this chapter), except that they need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.

* * * * *

(v) A Financial Data Schedule shall be submitted only in electronic format. Where a registrant submits a filing, otherwise required to include a Financial Data Schedule, in paper pursuant to a hardship exemption under Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter, respectively), the Financial Data Schedule shall not be included with the paper filing, but shall be included with the required confirming electronic copy.

* * * * *

(2) *Format and presentation of financial data schedule.* * * *

(iii) * * *

Note to paragraph (c)(2)(iii): A registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag for the period in which the stock split occurs includes a footnote indicating that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

8. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

9. By amending § 230.405 by revising the definition of ''electronic filer'' to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Electronic filer. The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101 of this chapter, respectively).

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

10. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

11. By amending § 232.10 by revising the note following paragraph (b) to read as follows:

§ 232.10 Application of Part 232.

* * * * *

Note: The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID well in advance of the first required filing, including a registration statement relating to an initial public offering, in order to facilitate electronic filing on a timely basis.

12. By amending § 232.11 by revising paragraphs (e) and (m) to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

(e) *Electronic filer.* The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101, respectively).

* * * * *

(m) *Official filing.* The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium.

* * * * *

13. By amending § 232.13 by revising the introductory text of paragraph (a)(1), by adding paragraph (a)(4) before the Note, by redesignating correct paragraphs (b) and (c) as paragraphs (c) and (b), and by removing paragraph (d) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) *General.* (1) Unless otherwise provided in this section or in Rule 14 of Regulation S–T (§ 232.14 of this chapter), the business day on which a filing is received by the Commission shall be the date of filing thereof, if:

* * * * *

(4) Where the Commission's rules, schedules and forms provide that a document may be ''mailed for filing with the Commission'' at the same time it is published, furnished, sent or given to security holders or others, an electronic filer shall file the document with the Commission before or on the date the document is first published, furnished, sent or given to security holders and others; *provided, however,* that if it is impracticable to file such materials electronically between the hours of 8 a.m. and 5:30 p.m. Eastern time on a business day of the Commission, the electronic filer may file as soon as reasonably practicable, but no later than 5:30 p.m. Eastern time, on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable) and not on the basis of the date of filing.

* * * * *

14. By adding § 232.14 to read as follows:

§ 232.14 Notification of delayed filing.

(a) *Notification of delayed filing.* Where an electronic filer in good faith attempts to file in a timely manner a report or schedule pursuant to sections 13(a), 13(d), 13(g), 15(d) or 16(a) of the Exchange Act (15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) or 78p(a)), but is unable to do so because of unanticipated technical difficulties beyond the filer's control, the report or schedule shall be deemed timely filed if:

(1) It is filed electronically no later than two business days following the applicable due date; and

(2) A Form DF (§ 249.448 of this chapter) is filed electronically no later than the date the report or schedule is filed.

(b) Form DF shall be filed only in electronic format and may not be filed in paper pursuant to a hardship exemption under § 232.201 or § 232.202.

(c) A registrant will not be eligible to use any registration statement form under the Securities Act the use of which is predicated on timely filed reports until the subject report and Form DF are electronically filed pursuant to paragraph (a) of this section.

15. By adding § 232.100, following the undesignated heading ''Electronic Filing Requirements'' to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

The following persons or entities shall be subject to the electronic filing requirements of this Part 232:

(a) Registrants whose filings are subject to review by the Division of Corporation Finance, except for foreign private issuers and foreign governments;

(b) Registrants whose filings are subject to review by the Division of Investment Management; and

(c) Any party (including natural persons, foreign private issuers and foreign governments) that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing requirements.

16. By amending § 232.101 by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2)(ii), (b)(1), (c)(6) and (c)(8), by removing paragraph (c)(20), and by adding paragraph (d) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.* (1) * * *

(ii) Statements and applications filed with the Commission pursuant to the Trust Indenture Act (15 U.S.C. 77aaa, *et seq.*), other than applications for exemptive relief filed pursuant to section 304 (15 U.S.C. 77ddd) and Section 310 (15 U.S.C. 77jjj) of that Act;

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n and 78o(d)), except Form 13F (§ 249.325 of this chapter), and proxy materials required to be furnished for the information of the Commission in connection with annual reports on Form 10–K (§ 249.310 of this chapter) or Form 10–KSB (§ 249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act.

Note to paragraph (a)(1)(iii). Domestic electronic filers are restricted from filing Schedules 13D and 13G with respect to foreign private issuers because EDGAR requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. Such filings should be made in paper pending future system enhancements.

