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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is lowering the rates on assessments paid to the Savings Association Insurance Fund (SAIF), and widening the spread of the rates, in order to avoid collecting more than needed to maintain the SAIF's capitalization at 1.25 percent of aggregate insured deposits, and to improve the effectiveness of the risk-based assessment system.

The final rule establishes a base assessment schedule for the SAIF with rates ranging from 4 to 31 basis points, and an adjusted assessment schedule that reduces these rates by 4 basis points. In general, effective SAIF rates range from 0 to 27 basis points as of October 1, 1996. The final rule also prescribes a special interim schedule of rates ranging from 18 to 27 basis points for SAIF-member savings associations for just the last quarter of 1996, reflecting the fact that assessments paid to the Financing Corporation (FICO) are included in the SAIF rates for these institutions during that interval. Excess assessments collected under the prior assessment schedule will be refunded or credited, with interest.

The final rule establishes a procedure for making limited adjustments to the base assessment rates, both for the SAIF and for the Bank Insurance Fund (BIF), by rulemaking without notice and comment.

The final rule clarifies and corrects certain provisions without making substantive changes.

EFFECTIVE DATE: December 11, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Allan Long, Assistant Director, Division of Finance, (202) 416–6991; James McFadyen, Senior Financial Analyst, (202) 898–7027; Christine Blair, Financial Economist, (202) 898–3936, Division of Research and Statistics; Richard Osterman, Senior Counsel, (202) 898–3523; Jules Bernard, Counsel, (202) 898–3731, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Final Rule

A. Background

Under the prior assessment schedule, SAIF rates have ranged from 23 basis points for institutions in the best assessment risk classification to 31 basis points for institutions in the least favorable one. This schedule has implemented the risk-based assessment program required by section 7 of the Federal Deposit Insurance (FDI Act), 12 U.S.C. 1817. The schedule has been designed to increase the reserve ratio of the SAIF—the ratio of the SAIF's net worth to aggregate SAIF-insured deposits, see id. 1817(l)(7)—to the designated reserve ratio (DRR).[1]

The SAIF has never received the full amount of the revenues that the SAIF rates have generated, however. The SAIF did not receive any revenues at all from its creation in 1989 through the end of 1992: all such revenues were diverted to other needs. Revenues have begun to flow into the SAIF after January 1, 1993, but still not at the full amounts. Certain SAIF-assessable institutions—namely, SAIF-member savings associations—have been required to pay assessments to the FICO in order to enable the FICO to pay the interest on its bonds. The amounts that these institutions have paid to the FICO have served to reduce the amounts that the institutions have paid to the SAIF. At $793 million per year, the FICO draw has been substantial. It has contributed to the slow growth in the SAIF reserve ratio, which has only increased from .28 percent to .47 percent during 1995.

Moreover, the assessment rates for the BIF were much lower than the comparable rates for the SAIF, because the BIF's reserve ratio had already reached the DRR. The disparity created incentives for institutions to move deposits from SAIF-insured status to BIF-insured status, and raised the question of whether a shrinking SAIF-assessable deposit base could continue both to service the interest on FICO debt and to capitalize the SAIF.

In response to these circumstances, Congress adopted the Deposit Insurance Funds Act of 1996 (Funds Act), Public Law 104–208, sections 2701–2711, 110 Stat. 3009 *et seq*. (Sept. 30, 1996). The Funds Act called for the FDIC to impose a one-time special assessment on SAIF-assessable deposits to raise the SAIF's reserve ratio to the DRR as of October 1, 1996. *Id*. section 2702. The FDIC carried out this mandate. See 61 FR 53834 (Oct. 16, 1996). The Funds Act also ended the link between the amounts assessed by the FICO and the amounts authorized to be assessed by the SAIF, effective January 1, 1997.

B. Statutory Framework for Setting Assessment Rates

Section 7(b)(1) of the FDI Act, 12 U.S.C. 1817(b)(1), requires the Board to establish a risk-based assessment system for all insured institutions. *Id*. 1817(b)(1)(A).

The Board must set semiannual assessments for each institution based on the following factors: (1) The probability that the institution will cause a loss to the BIF or to the SAIF, (2) the likely amount of the loss, and (3) the revenue needs of the appropriate fund. Id. 1817(b)(1)(C).

Section 7(b)(2)(A) sets forth the requirement that the FDIC's assessments must be designed to maintain each fund's reserve ratio at the DRR or, if the fund's reserve ratio is below that level, to lift the ratio to the DRR. Section 7(b)(2)(A)(i) states this requirement as a mandate to the Board to set assessments that are sufficient to achieve the appropriate goal. *Id*. 1817(b)(2)(A)(i). Section 7(b)(2)(A)(iii), as amended by section 2708(b) of the Funds Act, states this requirement as a limitation on the amounts to be collected: The Board may not collect more for a fund than is needed to fulfill the appropriate goal. *Id*. 1817(b)(2)(A)(iii).

[1] The DRR is a target ratio that has a fixed value for each year. The value is either 1.25 percent or such higher percentage as the Board determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the Fund. *Id*. 1817(b)(2)(A)(iv). The Board has not altered the statutory DRR for either fund.

Whether a fund is capitalized at the DRR or otherwise, the Board may set higher rates for institutions that exhibit weakness or are not well capitalized. *Id*. 1817(b)(2)(A)(v).

In setting semiannual assessments for an insurance fund, the Board must consider the following factors: (1) The fund's expected operating expenses; (2) the fund's case resolution expenditures and income; (3) the effect of assessments on the earnings and capital of fund members; and (4) any other factors that the Board deems appropriate. *Id*. 1817(b)(2)(A)(ii).

Through the end of 1996, the FICO draw serves to reduce the amounts that the FDIC assesses against SAIF-member savings associations. *Id*. 1441(f)(2) & 1817(b)(2)(D).[2] Thereafter, the FICO assessments are independent of and in addition to those of the FDIC. Funds Act section 2703 (a) and (c). But the FICO still must assess institutions in the same manner as the FDIC does, and the FDIC still must approve the FICO's assessments. 12 U.S.C. 1441(f)(2).

Finally, through the end of 1998, the assessment rate for a SAIF member may not be less than the assessment rate for a BIF member that poses a comparable risk to the deposit insurance fund. *Id*. 1817(b)(2)(E).

C. The Base and Adjusted Assessment Schedules for the SAIF

1. Overview

The SAIF's reserve ratio has been well below the DRR. The SAIF rates have been designed to increase the SAIF's capitalization to the DRR. In accordance with the Funds Act, however, the FDIC has capitalized the SAIF at the DRR as of October 1, 1996. The FDIC is therefore lowering the SAIF rates as of that date. See *id*. 1817(b)(2)(A)(iii) and (v).

The FDIC is retaining the 9-cell framework for SAIF assessment rates, but is replacing the prior set of rates with a new and lower rate-schedule, entitled the SAIF Base Assessment Schedule. The SAIF Base Assessment Schedule sets forth a permanent set of rates that will remain in place until changed through notice-and-comment rulemaking proceedings. The SAIF Base Assessment Schedule is adopted as of October 1, 1996. The SAIF Base Assessment Schedule is as follows:

SAIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

The FDIC is also making an immediate adjustment to the rates set forth in the SAIF Base Assessment Schedule. The adjustment, like the SAIF Base Assessment Schedule, is adopted as of October 1, 1996. The adjusted rates are the ones that are effective.

The adjustment is two-fold:

—The FDIC is making a general adjustment to the SAIF Base Assessment Schedule that lowers the rates therein by 4 basis points for all institutions other than SAIF-member savings associations. This adjustment is temporary, but indefinite: the FDIC expects to review it every semiannual period, but will not necessarily modify it, nor will the adjustment automatically terminate on its own.

—The FDIC is making a special adjustment to the SAIF Base Assessment Schedule that replaces the rates therein with a special interim set of rates just for SAIF-member savings associations, but only for the fourth calendar quarter of 1996. Thereafter these institutions pay the same SAIF rates as the others.

The SAIF Adjusted Assessment Schedule sets forth both sets of adjusted rates. The rates on the right in each risk classification category apply to SAIF-member savings associations during the last calendar quarter of 1996. The rates on the left in each risk classification category apply to all other SAIF-assessable institutions during that quarter, and to all SAIF-assessable institutions on and after January 1, 1997:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup					
	A		B		C	
1	0	18	3	21	17	24
2	3	21	10	24	24	25
3	10	24	24	25	27	27

The rates on the left in each risk classification category—those that represent the SAIF base rates as modified by the 4-basis- point adjustment—may be amended from time to time within certain limits by rulemaking without notice-and-comment procedures.

The FDIC has published these rates as a proposed rule, 61 FR 53867 (Oct. 16, 1996), and has received comments from 13 entities and organizations. Comments have come from three holding-company organizations (including their affiliates), six savings banks, and four trade groups. In addition, FDIC staff has conducted a briefing for members of the Savings Association Insurance Fund Industry Advisory Committee.

2. The SAIF Base Assessment Schedule

a. The Rate-Spread. Risk-based assessment rates have two purposes: To reflect the risk posed to each insurance fund by individual institutions, and to provide institutions with proper incentives to control risk-taking. The FDIC believes that a 27-basis-point rate-spread serves these purposes.