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a–8, 80a–17, 80a–20, 80a–23(c), 80a–24(e), 80a–24(f) and 80a–29); *provided, however,* that submissions under section 6(c), 8(f) or 17(g) of that Act (15 U.S.C. 80a–6(c), 80a–8(f) or 80a–17(g), or documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format; and

* * * * *

(2) * * *

(ii) The first electronic amendment to a paper format Schedule 13D (§ 240.13d–101 of this chapter) or Schedule 13G (§ 240.13d–102 of this chapter), shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. See Rule 102 (§ 232.102) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

* * * * *

(b) * * *

(1) Annual reports to security holders furnished for the information of the Commission pursuant to Rule 14a–3(c) (§ 240.14a–3(c) of this chapter) or Rule 14c–3(b) (§ 240.14c–3(b) of this chapter), or pursuant to the requirements of Form 10–K or Form 10–KSB filed by registrants pursuant to section 15(d) of the Exchange Act.

* * * * *

(c) * * *

(6) Applications for exemptive relief filed pursuant to Sections 304 and 310 of the Trust Indenture Act.

* * * * *

(8) Filings relating to offerings exempt from registration under the Securities Act, including filings made pursuant to Regulation A (§§ 230.251–230.263 of this chapter), Regulation D (§§ 230.501–230.506 of this chapter) and Regulation E (§§ 230.601–230.610a of this chapter), as well as filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively).

* * * * *

(d) *Paper Copies of Electronic Filings.* Electronic filers, including third party filers, shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted or blanked out to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 101(d) OF REGULATION S–T.

(3) Signatures are not required for paper format documents submitted pursuant to paragraph (d) of this section.

17. By amending § 232.102 by revising the last sentence of paragraph (d) to read as follows:

§ 232.102 Exhibits.

* * * * *

(d) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation ''CE'' (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

* * * * *

18. By amending § 232.201 by designating the note following paragraph (b) as Note 1 and by adding Note 2 to read as follows:

§ 232.201 Temporary hardship exemption.

* * * * *

(b) * * *

Note 2. If the exemption relates to an exhibit only, the requirement to submit a confirming electronic copy shall be satisfied by refiling the exhibit in electronic format in an amendment to the filing to which it relates. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a temporary hardship exemption.

19. By amending § 232.202 by revising paragraph (d) before the note, designating the note as Note 1 and adding Note 2 and Note 3 to read as follows:

§ 232.202 Continuing hardship exemption.

* * * * *

(d) If a continuing hardship exemption is granted for a limited time period, the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE (SPECIFY DOCUMENT) FILED ON (DATE) PURSUANT TO A RULE 202(d) CONTINUING HARDSHIP EXEMPTION

* * * * *

Note 2. If the exemption relates to an exhibit only and a confirming electronic copy of the exhibit is required to be submitted, the exhibit should be refiled in electronic format in an amendment to the filing to which it relates. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a continuing hardship exemption.

Note 3. Failure to submit a required confirming electronic copy of a paper filing made in reliance on a continuing hardship exemption granted pursuant to paragraph (d) of this section will result in ineligibility to use Forms S–2, S–3, S–8, F–2 and F–3 (*see*, §§ 239.12, 239.13, 239.16b, 239.32 and 239.33, respectively), restrict incorporation by reference of the document submitted in paper (*see* Rule 303 of Regulation S–T (§ 232.303), and toll certain time periods associated with tender offers (*see* Rule 13e–4(f)(12) (§ 240.13e–4(f)(12)) and Rule 14e–1(e) (240.14e–1(e))).

20. By amending § 232.303 by revising paragraph (a)(2) and paragraph (b) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(2) Any document filed in paper pursuant to a hardship exemption for which a required confirming electronic copy has not been submitted.

* * * * *

(b) If any portion of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, such portion of the annual or quarterly report to security holders shall be filed in electronic format as an exhibit to the filing, as required by Item 601(b)(13) of Regulation S–K and Item 601(b)(13) of Regulation S–B. This requirement shall not apply to incorporation by reference by an investment company from an annual or quarterly report to security holders.

21. By amending § 232.304 by revising paragraph (b)(2) and paragraph (d), to read as follows:

§ 232.304 Graphic, image and audio information.

* * * * *

(b)(1) * * *

(2) Narrative descriptions, tabular representations or transcripts of graphic, image and audio material included in an electronic filing or appendix thereto also shall be deemed part of the filing. However, to the extent such descriptions, representations or transcripts represent a good faith effort to fairly and accurately describe omitted graphic, image or audio material, they shall not be subject to the liability and anti-fraud provisions of the federal securities laws.