The FDIC has considered the comparative merits of a rate-spread of 8 basis points. In December, 1992, when the BIF and SAIF were both below the DRR, and assessment revenues were designed to build up the capitalization of both funds, the FDIC proposed to establish risk-based premium matrices of 23 to 31 basis points for each fund. The Board asked for comment on whether the proposed assessment rate spread of 8 basis points should be widened. See 57 FR 62502 (Dec. 31, 1992). Ninety-six commenters addressed this issue; 75 of them favored a wider rate spread. In the final rule, the Board expressed its conviction that widening the rate spread was desirable in principle, but chose to implement the 8-basis point rate spread. The Board expressed concern that widening the spread while keeping assessment revenue constant might unduly burden the weaker institutions that would be subject to greatly increased rates. See 58 FR 34357, 34361 (June 25, 1993).

Bankers, banking scholars and regulators have all criticized the 8-basis point rate-spread as being unduly

[2] Section 21(f)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f)(2), provides that amounts assessed by the FICO reduce the amounts authorized to be assessed by the FDIC for the SAIF. Section 7(b)(2)(D) of the FDI Act, *id*. 1817(b)(2)(D), states a parallel requirement. Section 2703 of the Funds Act repeals both provisions. Section 2703(a) repeals section 21(f)(2); section 2703(b) repeals section 7(b)(2)(B).

The repeals are not simultaneous—at least, not on their face. Section 2703(c)(1) sets an effective date for section 2703(a) of January 1, 1997. Section 2703(c) does not mention section 2703(b). Accordingly, section 2703(b) is—apparently—effective upon passage of the Funds Act. If so, section 7(b)(2)(D) has been repealed since September 30, 1996. A repeal of section 7(b)(2)(D) would have no practical consequence, as section 21(f)(2) remains in effect through the end of 1996.

The FDIC takes the view, however, that section 2703(c)(1) contains a drafting error in this regard. Section 2703(c)(1) says it applies to section 2703(a) and to section 2703(c)—that is, to itself. The FDIC considers that the self-reference makes no sense, and that a reference to subsection (b) was intended. Accordingly, the FDIC interprets the Funds Act to repeal section 7(b)(2)(D) on January 1, 1997, in concert with the repeal of the Federal Home Loan Bank Act's parallel provisions.

narrow. There is considerable empirical support for this criticism. Using a variety of methodologies and different sample periods, the vast majority of relevant studies of deposit-insurance pricing have produced results that are consistent with the conclusion that the rate-spread between healthy and troubled institutions should exceed 8 basis points. The precise estimates vary; but there is a clear consensus from this evidence that the rate-spread should be widened.[3]

There also is a concern that rate differences between adjacent cells in the current matrix do not provide adequate incentives for institutions to improve their condition. Larger differences are consistent with historical variations in failure rates across cells of the matrix, as seen in the following table:

TABLE 1.—HISTORICAL THRIFT FAILURE RATES BY CELL

[1988–1993*]

Tangible capital category	Supervisory risk sub-group			Not rated (as of 12/31/87)
	A	B	C	
1. Well:				
Thrifts	1,189	172	21	25
Failures	43	28	9	5
Failure rate	2.9%	16.3%	42.9%	20.0%
2. Adequate:				
Thrifts	215	73	14	1
Failures	26	20	7	0
Failure rate	12.1%	27.4%	50.0%	0.0%
3. Under:				
Thrifts	460	389	541	37
Failures	134	205	447	35
Failure rate	29.1%	52.7%	82.6%	94.6%

Average failure rate: 30.6%.

* Percentage of thrifts in cell at year-end 1987 that failed during 1988–1993. These figures reflect different examination policies and procedures than exist today. In particular, examinations may have been relatively infrequent for some institutions during this period.

The precise magnitude of the proper rate differences is open to debate, given the sensitivity of estimates to small changes in assumptions and to the selection of the sample periods. But the evidence indicates that larger rate differences between adjacent cells of the risk-based assessment matrix are warranted.

Because of concern for the impact of a wider spread on weaker SAIF-insured institutions, the FDIC has performed analyses on increasing the spread from 8 to 27 basis points and has found that, apart from institutions already recognized as likely failures, the wider spread is expected to have a minimal impact in terms of additional failures. The FDIC is therefore adopting a 27-basis point spread for members of the SAIF.

Two trade groups express support for the rate-spread in the SAIF Base Assessment Schedule, but without providing any extensive analysis. No commenter opposes it.

b. The Rates. The FDIC recognizes that, in setting deposit insurance premiums, the risk of adverse events that may occur beyond the immediate semiannual assessment period must be considered, in order to spread risk over time and to moderate the cyclical effects of insurance losses on insured institutions. A strict ''pay-as-you- go'' insurance system—one that attempts only to balance revenue and expense over the current assessment period—can result in rate volatility that would adversely impact weak institutions in periods of economic stress, increasing the risk of loss to the fund. Historical evidence shows that in peak loss years, pay-as- you-go rates would substantially exceed the rates required to balance revenues and expenses over the longer term.

The FDIC believes that, for the purpose of estimating future losses for the thrift industry, the industry's loss experience in the 1980s is not especially informative. The insurance losses associated with thrifts far exceeded insurance losses from banks during this period both in dollars and, to an even greater extent, as a percentage of the size of the industry. The losses prompted Congress to adopt a number of legislative reforms that have the effect of placing thrifts in a regulatory context that resembles that of the banks much more closely. The FDIC has replaced the Federal Savings and Loan Insurance Corporation (FSLIC) as insurer for the thrift industry. The Office of Thrift Supervision, an office within the Department of the Treasury, has replaced the Federal Home Loan Bank Board as the supervisor for thrift institutions. Thrifts are now subject to stronger capital standards, which are set at the same levels as required of banks. Thrifts, like banks, now pay assessments based on risk. The losses generated in thrift failures are limited by the same safeguards as those that apply to bank failures—notably, the early-closure rule of the prompt corrective action statute, the cross-guarantees among affiliates, the least-cost resolution requirement, and the depositor-preference statute. In view of these changes in the regulatory and insurance environment for thrifts, the failure experience of commercial banks is likely to be more illuminating for the purpose of estimating future thrift losses than is the experience of the thrifts themselves.

The FDIC has recently analyzed its historical loss experience with banks, and has considered the likely effect of recently enacted statutory provisions that are expected to moderate deposit insurance losses going forward. The FDIC has concluded that average assessment rates of 4 to 5 basis points

[3] The FDIC's research also suggests that a substantially larger spread is necessary to establish an ''actuarially fair'' assessment rate system. See Gary S. Fissel, ''Risk Measurement, Actuarially Fair Deposit Insurance Premiums and the FDIC's Risk-Related Premium System'', *FDIC Banking Review* 16–27, Table 5, Panel B (1994).

are appropriate to achieve a long-run balance between BIF revenues and expenses. See 60 FR 42680 (Aug. 16, 1995). These rates reflect the experience of the FDIC during the period from 1950 to 1980. From 1980 through 1994, rates in the range of 10 to 13 basis points would have been required to balance revenues and expenses: but for banks as well as thrifts, failures during this period were attributable to extraordinary conditions brought on by volatile interest rates, ineffective supervision and real estate values that first soared and then collapsed. While regulators still may not have the ability to foresee a real estate collapse or other severe economic adversities, the statutory and regulatory safeguards now in place are likely to limit losses to the funds under such extreme conditions. Accordingly, average assessment rates in the range of 4 to 5 basis points are thought to be adequate to balance long-range revenues and expenses for the BIF.

The FDIC considers that this range is an appropriate benchmark for SAIF rates as well. From 1950 to 1980, the rates paid by FSLIC-insured thrifts were about twice the effective rate paid by FDIC-insured banks, reflecting higher annual rates of deposit growth for thrifts and a somewhat higher loss experience for the FSLIC.[4] But differences between the banking and thrift industries are less significant today than they were in the period from 1950 to 1980; thrifts generally are better protected than they were from the effects of interest-rate swings; regulatory and accounting standards are more exacting; and deposits have generally declined since 1989. The FDIC recognizes that structural weaknesses of the SAIF, including a relatively small membership base and geographic and product concentrations, suggest that the appropriate SAIF assessment rate to achieve a long-range balance may be higher than the BIF rate. Lacking a compelling empirical basis for determining different assessment structures for the two industries, however, the FDIC currently expects that average assessment rates of 4 to 5 basis points will likely result in a long-range balance of revenues and expenses for the SAIF as well as for the BIF.

The vast majority of institutions qualify for the highest assessment risk classification, and pay assessments at the most favorable rate; conversely, the most favorable rate generates the vast majority of the revenues that the insurance funds receive. For the SAIF's average assessment rates to yield 4 to 5 basis points, the most favorable rate for the SAIF Base Assessment Schedule is set at 4 basis points; the other rates in the schedule are set in accordance with the rate-spreads described above.

Until January 1, 1999, SAIF rates may not be lower than the BIF rates for institutions that pose comparable risks to their funds. 12 U.S.C. 1817(b)(2)(E)(iii). Accordingly, the rates in the SAIF Base Assessment Schedule are no lower than the permanent (or base) BIF rates set forth in Rate Schedule 2.[5] See id. 327.9(a).

The SAIF Base Assessment Schedule (see I.C.1. above) applies to all institutions as of October 1, 1996. As discussed below, however, the rates set forth in the SAIF Base Assessment Schedule are not the rates that are actually effective as of that date.

Two trade groups and one savings bank express support for the rates in the SAIF Base Assessment Schedule. No commenter opposes the rates.

3. The SAIF Adjusted Assessment Schedule

a. The General 4-Basis-Point Adjustment

The Board is making a general adjustment to the rates in the SAIF Base Assessment Schedule that lowers each such rate by 4 basis points. The adjusted rates range from 0 to 27 basis points, which yield an average rate of 0.6 basis points (annualized) and an estimated reserve ratio of 1.27 percent at midyear 1997, under moderate conditions.[6] The adjusted rates are effective as of October 1, 1996, for all institutions other than SAIF-member savings associations. On January 1, 1997, the adjusted rates are effective for all institutions.

In setting these rates, the FDIC has considered the SAIF's expected operating expenses and revenues, its case resolution expenditures and income, and the effect of the new rates on the earnings and capital of SAIF members. See id. 1817(b)(2)(A)(ii).

Expected operating expenses and revenues of the SAIF. Table 2 shows the projected SAIF reserve ratio on June 30, 1997, under pessimistic, optimistic and moderate conditions. The pessimistic conditions combine relatively high loss provisions, high deposit growth and low investment earnings; the optimistic conditions combine zero loss provisions, negative deposit growth and high investment earnings.

Table 2 indicates that, under pessimistic conditions, an assessment rate range of 4 to 31 basis points falls just short of maintaining the DRR of 1.25 percent. But under moderate conditions, which can be viewed as more likely than either the pessimistic or optimistic scenarios, rates of 0 to 27 basis points result in a SAIF reserve ratio of 1.27 percent:

TABLE 2.—SAIF ASSESSMENT RATES AND RESERVE RATIO UNDER VARYING CONDITIONS

Conditions	Pessimistic	Optimistic	Moderate
Deposit growth rate (%)	4.0	−2.0	2.0
Loss provisions ($M)	270	0	50
Investment rate (%)	5.2	6.2	5.7

Assessment rates (bp)		Estimated reserve ratio (%) June 30, 1997		
Range	Average	Pessimistic	Optimistic	Moderate
4 to 31	4.7	1.24	1.36	1.30
2 to 29	2.7	1.23	1.34	1.28
0 to 27	0.7	1.21	1.33	1.27

Following is a discussion of each of the main variables affecting the estimated reserve ratio:

Yield on investments: After having been capitalized on October 1, 1996, the SAIF's balance stood at approximately $8.6 billion. The SAIF is very liquid, not having had any significant receivership activity. Although FDIC policy limits the proportion of investments with maturities beyond five years, a fully capitalized SAIF will have significant investment earnings. Short-term interest rates have been generally stable in 1996, and the FDIC's recent investment yield of 5.7 percent may be a reasonable approximation for the expected yield through the first half of 1997. The investment rates utilized in Table 2 range from 5.2 percent to 6.2 percent, or 50 basis points on either side of the recent experience. Estimated annual operating expenses are assumed to be $40 million, the same as in 1995.[7]

[4] See James R. Barth, John J. Feid, Gabriel Riedel and M. Hampton Tunis, Alternative Federal Deposit Insurance Schemes, Office of Policy and Economic Research, Federal Home Loan Bank Board (January 1989), at 12–20.

[5] The final rule redesignates Rate Schedule 2 as the BIF Base Assessment Schedule.

[6] While the appropriate long-term average assessment rates are 4 to 5 basis points (as discussed above), the analysis summarized in Table 2 indicates that, under current conditions, these rates would likely result in a reserve ratio well in excess of 1.25 percent. With no significant receivership activity and a very liquid fund, investment earnings presently are more than adequate to maintain the DRR.

[7] The FDIC presently is addressing the allocation of operating expenses between the BIF and the SAIF. A likely outcome is that the proportion of expenses borne by the SAIF will increase.

Growth of SAIF-insured deposits: For the 12 months ending December 31, 1995, SAIF-insured deposits increased 2.5 percent, reversing a long-term decline that began with the inception of the SAIF in 1989. But insured deposit growth slowed in the first six months of 1996 to an annual rate of 0.3 percent. The FDIC regards an annual growth rate of 2.5 percent as near the high end of the possible range of deposit growth for the near future. Accordingly, the FDIC's analysis uses a range of insured deposit growth from −2 percent to 4 percent (annualized).

Provisions for loss: The FDIC has already established a reserve for losses within the SAIF, and has accordingly reduced SAIF's reported net worth by the amount of the reserve.[8] This reserve represents the estimated loss for institutions that, absent some favorable event, are likely to fail within 18 months. That projection is subject to considerable uncertainty.

The optimistic scenario assumes the existing reserve is adequate. Table 2 shows an additional loss provision of zero under this scenario.

The pessimistic scenario has an additional loss provision of $270 million. This scenario represents the long-range failure rate for SAIF-insured institutions, which is estimated to be 22 basis points per year of total assets (or slightly more than $2 billion in failed assets per year). The pessimistic scenario is not a worst-case scenario. But given the currently favorable economic conditions and the relative health of the thrift industry, deterioration in the industry would have to be sudden and sharp for the SAIF to require additional loss reserves at the long-term rate.

The moderate scenario reflects the fact that the FDIC has identified a few SAIF members as possible failures by year-end 1997 but has not yet established loss reserves for them. If loss reserves were established for these thrifts in 1996, the cost to the SAIF would be about $50 million.

The SAIF's case resolution expenditures and income. As noted above, the SAIF has no significant receivership activity. Accordingly, case resolution expenditures and income are negligible.

SAIF members' earnings and capital. The final rule reduces assessment rates for all institutions that pay assessments to the SAIF, and therefore has a beneficial impact on all such institutions' earnings and capital.

Thrifts had record earnings and a return on assets above one percent in each of the first two quarters of 1996. Nearly 98 percent of all SAIF members are well capitalized. The assets of ''problem'' SAIF members fell to $7 billion as of June 30, down from over $200 billion at the end of 1991. Only one SAIF member has failed in 1996.

The commercial banking industry, which owns one-fourth of the SAIF assessment base, is even stronger. Based on net income for the first half of 1996, the banking industry is expected to have record annual earnings for the fifth consecutive year.

Three commenters—2 trade groups and a savings bank—express support for the 4-basis-point adjustment to the rates in the SAIF Base Assessment Schedule. No commenter opposes the adjusted rates.

b. The Interim Schedule for SAIF-Member Savings Associations

The FDIC is prescribing a special interim rate-schedule for SAIF-member savings associations for the final quarter of 1996. The interim schedule generally retains the relationships among the assessment-risk categories in the prior SAIF assessment schedule, but reduces each rate in the schedule by 5 basis points. There is one exception: the rate for institutions in the highest-risk category is only reduced by 4 basis points, in order to comply with section 7(b)(2)(E) of the FDI Act. These interim rates do not generate revenue for the SAIF that is in excess of the amount needed to maintain the SAIF's reserve ratio at the DRR. Accordingly, the interim rates do not violate the prohibition stated in section 7(b)(2)(A)(iii) of the FDI Act. Nor are the interim rates set so high as to impose an unreasonable burden on the SAIF-member savings associations.

The special interim rate-schedule is needed because SAIF-member savings associations are subject to a special requirement: they (and only they) must pay FICO assessments for the final quarter of 1996. See ''Treatment of Assessments Paid by 'Oakar' Banks and 'Sasser' Banks on SAIF-Insured Deposits, General Counsel's Opinion No. 7'', 60 FR 7059 (Feb. 6, 1995).[9] This special requirement prevents the FDIC from establishing a single rate-schedule for all SAIF-assessable institutions. If the SAIF-member savings associations were to pay at the general rates (as adjusted), the FICO draw would absorb all the amounts assessed on them, and the SAIF would not be compensated for the risks they pose. On the other hand, if all institutions were to pay assessments at the special interim rates, the SAIF would receive revenues far in excess of the amounts needed to preserve the SAIF's reserve ratio at the DRR.

Eleven commenters—five savings banks, two holding companies, and all four trade groups—expressly consider the interim schedule. One trade group endorses it. The other 10 commenters oppose it.

Five savings banks and two trade groups object to the interim schedule's effects. Four savings banks and both trade groups contend that the interim schedule is improper because the institutions that are subject to it must pay different (and higher) rates than other comparable institutions must pay. Two savings banks assert that, having paid a special assessment to capitalize the SAIF as of October 1, 1996, they should not have to sustain the burden of paying a FICO assessment for the fourth quarter of 1996. While the FDIC recognizes that the special interim rate-schedule has a disparate impact, the FDIC does not agree that the interim rate-schedule is therefore discriminatory or otherwise improper. The disparate impact merely reflects the different statutory obligations that these institutions have with respect to the FICO.

In essence, the FDIC's reduced rate-schedules—both for SAIF-member savings associations and for other institutions—serve to return the amounts that institutions have paid to the SAIF for the fourth quarter of 1996. In the case of SAIF-member savings associations, however, those amounts have been reduced by the FICO draw. The FICO draw is not subject to refund: accordingly, SAIF-member savings associations experience less of a reduction in rates than do other institutions.