* * * * *

(d) The performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(l) of Regulation S–K (§ 229.402(l) of this chapter), and the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5A of Form N–1A (§ 274.11A of this chapter), shall be furnished to the Commission in connection with an electronic filing by presenting the data in tabular or chart form within the electronic filing, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

22. By revising § 232.307 and its section heading to read as follows:

§ 232.307 Bold face type.

Provisions requiring presentation of information in bold face type shall be satisfied in an electronic format

document by presenting such information in capital letters.

23. By amending § 232.311 by adding paragraph (i) to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(i) Computational materials filed as an exhibit to Form 8–K (§ 249.308) by issuers of an ''asset-backed security,'' as that term is defined in General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter).

24. By adding an undesignated heading and § 232.601, to read as follows:

FOREIGN PRIVATE ISSUERS AND FOREIGN GOVERNMENTS

§ 232.601 Foreign private issuers and foreign governments.

(a) Foreign private issuers and foreign governments shall not be subject to the mandated electronic filing requirements of this part 232, except that a document filed either jointly with, or with respect to, a registrant that is subject to mandated electronic filing shall be filed in electronic format. *See* Rule 100 of Regulation S–T (§ 232.100).

(b) Foreign private issuers and foreign governments may choose to file electronically any document not required to be so filed to the extent that an appropriate form type is available, as identified by the EDGAR Filer Manual.

(c) Notwithstanding any provision of this part 232, if a foreign private issuer engages in an exchange offer, merger or other business combination transaction with a domestic registrant and the foreign private issuer files a Securities Act registration statement with respect to the transaction, the registration statement and all other documents relating to the transaction may be filed in paper, provided that the domestic registrant will not be subject to the reporting requirements of the Exchange Act at the conclusion of the transaction.

§§ 232.901, 232.902 and 232.903 and Undesignated heading [Removed and renewed

25. By removing and reserving §§ 232.901, 232.902 and 232.903 and the undesignated heading ''Transition to Electronic Filing''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

26. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

27. By amending Form S–2 (referenced in § 239.12) by revising general instruction I.H.(1) to read as follows:

Note: The text of Form S–2 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S–2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I. Eligibility Requirements for Use of Form S–2

* * * * *

H. *Electronic filings.* * * *

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and,

* * * * *

28. By amending Form S–3 (referenced in § 239.13) by revising general instruction I.A.8.(1) to read as follows:

Note: The text of Form S–3 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

GENERAL INSTRUCTIONS

* * * * *

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. *Registrant Requirements.* * * *

8. *Electronic filings.* * * *

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and,

* * * * *

29. By amending Form S–8 (referenced in § 239.16b) by revising general instruction A.3.(1) to read as follows:

Note: The text of Form S–8 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S–8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

A. Rule as to Use of Form S–8. * * *

3. *Electronic filings.* * * *

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and,

30. By amending Form F–2 (referenced in § 239.32) by revising general instruction I.H to read as follows:

Note: The text of Form F–2 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM F–2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

A. Eligibility Requirements for Use of Form F–2 * * *

H. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§§ 232.101 of this chapter) shall have filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter).

* * * * *

31. By amending Form F–3 (referenced in § 239.33) by revising general instruction I.A.6 to read as follows:

Note: The text of Form F–3 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

I. Eligibility Requirements for Use of Form F–3 * * *

A. *Registrant requirements* * * *

6. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§§ 232.101 of this chapter) shall have filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

32. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q,

79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

33. By amending § 240.0–1 by revising paragraph (a)(5) to read as follows:

§ 240.0–1 Definitions.

(a) * * *

(5) The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101 of this chapter, respectively).

* * * * *

34. By amending § 240.12b–25 by revising the section heading and last sentence of paragraph (g) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, 11–K, or N–SAR.

* * * * *

(g) * * * Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with Rule 14 (§ 232.14 of this chapter), Rule 201 or Rule 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(c) of Regulation S–T (§ 232.13(c) of this chapter).