Seven commenters—three trade organizations, two holding companies and two savings banks—expressly challenge the FDIC's authority to adopt the special interim rate-schedule. They contend that, when an insurance fund's reserve ratio is at the DRR, the FDIC cannot impose assessments with respect

[8] The SAIF loss reserve was $114 million on June 30, 1996.

[9] A prior version of the Funds Act, which was contained in the ''Balanced Budget Act of 1995'' (H.R. 2491) but vetoed by the President on December 6, 1995, would have required *pro rata* sharing of the FICO payments by savings associations and banks essentially immediately, as that provision would have been effective January 1, 1996. Later on, however, Congress altered the effective date for the FICO sharing provision to apply to semiannual periods beginning after December 31, 1996. By implication, banks do not share in the FICO assessment payments prior to that date.

to the fund. They recognize, as they must, that any sums assessed by the FICO against SAIF-member savings associations will serve to reduce the amounts that the SAIF is authorized to assess against those institutions during the final quarter of 1996. But they assert that SAIF is not authorized to impose any assessments for that quarter, and that accordingly there are no revenues to be directed to the FICO.

The FDIC does not agree. The FDIC considers that section 7(b)(2)(A)(ii)(IV) of the FDI Act, 12 U.S.C. 1817(b)(2)(A)(ii)(IV), provides ample authority for the special interim rate-schedule. Section 7(b)(2)(A)(ii)(IV) says that, when setting assessments for the purpose of maintaining a fund's reserve ratio at the DRR, the Board may—indeed, must—consider ''any other factors'' that it may deem appropriate. The FICO draw is just such a factor. SAIF-member savings associations must pay assessments at rates that are high enough to cover the full amount of the FICO draw: otherwise the rates would not generate any revenues for the SAIF at all. Moreover, every rate—even the lowest rate—must be high enough to cover each SAIF-member savings association's pro-rata share of the FICO draw. Otherwise institutions in less-favorable risk classifications would bear a disproportionately large share of the FICO draw. One consequence would be to deform the structure of the assessment-rate schedule, because the spread between the most-favorable rate and the other rates would be increased. Another consequence would be to impose an extra measure of risk on the SAIF, because the weaker institutions would have to sustain the burden of paying higher rates. The FDIC considers that these consequences would adversely affect its risk-based assessment program. More basically, the FDIC considers that section 7(b)(2)(A)(ii)(IV) gives the FDIC the necessary authority to consider and deal with these effects in constructing the SAIF rate-schedule.

The FDIC further considers that the legal interpretation espoused by the opponents contravenes the clear intent of Congress. The Federal Home Loan Bank Act makes it clear that the FDIC's assessment procedures govern the FICO's assessments. *Id.* 1441(f)(2). Both the Federal Home Loan Bank Act and the FDI Act also make it clear that the FICO is to receive (as a general matter) the full amount it needs from the revenues generated by means of those procedures, while the SAIF is to receive the residual amount of the revenues after the FICO draw has been subtracted from them. See *id.* and 1817(b)(2)(D). The clear expectation is that the FDIC will assess—and has full authority to assess—amounts that are sufficient to cover the FICO draw.

By contrast, the interpretation offered by the opponents leads to a result that is, in the FDIC's view, untenable: namely, that Congress intended to fund the FICO only intermittently. The FDI Act has, since 1989, instructed the FDIC to set semiannual assessments ''to maintain the reserve ratio of a fund at the designated reserve ratio''. Under the opponents' view, that language prevents the FDIC from setting rates sufficient to cover the FICO draw—and effectively cuts off the FICO's power to assess SAIF-member savings associations—whenever the SAIF is capitalized at the DRR. At the same time, however, the SAIF's reserve ratio can be expected to fluctuate: indeed, Congress has expressly provided for that possibility. The opponents' view thus implies a stop-and-go funding plan for the FICO, in which the FICO's access to SAIF assessments depends on the current status of the SAIF's capitalization. The FDIC declines to adopt this view.

More generally, the FDIC considers that the Funds Act expresses Congress' intention to revise the existing relationship between the FICO and the SAIF, but not until the start of 1997. See Funds Act section 2703(a). The FDIC considers that Congress has intended to preserve the existing relationship through the end of 1996.

As a final note, the opponents say their view is not unreasonable because, if the FICO has no access to assessments paid by SAIF-member savings associations (or to any other source of funding) during the final quarter of 1996, the exit fees now held in escrow by the Treasury Department are available to pay the interest on the FICO's bonds. The FDIC does not agree that the escrowed funds are available for this purpose. These funds are to be paid to the FICO only if the Secretary of the Treasury determines that the FICO has exhausted all other sources of funding for its interest payments, and orders that the fees be so paid. *Id.* 1815(d)(2)(E)(i)(II); see 12 CFR 312.5(d) and 312.8(f). The Secretary has not made such a determination or issued such an order.

Moreover, it is apparent that the FICO has no current need for these funds. The FICO has collected its assessments for the second semiannual period of 1996, and is entitled to retain them. The SAIF-rate reductions merely serve the purpose of returning to each institution the amount that the FDIC has collected from that institution for the SAIF in excess of the amount needed to maintain the SAIF at the DRR during the final quarter of 1996, while preserving appropriate risk-based rates for all such institutions. Seen from this standpoint, the SAIF-rate reductions have no effect on the FICO assessments or on the FICO's financial condition.

Conversely, the escrowed exit fees may not be released to the SAIF until the FDIC and the Secretary of the Treasury determine that it is not necessary to reserve the funds for the payment of interest on the FICO bonds. See 12 CFR 312.5(e) and 312.8(g). No such determination has been made. On the contrary, the FDIC considers that the exit-fee reserve serves to protect against the possibility of an interim short-fall during the period in which the FICO's assessment procedures are converted from those currently in effect to those prescribed for 1997 and thereafter by the Funds Act. Accordingly, the funds in the exit-fee reserve are required for other purposes: they cannot replace the FICO assessments due from SAIF-member savings associations for the final quarter of 1996.

D. The BIF Assessment Schedules

The final rule publishes the rates that currently apply to BIF members without change, except insofar as changes have been made by the Funds Act. The final rule does not make any change of substance to the FDIC's assessment regulation with respect to BIF rates.

1. The BIF Base Assessment Schedule

The FDIC's assessment regulation has presented the base rates for the BIF-assessable institutions in Rate Schedule 2. The final rule retains these base rates, and redesignates them as the BIF Base Assessment Schedule. The BIF Base Assessment Schedule is as follows:

BIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

2. The BIF Adjusted Assessment Schedule

In addition, the final rule sets forth the effective BIF rates for the second semiannual period of 1996 and the first semiannual period of 1997. These rates have been prescribed by the Board in resolutions dated May 14 and November 26, 1996, which were issued pursuant to the procedures in effect prior to the adoption of the final rule. See 61 FR 26078 (May 24, 1996) and *id.* 64609

(Dec. 6, 1996). The final rule presents the adjusted rates in the BIF Adjusted Assessment Schedule, as follows:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

These adjusted rates will terminate at the end of June, 1997. The final rule indicates that, upon termination of the adjusted rates, the rates in the BIF Base Assessment Schedule will apply to BIF members and other BIF-assessable institutions. The Board may adjust the rates in the BIF Base Assessment Schedule pursuant to the procedures herein adopted, however (see I.E. below).

The Funds Act has eliminated the minimum assessment required by statute. Funds Act section 2708(b). The FDIC's regulations have not stated that requirement, and the FDIC is not now retaining it. Accordingly, neither the BIF Base Assessment Schedule nor the adjusted rate-schedule refers to minimum assessments.

E. Procedure for Adjusting the Base Assessment Schedules

1. In General

Section 327.9(b) sets forth a procedure under which the Board may increase or decrease the BIF Base Assessment Schedule without engaging in separate notice-and-comment rulemaking proceedings for each adjustment. 12 CFR 327.9(b).

The allowable adjustments are subject to strict limits. No adjustment may, when aggregated with prior adjustments, cause the adjusted BIF rates to deviate ''over time'' by more than 5 basis points from those set forth in Rate Schedule 2, which is the permanent or base rate-schedule for the BIF. An adjustment may not result in a negative assessment rate. No one adjustment may constitute an increase or decrease of more than 5 basis points. See *id*. 327.9(b)(1).

The Board is modifying and clarifying this process somewhat, and extending it to SAIF rates as well. The final rule does not change the limits on allowable adjustments, but clarifies the following two points.

First, the Board may not, without notice-and-comment rulemaking, establish an adjusted assessment schedule for a fund in which the adjusted rates differ by more than 5 basis points at any time from the base assessment schedule for that fund. For example, if the rate for 1A SAIF members in the SAIF Base Assessment Schedule were 4 basis points, the adjusted rate for 1A SAIF members may never rise above 9 basis points without a new notice-and-comment rulemaking proceeding.

Second, the Board may not reduce the rates in either base assessment schedule any more than those rates have already been lowered, because in that event the lowest rate in the schedule would be less than zero. The final rule makes it clear that zero serves as a lower bound on the most favorable rate, and prevents the other rates from being adjusted by the full 5 basis points.

2. Procedure

The final rule alters the formal mechanism by which the Board makes adjustments to the base assessment schedules.

The prior regulation called for the Board to adopt the semiannual assessment schedule and any adjustment thereto by means of a resolution, a procedure that does not require public notice or comment. 12 CFR 327.9(b)(3). Under the final rule, the Board adopts the new assessment schedule pursuant to a rulemaking proceeding, but still without public notice and comment.

Consistent with the current rule, the final rule provides that an adjustment to the base assessment schedule may not be applied only to selected risk classifications, but rather must be applied to each cell in the schedule uniformly. The differences between the respective cells in the rate-schedule therefore remain constant. Similarly, adjustments neither expand nor contract the spread between the lowest- and highest-risk classifications.

The adjustment for any particular semiannual period is determined by: (1) The amount of assessment income necessary to maintain the SAIF reserve ratio at 1.25 percent (taking into account operating expenses and expected losses and the statutory mandate for the risk-based assessment system); and (2) the particular risk-based assessment schedule that would generate that amount considering the risk composition of the industry at the time. The Board expects to adjust the assessment schedule every six months by the amount (if any), up to and including the maximum adjustment of 5 basis points, necessary to maintain the reserve ratio at the DRR.

Such adjustments will be adopted in a regulation that reflects consideration of the following statutory factors: (1) Expected operating expenses; (2) projected losses; (3) the effect on SAIF members' earnings and capital; and (4) any other factors the Board determines to be relevant. The regulation will be adopted and announced at least 15 days prior to the date the invoice is provided for the first quarter of the semiannual period for which the adjusted rate-schedule is to take effect.

If the amount of the adjustment under consideration by the FDIC would result in an adjusted schedule exceeding the 5 basis-point maximum, then the Board would initiate a notice-and-comment rulemaking proceeding.

As discussed in more detail in the preamble to the final rule in which the FDIC established the adjustment procedure for BIF rates, the FDIC fully recognizes and understands the concern for the possibility of assessment rate increases without the benefit of full notice-and-comment rulemaking. See 60 FR 42680, 42739–42740 (Aug. 16, 1995). Nevertheless, for the reasons given below, the FDIC considers that notice and public participation with respect to an adjustment would generally be ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of 5 U.S.C. 553(b). Furthermore, the FDIC considers that for the same reasons it has ''good cause'' within the meaning of *id*. 553(d) to make any such rule effective immediately, and not after a 30-day delay.

Section 7(b)(2)(A)(i) of the FDI Act declares that the FDIC ''shall set rates when necessary, and only to the extent necessary'' to maintain each fund's reserve ratio at the DRR, or to raise a fund's reserve ratio to that level (although the Board may set higher rates for institutions that exhibit weakness or are not well capitalized, see *id*. 1817(b)(2)(A)(v)). Section 7(b)(2)(A)(iii) of the FDI Act restates the substance of this mandate in a different way: the FDIC ''shall not set assessment rates in excess of the amount needed'' for those purposes. These twin commands require the FDIC to monitor the size of each fund, the amount of deposits that each fund insures, and the relationship between them. Section 7(b)(2)(A) requires the FDIC to set ''semiannual assessments''. Accordingly, the FDIC evaluates the assessment schedules every six months.

Notice-and-comment rulemaking procedures are ''unnecessary'' as a general rule because institutions are already on notice with respect to the benchmark rates that are set forth in the base assessment schedules, with respect to the need for making semiannual

adjustments to the rates, and with respect to the maximum amount of any such adjustments. Moreover, the adjustments are limited: The FDIC may not change a current assessment schedule by more than 5 basis points, or deviate from the base assessment schedule by more than 5 basis points.

Notice-and-comment rulemaking procedures also are generally ''unnecessary'' because they would not generate additional information that is relevant to the rate-setting process. The institutions already provide part of the needed information in their quarterly reports of condition. The remainder of the needed information is data that the FDIC generates internally: *e.g.,* The current balance and expected operating expenses of each fund, and each fund's case resolution expenditures and income.

Finally, notice-and-comment rulemaking procedures are also generally ''impracticable'' and ''contrary to the public interest'' in this context because they are not compatible with the need to make frequent small adjustments to the assessment rates in order to maintain the funds' reserve ratios at the DRR. The FDIC must use data that is as current as possible to generate an assessment schedule that complies with the statutory standards. Notice-and-comment rulemaking procedures entail considerable delay. Such delay could force the FDIC to use out-of-date information to compute the amount of revenue needed and to produce an appropriate assessment schedule. Using out-of-date information could cause the FDIC to set rates for a fund that were higher or lower than necessary to achieve the fund's target DRR.

For these reasons, the FDIC has determined that any adjustment to the base assessment schedule may be adopted as a final rule without notice and public procedure thereon. Any such final rule will be adopted at least 15 days before the invoice date for the first payment of a semiannual period (and 45 days before the collection date for that payment). The adjusted assessment schedule will be published in the Federal Register as an appendix to subpart A of part 327.

Two trade groups endorse the adjustment procedure; one of them specifically supports the 5-basis-point limit on adjustments. No commenters opposed the procedure.

F. Institutions That ''Exhibit Weaknesses'' or Are ''Not Well Capitalized''

Although the FDIC may not generally collect assessments in excess of the amounts necessary to maintain an insurance fund's reserve ratio at the DRR (or to raise the fund's reserve ratio to the DRR), the FDIC may continue to collect assessments from institutions ''that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or that are not well capitalized as defined in [FDI Act] section 38''. *Id.* 1817(b)(2)(A)(v). In setting adjusted BIF rates for the first semiannual period of 1997, the FDIC has interpreted this clause in a manner that is consistent with the existing framework of the risk-based assessment program. 61 FR 64609 (Dec. 6, 1996). The FDIC has now determined to formalize this interpretation in part 327 of its rules and regulations. No commenters addressed this aspect of the final rule.

''Financial, operational, or compliance weaknesses''. For assessment purposes, the FDIC classifies each institution into one of three supervisory subgroups:

Subgroup A—Financially sound institutions with only a few minor weaknesses. 12 CFR 327.4(a)(2)(i).

Subgroup B—Institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased loss to the BIF or SAIF. *Id.* 327.4(a)(2)(ii).

Subgroup C—Institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken. *Id.* 327.4(a)(2)(iii).

When Congress adopted the Funds Act, Congress was aware that the FDIC already had these standards and definitions in place, and that the FDIC already used them for the purpose of imposing risk-based assessments. Moreover, the standards and definitions focus on institutions' financial and operational activities, and with their compliance with laws and regulations. The FDIC accordingly believes that it is reasonable and appropriate—and consistent with the intent of Congress—to apply these standards and definitions in determining whether an institution ''exhibit[s] * * * weaknesses ranging from moderately severe to unsatisfactory'' for assessment purposes.

The FDIC considers that if an institution's weaknesses are so severe that ''if not corrected, [they] could result in significant deterioration of the institution and increased loss to the BIF or SAIF'', the weaknesses may properly be characterized as ''moderately severe''. The FDIC further considers that if the weaknesses ''pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken'', they may properly be regarded as ''unsatisfactory''. The FDIC is therefore interpreting section 7(b)(2)(A)(v) to include any institution that is classified in supervisory subgroup B or C.

''Not well capitalized''. Section 7(b)(2)(A)(v) also authorizes the FDIC to set higher rates for institutions ''that are not well capitalized as defined in [FDI Act] section 38''. Section 38 of the FDI Act, 12 U.S.C. 1831o, defines a ''well capitalized'' institution as one that ''significantly exceeds the required minimum level for each relevant capital measure''. 12 U.S.C. 1831o(b)(1)(A).

Section 38 requires each agency to specify the relevant capital measure at which insured depository institution is well capitalized. *Id.* 1831o(c)(2). The FDIC has done so in subpart B of part 325 of its regulations, 12 CFR part 325 (''Capital Maintenance''). See *id.* 325.103(b)(1). But subpart B—and therefore its definition of ''well capitalized''—only applies to state nonmember banks and to insured state branches of foreign banks for which the FDIC is the appropriate federal banking agency. *Id.* 325.101(c).

The FDIC also defines the term ''well capitalized'' in part 327. See *id.* 327.4(a)(1)(i). Here the FDIC does so for the broader purpose of implementing a risk-based assessment system: accordingly, part 327's definition applies to all insured institutions.

While the two definitions employ the same numerical ratios, part 325's definition also includes an extra criterion: an institution may not be ''subject to any written agreement, order, capital directive, or prompt corrective action directive * * * to meet and maintain a specific capital level for any capital measure''. *Id.* 325.103(b)(1)(v). Within the context of the assessment regulation, this kind of consideration helps to determine an institution's supervisory subgroup, but not its capital category. Accordingly, the FDIC considers that it is not appropriate to apply that criterion for the purpose of determining whether an institution is ''well capitalized'' for assessment purposes. The FDIC therefore is applying part 327's current definition of ''well capitalized'' for the purpose of interpreting section 7(b)(2)(A)(v) of the FDI Act.

G. Transitional Matters

1. Refunds

The FDIC has already collected the second quarterly payments for the current semiannual period (July-December 1996). These payments were computed at the rates in effect prior to

passage of the Funds Act and prior to adoption of the final rule.

Both the SAIF Adjusted Assessment Schedule and the interim rate-schedule for SAIF-member savings associations are effective as of October 1, 1996. In addition, Congress has repealed the minimum assessment rate for all institutions. The final rule therefore provides for a refund or credit of any excess amounts collected for the BIF or the SAIF for the final quarter of 1996. Interest will accrue on the excess amounts as of October 1, 1996.