35. By amending § 240.13d–2 by revising paragraph (c) to read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

* * * * *

(c) The first electronic amendment to a paper format Schedule 13D (§ 240.13d–101 of this chapter) or Schedule 13G (§ 240.13d–102 of this chapter) shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. *See* Rule 102 of Regulation S–T (§ 232.102 of this chapter) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

36. By amending § 240.13e–4 by revising the last sentence of paragraph (f)(12) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(f) * * *

(12) * * * If such documents were filed in paper pursuant to a hardship exemption (see § 232.201 and § 232.202 of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

* * * * *

37. By amending § 240.14e–1 by revising the last sentence of paragraph (e) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(e) * * * If such documents were filed in paper pursuant to a hardship exemption (see § 232.201 and § 232.202 of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

38. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

39. By amending Form 12b–25 (referenced in § 249.322) by revising general instruction 5 to read as follows:

Form 12b–25

NOTIFICATION OF LATE FILING

* * * * *

GENERAL INSTRUCTIONS

* * * * *

5. *Electronic Filers.* This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with Rule 14 (§ 232.14 of this chapter), Rule 201 or Rule 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(c) of Regulation S–T (§ 232.13(c) of this chapter).

40. By adding § 249.448 to Subpart D to read as follows:

§ 249.448 Form DF—Notification of delayed filing pursuant to Rule 13(d) of Regulation S–T

This form shall be filed in connection with a delayed electronic filing, as provided by Rule 13(d) of Regulation S–T (§ 232.13(d) of this chapter), to preserve the timeliness of filing of reports or schedules filed pursuant to sections 13(a), 13(d), 13(g), 15(d) and 16(a) of the Exchange Act (15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) or 78p(a)), which, notwithstanding good faith efforts, are not filed in a timely manner because of technical difficulties beyond the electronic filer's control.

41. By adding Form DF (referenced in § 249.448), to read as follows:

Note: The text of Form DF will not appear in the Code of Federal Regulations

FORM DF

NOTIFICATION OF DELAYED FILING PURSUANT TO RULE 14 OF REGULATION S–T

_____

Exact name of registrant as specified in charter

_____

Registrant CIK Number

_____

Report or schedule with respect to which this form is being filed (include period of report)

_____

SEC File Number, if available

_____

Name of person filing the document (if other than the registrant)

Reasons for the delay: _____

_____

The registrant (or person filing the report or schedule if other than the registrant) hereby certifies that it made good faith attempts to electronically file the document identified above in a timely manner, but that the filing was delayed due to technical difficulties beyond its control. The registrant undertakes to file the document electronically no later than two business days following the applicable due date.

SIGNATURES

Filings made by the registrant:

The registrant has duly caused this form to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of _____, state of _____, Dated _____, 19_____.

_____

(Registrant)

By: _____

(Name and title)

Filings made by person other than the registrant:

After reasonable inquiry and to the best of my knowledge and belief, I certify on _____, 19____, that the information set forth in this statement is true and complete.

By: _____

(Name and title)

GENERAL INSTRUCTIONS TO FORM DF

I. Use of Form DF

This form may be filed in connection with a report or schedule filed pursuant to Section 13(a), 13(d), 13(g), 15(d) or 16(a) of the Securities Exchange Act of 1934 which, despite good faith efforts, could not be submitted electronically in a timely manner because of technical difficulties beyond the control of the filer. Rule 14 of Regulation S–T (17 CFR

232.13(d) of this chapter). Form DF shall be filed only in electronic format. The report or schedule will be deemed timely filed if it is filed electronically no later than two business days following the applicable due date and this Form DF is filed electronically no later than the date the report or schedule is filed. If either of these conditions are not satisfied, the report or schedule will not be deemed timely filed.

II. Preparation and filing of Form DF

Form DF should be submitted electronically as a separate filing, as outlined in the EDGAR Filer Manual, and not as a cover sheet to the report or schedule.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

42. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

43. By amending § 260.0–2 by revising paragraph (g) to read as follows:

§ 260.0–2 Definitions of terms used in the rules and regulations.

* * * * *

(g) *Electronic filer.* The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101 of this chapter, respectively).

* * * * *

Dated: December 6, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[Note: This appendix will not appear in the Code of Federal Regulations

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 200.30–1, Rule 200.30–5, Item 601(c) of Regulation S–B and Regulation S–K, Rule 405 of Regulation C, Rules 10, 11, 13, 101, 102, 201, 202, 303, 304, 307 and 311 of Regulation S–T, Forms S–2, S–3, S–8, F–2 and F–3 under the Securities Act of 1933 (''Securities Act''), Rule 0–1, Rule 12b–25, Rule 13d–2, Rule 13e–4, Schedule 14A, Rule 14e–1, and Form 12b–25 under the Securities Exchange Act of 1934 (''Exchange Act''), and Rule 0–2 under the Trust Indenture Act of 1939, the addition of new Rules 14, 100 and 601 to Regulation S–T, and new Form DF, and the elimination of the electronic filing transition rules found in Rules 901, 902 and 903 of Regulation S–T, as set forth in Securities Act Release Number 7369, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule amendments generally would have no economic impact on small entities because they would codify existing interpretations and practices relating to the preparation, filing and processing of electronic documents via the Commission's Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system. Other changes would effect only technical corrections to current rules and similarly would not result in an economic impact on small entities.