The excess amounts will be refunded or credited in one or more installments. The refunds and credits will be made according to the procedures applicable to regular quarterly payments.

2. Capital Ratios

The FDIC recognizes that payment of the special assessment could negatively impact the capital ratings of some institutions, affecting their risk classification under the risk-based assessment system. The risk classification for the first semiannual assessment period of 1997 is based on an institution's capital as of June 30, 1996, and is unaffected by payment of the special assessment. But the risk classification for the second semiannual assessment period of 1997 is based on an institution's capital as of December 30, 1996, and therefore reflects payment of the special assessment.

The FDIC has determined that, for purposes of assigning an institution's risk classification under the risk-based assessment system for the second semiannual period of calendar year 1997 only, the FDIC will calculate the institution's capital as if the special assessment had not been paid, while taking into account other capital fluctuations. The chief basis for this determination is that the special assessment is a one-time cost that is extraordinary in character: It neither derives from nor necessarily implies the presence of any adverse conditions or any procedural or managerial weaknesses in the institution. The FDIC has therefore concluded that, taken in isolation, the effect of the special assessment on an institution does not automatically represent an increase in the insurance risk that the institution poses to the SAIF as measured by the institution's capital.

The FDIC recognizes, however, that for some institutions the cost of the special assessment could have a more lasting effect. Accordingly, the FDIC is only calculating capital in this manner one time. All subsequent calculations will reflect all costs incurred by an institution.

The FDIC wishes to emphasize the point that it is excluding the special assessment from the capital calculation only for assessment purposes, and not for supervisory or regulatory purposes. For example, the exclusion does not come into play for the purpose of determining the adequacy of an institution's capital under the prompt corrective action statute, section 38 of the FDI Act, 12 U.S.C. 1831o. Part 325 of the FDIC's regulations, 12 CFR part 325 (Capital Maintenance), implements section 38 and sets capital ratios equivalent to those found in part 327. The ratios computed pursuant to part 325 will not reflect the exclusion allowed under part 327. If the ratios indicate that supervisory action may be warranted in a particular case, the FDIC will inquire further into the condition of the institution, and determine the supervisory action that is appropriate. Similarly, the exclusion does not come into play when determining whether an institution is ''well capitalized'' within the meaning of section 29 of the FDI Act, 12 U.S.C. 1831f, which sets minimum capital requirements for institutions that accept brokered deposits.

Two trade groups express support for the one-time relief in computing capital ratios. One of the two suggests that the FDIC should provide relief of this kind during the first semiannual period of 1998 on a case-by-case basis. The FDIC believes that such an extension is unwarranted, and would be imprudent. If an institution's capital ratios continued to be impaired for so long an interval, there would be no basis for allowing such relief, as the institution's financial condition would present an increased and on-going risk to the SAIF.

3. Deadlines

a. Invoices. The FDIC must generally issue invoices not less than 30 days prior to the collection date. 12 CFR 327.3(c)(1). A shorter interval is warranted in this case in order to afford time for notice and comment on the final rule, however. The final rule allows the FDIC to delay issuing the invoices for the first quarterly payment for the first semiannual period of 1997, which is the first payment under the new schedule.

b. Announcement of the Adjusted Rates. The assessment regulation has provided that, when the Board adopts an adjustment to the base rates by resolution, the Board must announce the adjustment and the new rate-schedule at least 15 days before the invoice date for the first payment of the semiannual period to which the rates will apply. For the reasons given above with respect to the invoice date, the Board has determined that it is appropriate to relax this requirement with respect to the rates for the first semiannual period of 1997.

H. Effective date

The final rule is effective immediately upon adoption. The FDIC considers that an immediate effective date is both necessary and appropriate because the FDIC must issue invoices reflecting the new lower rates, in order that institutions may know the amounts they are to pay for the first quarter of 1997. By making the rule effective immediately, the FDIC can issue the invoices as promptly as possible.

I. Technical Adjustments

The final rule updates, clarifies, and corrects various references in part 327. For example, § 327.4(a) refers to § 327.9(a) and to § 327.9(c); the final rule replaces the references with a single reference to § 327.9. Section 327.4(c) speaks of institutions for which either the FDIC or the Resolution Trust Corporation (RTC) has been appointed conservator; the final rule eliminates the reference to the RTC, and speaks instead of institutions for which the FDIC either has been appointed or serves as conservator. The final rule removes the definitions for ''adjustment factor'' and ''assessment schedule'', which are found in § 327.8(i), on the ground they are not needed. The final rule deletes certain obsolete provisions relating to the BIF after the BIF achieved its DRR.

II. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget (OMB) for review.

III. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, does not apply to the rule. The RFA's definition of the term ''rule'' excludes ''a rule of particular applicability relating to rates'. *Id.* 601(2). The FDIC considers that the rule is governed by this exclusion.

In addition, the legislative history of the RFA indicates that its requirements are inappropriate to this proceeding. The RFA focuses on the ''impact'' that a rule will have on small entities. The legislative history shows that the ''impact'' at issue is a differential impact—that is, an impact that places a disproportionate burden on small businesses:

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

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

The final rule does not impose a uniform cost or requirement on all institutions regardless of size. Rather, it imposes an assessment that is directly proportional to each institution's size. Nor does the rule cause an affected institution to incur any ancillary costs of compliance (such as the need to develop new recordkeeping or reporting systems, to seek out the expertise of specialized accountants, lawyers, or managers) that might cause disproportionate harm to small entities. As a result, the purposes and objectives of the RFA are not affected, and an initial regulatory flexibility analysis is not required.

IV. Riegle Community Development and Regulatory Improvement Act

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that, as a general rule, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. See 12 U.S.C. 4802(b). This restriction is inapplicable because the final rule would not impose such additional or new requirements. Nevertheless, the final rule takes effect on January 1, 1997, in conformity with the Riegle Act.

V. Congressional Review

As a general matter, when an agency adopts a final rule, the agency must submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a general statement relating to the rule, and the rule's proposed effective date. 5 U.S.C. 801(a)(1). The term ''rule'' excludes ''any rule of particular applicability, including a rule that approves or prescribes for the future rates'', however. *Id.* 804(3). The final rule is governed by this exclusion, because the final rule sets assessment rates and relates to the computations associated with assessment rates. Accordingly, the reporting requirement of *id.* 801(a)(1), and the more general requirements of *id.* sections 801–808, do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

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

PART 327—ASSESSMENTS

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

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

2. Section 327.3 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) *First-quarterly payment*—(1) *Invoice.* Except in the case of invoices for the first quarterly payment for the first semiannual period of 1997, no later than 30 days prior to the payment date specified in paragraph (c)(2) of this section, the Corporation will provide to each insured depository institution an invoice showing the amount of the assessment payment due from the institution for the first quarter of the upcoming semiannual period, and the computation of that amount. * * *

* * * * *

3. Section 327.4 is amended by revising the first sentence of paragraph (a) introductory text, paragraph (a)(1)(i)(A), paragraph (a)(1)(ii)(A), and paragraph (c) to read as follows:

§ 327.4 Annual assessment rate.

(a) *Assessment risk classification.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.9, each insured depository institution will be assigned an ''assessment risk classification''.

* * *

(1) * * *

(i) * * *

(A) Except as provided in paragraph (a)(1)(i)(B) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 or greater. New insured depository institutions coming into existence after the report date specified in paragraph (a)(1) of this section will be included in this group for the first semiannual period for which they are required to pay assessments. For the purpose of computing the ratios referred to in this paragraph (a)(1)(i)(A) for the second semiannual period of 1997, each such ratio shall be computed for an institution as if the institution had retained the funds that the institution disbursed in payment of the special assessment prescribed by § 329.41(a).

* * * * *

(ii) * * *

(A) Except as provided in paragraph (a)(1)(ii)(B) of this section, this group consists of institutions that do not satisfy the standards of ''well capitalized'' under this paragraph but which satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater. For the purpose of computing the ratios referred to in this paragraph (a)(1)(ii)(A) for the second semiannual period of 1997, each such ratio shall be computed for an institution as if the institution had retained the funds that the institution disbursed in payment of the special assessment prescribed by § 327.41(a).

* * * * *

(c) *Classification for certain types of institutions.* The annual assessment rate applicable to institutions that are bridge banks under 12 U.S.C. 1821(n) and to institutions for which the Corporation has been appointed or serves as conservator shall in all cases be the rate applicable to the classification designated as ''2A'' in the appropriate assessment schedule prescribed pursuant to § 327.9.

* * * * *

§ 327.8 [Amended]

4. Section 327.8 is amended by removing and reserving paragraph (i).

5. Section 327.9 is revised to read as follows:

§ 327.9 Assessment schedules.

(a) *Base assessment schedules*—(1) *In general.* Subject to § 327.4(c) and subpart B of this part, the base annual assessment rate for an insured depository institution shall be the rate prescribed in the appropriate base assessment schedule set forth in paragraph (a)(2) of this section applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that institution. Each base assessment schedule utilizes the group and subgroup designations specified in § 327.4(a). An institution shall pay assessments at the rate specified in the appropriate base assessment schedule except as provided in paragraph (b) of this section.

(2) *Assessment schedules*—(i) *Base rates for BIF members.* The following base assessment schedule applies with respect to assessments paid to the BIF by BIF members and by other institutions that are required to make payments to the BIF pursuant to subpart B of this part:

BIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

(ii) *Base rates for SAIF members.* The following base assessment schedule applies with respect to assessments paid to the SAIF by SAIF members and by other institutions that are required to make payments to the SAIF pursuant to subpart B of this part:

SAIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

(b) *Adjusted assessment schedules*—(1) *In general.* Institutions shall pay semiannual assessments at the rates specified in this paragraph (b) whenever such rates have been prescribed by the Board.

(2) *Adjusted rates for BIF members.* (i) The Board has adjusted the BIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the second semiannual period of 1996 and for the first semiannual period of 1997 by resolution of the Board of Directors of the Corporation. Accordingly, the following adjusted assessment schedule applies to BIF members for those two semiannual periods:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

(ii) The rates set forth in paragraph (b)(2)(i) of this section shall terminate at the end of the first semiannual period of 1997.

(3) *SAIF members*—(i) *General reduction.* Except as provided in paragraph (b)(3)(ii) of this section, the Board has adjusted the SAIF Base Assessment Schedule as of October 1, 1996, by reducing the rates therein by 4 basis points. The adjusted rates are presented to the left in each risk classification category in the schedule shown in paragraph (b)(3)(iii) of this section.

(ii) *Interim assessment schedule for SAIF-member savings associations.* From October 1, 1996, through December 31, 1996, savings associations that are members of the SAIF shall pay assessments according to the schedule in effect for such institutions on September 30, 1996, except that each rate in the schedule other than the rate for institutions in assessment risk classification 3C shall be reduced by 5 basis points (0.05 percent), and the rate for institutions in assessment risk classification 3C shall be reduced by 4 basis points (0.04 percent). No rate prescribed under this paragraph (b)(3)(ii) shall be applied for the purpose of § 327.32(a)(2)(i). The rates specified by this paragraph (b)(3)(ii) are presented to the right in each risk classification category in the schedule shown in paragraph (b)(3)(iii) of this section.

(iii) *Adjusted rates for SAIF members.* The following schedule sets forth to the left in each risk classification category the adjusted rate schedule that applies to SAIF members generally on and after October 1, 1996, in accordance with paragraph (b)(3)(i) of this section, and also sets forth to the right in each risk classification category the rates that apply to savings associations that are members of the SAIF from October 1, 1996, through December 31, 1996, in accordance with paragraph (b)(3)(ii) of this section:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup					
	A		B		C	
1	0	18	3	21	17	24
2	3	21	10	24	24	25
3	10	24	24	25	27	27

(c) *Rate adjustments; procedures*—(1) *Semiannual adjustments.* The Board may increase or decrease the BIF Base Assessment Schedule set forth in paragraph (a)(2)(i) of this section or the SAIF Base Assessment Schedule set forth in paragraph (a)(2)(ii) of this section up to a maximum increase of 5 basis points or a fraction thereof or a maximum decrease of 5 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary to maintain the reserve ratio of an insurance fund at the designated reserve ratio for that fund. Any such adjustment shall apply uniformly to each rate in the base assessment schedule. In no case may such adjustments result in an assessment rate that is mathematically less than zero or in a rate schedule for an insurance fund that, at any time, is more than 5 basis points above or below the base assessment schedule for that fund, nor may any one such adjustment constitute an increase or decrease of more than 5 basis points. The adjustment for any semiannual period for a fund shall be determined by:

(i) The amount of assessment revenue necessary to maintain the reserve ratio at the designated reserve ratio; and

(ii) The assessment schedule that would generate the amount of revenue in paragraph (c)(1)(i) of this section considering the risk profile of the institutions required to pay assessments to the fund.

(2) *Amount of revenue.* In determining the amount of assessment revenue in paragraph (c)(1)(i) of this section, the Board shall take into consideration the following:

(i) Expected operating expenses of the insurance fund;

(ii) Case resolution expenditures and income of the insurance fund;

(iii) The effect of assessments on the earnings and capital of the institutions paying assessments to the insurance fund; and

(iv) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph (c) will be adopted by rulemaking. Nevertheless, because the Corporation is generally required by statute to set assessment rates as necessary (and only to the extent necessary) to maintain or attain the target designated reserve ratio, and because the Corporation must do so in the face of constantly changing conditions, and because the purpose of the adjustment procedure is to permit the Corporation to act expeditiously and frequently to maintain or attain the designated reserve ratio in an environment of constant change, but within set parameters not exceeding 5 basis points, without the delays associated with full notice-and-comment rulemaking, the Corporation has determined that it is ordinarily impracticable, unnecessary and not in the public interest to follow the procedure for notice and public comment in such a rulemaking, and that accordingly notice and public procedure thereon are not required as provided in

5 U.S.C. 553(b). For the same reasons, the Corporation has determined that the requirement of a 30-day delayed effective date is not required under 5 U.S.C. 553(d). Any adjustment adopted by the Board pursuant to a rulemaking specified in this paragraph (c) will be reflected in an adjusted assessment schedule set forth in paragraph (b)(2) or (b)(3) of this section, as appropriate.

(4) *Announcement.* Except with respect to assessments for the first semiannual period of 1997, the Board shall announce the semiannual assessment schedule and the amount and basis for any adjustment thereto not later than 15 days before the invoice date specified in § 327.3(c) for the first quarter of the semiannual period for which the adjustment shall be effective.

(d) *Refunds or credits of certain assessments.* If the amount paid by an institution for the regular semiannual assessment for the second semiannual period of 1996 exceeds, as a result of the reduction in the rate schedule for a portion of that semiannual period, the amount due from the institution for that semiannual period, the Corporation will refund or credit any such excess payment and will provide interest on the excess payment in accordance with the provisions of § 327.7. Notwithstanding § 327.7(a)(3)(ii), such interest will accrue beginning as of October 1, 1996.

6. A new § 327.10 is added to subpart A to read as follows:

§ 327.10 Interpretive rule: section 7(b)(2)(A)(v).

This interpretive rule explains certain phrases used in section 7(b)(2)(A)(v) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(A)(v).

(a) An institution classified in supervisory subgroup B or C pursuant to § 327.4(a)(2) exhibits ''financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory'' within the meaning of such section 7(b)(2)(A)(v).

(b) An institution classified in capital group 2 or 3 pursuant to § 327.4(a)(1) is ''not well capitalized'' within the meaning of such section 7(b)(2)(A)(v).

By order of the Board of Directors.

Dated at Washington, D.C., this 11th day of December 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–32113 Filed 12–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–22]

Amendment to Class D Airspace; St. Petersburg Albert-Whited Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D surface area airspace at the St. Petersburg, FL, Albert-Whited Airport. Due to the low density aircraft traffic environment at and the proximity of the Tampa International Airport to the Albert-Whitted Airport, the Class D airspace at the Albert-Whitted Airport above 1,500 feet AGL has been delegated to Tampa Approach Control. Therefore, the height of the Albert-Whitted Airport Class D airspace will be amended from 2,500 feet AGL to 1,500 feet AGL.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:.

History

On October 17, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D airspace at the St. Petersburg, FL, Albert-Whited Airport. (61 FR 54108). This action would provide adequate Class D airspace for IFR operations at the Albert-Whited Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in Paragraph 5000 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 D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regualtions (14 CFR part 71) modifies Class D airspace at St. Petersburg, FL, Albert-Whitted Airport by reducing the height from 2,500 feet AGL to 1,500 feet AGL.

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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D St. Petersburg Albert-Whitted Airport, FL [Revised]

St. Petersburg, Albert-Whitted Airport, FL
Lat. 27°45′54″ N, Long. 82°37′38″ W)
MacDill AFB
Lat. 27°50′57″ N, Long. 82°31′17″ W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4-mile radius of the Albert-Whitted Airport; excluding that portion northeast of a line connecting the points of intersection with a 4.5-mile radius circle centered on MacDill AFB; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 13, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 96–32698 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANM–25]

Amendment of Class E Airspace; Pullman, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Pullman, Washington, Class E airspace to accommodate a new Standard Instrument Approach Procedure (SIAP) to the Pullman/Moscow Regional Airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: James D. Lambert, Operations Branch, ANM–532.3, Federal Aviation Administration, Docket No. 96–ANM–25, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2538.