One noteworthy proposed change is the addition of Form DF and related rules that would allow electronic filers to act on their own to preserve the timeliness of certain Exchange Act reports that are electronically filed late because of unanticipated technical difficulties beyond their control. Currently, if electronic documents are filed late under such circumstances, filers must petition the staff in writing for a filing date adjustment. This petition generally takes the form of a letter to the staff explaining the factual and legal basis in support of the request. The staff then processes the application and grants or denies the request pursuant to delegated authority. In the first eight months of 1996, approximately 24 Exchange Act reporting companies with assets of $5 million or less applied for and received a filing date adjustment for a late Exchange Act report. The proposals would eliminate the need for staff intervention in most similar cases in the future, resulting in greater certainty of treatment for filers and time savings for the staff. However, while the burden of consultation with the staff would be eliminated, a one-page document would still need to be prepared and filed with the Commission. The estimated time required to prepare this document is 10 to 15 minutes. In sum, while both filers and the staff would benefit from the adoption of this procedure, the economic impact of the proposed procedure would be roughly equivalent to the current practice.

Dated: December 5, 1996.

Arthur Levitt,

Chairman.

[FR Doc. 96–31499 Filed 12–11–96; 8:45 am]

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Federal Register

Thursday
December 12, 1996

Part IV

The President

Proclamation 6964—Human Rights Day, Bill of Rights Day, and Human Rights Week

Federal Register
Vol. 61, No. 240
Thursday, December 12, 1996

Presidential Documents

Title 3—

The President

Proclamation 6964 of December 10, 1996

Human Rights Day, Bill of Rights Day, and Human Rights Week

By the President of the United States of America

A Proclamation

When America's founders crafted the Constitution and Bill of Rights more than two centuries ago, they not only created a blueprint for the conduct of American government, but they also gave expression to a vision of human dignity that inspires people to this day the world over. Our Nation's commitment to the freedoms enumerated in the Bill of Rights—among them freedom of speech, religion, and assembly, and the right to due process and a fair trial—serves as a beacon of hope to oppressed peoples everywhere.

Americans continue to work to improve our application of equality under the law for all our own citizens, as we believe that freedom and justice are the birthright of humankind. We are also working daily to foster and promote the growth of these rights in other countries. Indeed, the championing of democracy and human rights serves as a cornerstone of my Administration's foreign policy.

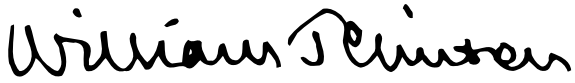
As we observe Human Rights Day, Bill of Rights Day, and Human Rights Week, we can take satisfaction in our progress in advancing human rights around the world in the past decade. In fact, more than half the people in the world now live under democratic political systems. Even in countries still struggling to establish basic human rights and freedoms, we are seeing some progress. And brave reformers such as Aung San Suu Kyi of Burma continue to press their rightful demand for freedom.

It is also encouraging that, with the growth and development of the human rights movement, there has been greater awareness and appreciation that women's rights are human rights.

Just over a year ago, representatives from 189 countries met in Beijing at the United Nations Fourth World Conference on Women. That historic gathering focused the attention of the world on women's rights and needs. Now, we are beginning to see some progress. In many countries, increasing numbers of women are contesting and attaining public office and playing a vital role in shaping the political agenda. In Romania, women gathered from around Central and Eastern Europe to promote the goals of the Beijing women's conference. Thailand has passed a new anti-prostitution law. Women in Namibia are now afforded equal rights with men in marriage. Chile has made a serious commitment to expanding educational opportunities for girls. And in the United States, the Violent Crime Control and Law Enforcement Act, that I signed into law in September of 1994, reflects our profound national commitment to ending abuse against women. These are just a few hopeful signs of improvement in global respect for women's rights, and it is fitting that we celebrate them.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1996, as Human Rights Day; December 15, 1996, as Bill of Rights Day; and the week beginning December 10, 1996, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate programs, ceremonies, and activities that demonstrate our national commitment to the Constitution and the promotion of human rights for all people.

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



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