SUPPLEMENTARY INFORMATION:

History

On September 20, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Pullman, Washington, to accommodate a new SIAP to the Pullman/Moscow Regional Airport (61 FR 49425).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83 Class E airspace areas extending upward from 700 feet or more above the surface of the earth 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 listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Pullman, Washington. 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 FAA 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, 1159–1963 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Pullman, WA [Revised]

Pullman/Moscow Regional Airport, WA
(lat. 46°44′38″N, long. 117°06′35″W)
Pullman VOR/DME
(lat. 46°40′28″N, long. 117°13′25″W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Pullman/Moscow Regional Airport, and within 1.7 miles each side of the Pullman VOR/DME 232° and 047° radials extending from the 4-mile radius to 7 miles southwest of the VOR/DME, and the airspace within a 27-mile radius of the Pullman VOR/DME extending clockwise from the 342° radial to the 060° radial of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7.8 miles northwest and 5.2 miles southeast of the Pullman VOR/DME 052° and 232° radials extending from 15.2 miles southwest to 6.5 miles northeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on November 22, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–32700 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANM–026]

Amendment of Class E Airspace; Forsyth, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Forsyth, Montana, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Tillitt Field Airport.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No 96–ANM–026, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On October 7, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Forsyth, Montana, to accommodate a new GPS SIAP to the Tillitt Field Airport (61 FR 52397).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth 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 listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E

airspace at Forsyth, Montana. 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Forsyth, MT [Revised]

Forsyth, Tillitt Field, MT
(Lat. 46°16′16″N, long. 106°37′26″W)
Forsyth NDB
(Lat. 46°16′10″N, long. 106°31′03″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Tillitt Field, and within 3.5 miles north and 4.3 miles south of the 075° bearing from the Forsyth NDB extending from the NDB to 8.7 miles east of the NDB; that airspace extending upward from 1,200 feet above the surface bounded on the north by the south edge of V–120, on the south by the north edge of V–2, and on the west by long. 107°00′00″W; excluding that portion which overlies the Miles City, Frank Wiley Field, MT, Class E airspace area.

Issued in Seattle, Washington, on December 9, 1996.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–32699 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AWP–3]

Establishment of Class E Airspace; Grand Canyon-Valle Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic coordinates of a final rule that was published in the Federal Register on November 21, 1996 (61 FR 59180), Airspace Docket No. 95–AWP–3.

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

Federal Register Document 96–29818, Airspace Docket No. 95–AWP–3, published on November 21, 1996 (61 FR 59180), established the description of the Class E airspace area at Grand Canyon-Valle Airport, AZ. An error was discovered in geographic coordinates for the Grand Canyon-Valle Airport, AZ, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Grand Canyon-Valle Airport, AZ, as published in the Federal Register on November 21, 1996 (61 FR 59180), (Federal Register Document 96–29818; page 59180, column 3, and page 59181, column 1), are corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP AZ E5 Grand Canyon-Valle Airport, AZ [Corrected]

Grand Canyon-Valle Airport, AZ
(lat. 35°39′03″N, long. 112°08′47″W)

On page 59180, column 3, and page 59181, column 1, the airspace description for Grand Canyon-Valle Airport, AZ, is corrected to read as follows:

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Valle Airport and within 1.4 each side of the 021° bearing from the Valle Airport extending from the 6.4-mile radius of the Valle Airport to 8 miles northwest of the Valle Airport and within 2 miles each side of the 201° bearing from the Valle Airport extending from the 6.4-mile radius of the Valle Airport to 10 miles southwest of the Valle Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°42′30″N, long. 112°00′03″W; to lat. 35°18′30″N, long. 112°00′03″W; to lat. 35°24′00″N, long. 112°21′30″W; to lat 35°34′00″N, long. 112°20′30″W; to lat. 35°38′30″N, long. 112°17′30″W; to lat. 35°38′30″N, long. 112°07′03″W; to lat. 35°42′30″N, long. 112°07′03″W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on December 10, 1996.

Leonard A. Mobley,

Acting Manager, Air Traffic Division Western-Pacific Region

[FR Doc. 96–32694 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 28764; Admit. No. 400]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. 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.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on December 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 30, 1997.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 400 Effective Date, January 30, 1997]

From	To	MEA
§ 95.6010 VOR FEDERAL AIRWAY 10 IS AMENDED TO READ IN PART		
Litchfield, MI VORTAC	*CRUXX, MI FIX	3000
*7500–MRA		
CRUXX, MI FIX	CARLETON, MI VORTAC	*3000
*2200–MOCA		
§ 95.6068 VOR FEDERAL AIRWAY 68 IS AMENDED TO READ IN PART		
JUNCTION, TX VORTAC	CENTER POINT, TX VORTAC	3800
§ 95.6076 VOR FEDERAL AIRWAY 76 IS AMENDED TO READ IN PART		
WELCH, TX FIX	PATTS, TX FIX	*6100
*4500–MOCA		
§ 95.6077 VOR FEDERAL AIRWAY 77 IS AMENDED TO READ IN PART		
ABILENE, TX VORTAC	WICHITA FALLS, TX VORTAC	*3900
*3100–MOCA		
§ 95.6081 VOR FEDERAL AIRWAY 81 IS AMENDED TO READ IN PART		
MIDLAND, TX VORTAC	PATTS, TX FIX	4500
PATTS, TX FIX	*WELCH, TX FIX	**6100
*7000–MRA		
*4500–MOCA		
§ 95.6452 VOR FEDERAL AIRWAY 452 IS AMENDED TO READ IN PART		
DIBVY, AK FIX	GALENA, AK VORTAC	3000
GALENA, AK VORTAC	ZOMBY, AK FIX	*4000
*3300–MOCA		
ZOMBY, AK FIX	HORSI, AK FIX	
	E BND	*7000
	W BND	*4000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 400 Effective Date, January 30, 1997]

From	To	MEA
*4000–MOCA		
§ 95.6488 VOR FEDERAL AIRWAY 488 IS AMENDED TO READ IN PART		
HOOPER BAY, AK VOR/DME	AKELT, AK FIX	
	NE BND	10000
	SW BND	4000
AKELT, AK FIX	ALMOT, AK FIX	
	SW BND	*10000
	NE BND	*4000
*4000–MOCA		
ALMOT, AK FIX	UNALAKLEET, AK VORTAC	
	SW BND	10000
	NE BND	3000
UNALAKLEET, AK VORTAC	EDMON, AK FIX	
	NE BND	*5500
	SW BND	*4000
*4000–MOCA		
VENCE, AK FIX	GALENA, AK VORTAC	
	SW BND	*5500
	NE BND	*3000
*2500–MOCA		
GALENA, AK VORTAC	KUHZE, AK FIX	*5000
*4400–MOCA		
KUHZE, AK FIX	CHOKK, AK FIX	6000
CHOKK, AK FIX	TANANA, AK VOR/DME	
	SW BND	6000
	NE BND	3000
TANANA, AK VOR/DME	REEBA, AK FIX	
	E BND	*7000
	W BND	*4000
*4000–MOCA		
§ 95.6489 VOR FEDERAL AIRWAY 489 IS AMENDED TO READ IN PART		
GALENA, AK VORTAC	ZOMBY, AK FIX	*4000
*3300–MOCA		
ZOMBY, AK FIX	HORSI, AK FIX	
	E BND	*7000
	W BND	*4000
*4000–MOCA		
§ 95.6498 VOR FEDERAL AIRWAY 498 IS AMENDED TO READ IN PART		
MC GRATH, AK VORTAC	NIXON, AK FIX	
	NW BND	*6000
	SE BND	*4500
*4500–MOCA		
NIXON, AK FIX	AHVUH, AK FIX	*6000
*5500–MOCA		
AHVUH, AK FIX	GALENA, AK VORTAC	
	SE BND	*6000
	NW BND	*4000
*4000–MOCA		
GALENA, AK VORTAC	EBIKY, AK FIX	*3000
*2500–MOCA		
EBIKY, AK FIX	*KATEL, AK FIX	
	NW BND	**8000
	SE BND	**4000
*8000–MRA		
*4000–MOCA		
BALIN, AK FIX	KOTZEBUE, AK VOR/DME	
	SE BND	*8000
	NW BND	*2000
*2000–MOCA		

From	To	MEA	MMA
§ 95.7522 JET ROUTE NO. 522 IS AMENDED BY ADDING			
BRAINERD, MN VORTAC	GREEN BAY, WI VORTAC	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS, AIRWAY SEGMENT, V–189 IS AMENDED BY ADDING			
WRIGHT BROTHERS, NC VOR/DME	TAR RIVER, NC VORTAC	25	WRIGHT BROTHERS.

[FR Doc. 96–32697 Filed 12–23–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28756; Amdt. No. 1770]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impractical and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 13, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 2, 1997*

Destin, FL, Destin-Fort Walton Beach, NDB RWY 32, Orig
Ames, IA, Ames Muni, LOC RWY 1, Amdt 1 CANCELLED
Ames, IA, Ames Muni, ILS RWY 1, Orig

** * * Effective January 30, 1997*

Bettles, AK, Bettles, VOR/DME RWY 1, Orig
Bettles, AK, Bettles, VOR OR GPS RWY 1, Amdt 3, CANCELLED
Bettles, AK, Bettles, LOC/DME RWY 1, Amdt 4
Bettles, AK, Bettles, NDB OR GPS–A, Amdt 8
Bettles, AK, Bettles, GPS RWY 1, Orig
Phoenix, AZ, Phoenix-Deer Valley Muni, GPS RWY 7R, Orig
Fullerton, CA, Fullerton Muni, GPS RWY 24, Orig
Los Angeles, CA, Los Angeles, Intl, ILS RWY 25L, Amdt 5
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 9
Los Angeles, CA, Whiteman, GPS–B, Orig
Wilmington, DE, New Castle County, VOR/DME RNAV RWY 9, Amdt 4, CANCELLED
Wilmington, DE, New Castle County, VOR/DME RNAV RWY 9, Orig
Kosrae Island, FM, Kosrae, NDB/DME OR GPS–A, Orig
Kosrae Island, FM, Kosrae, NDB/DME–A Orig
Salem, IL, Salem-Leckrone, NDB RWY 18, Amdt 9
Salem, IL, Salem-Leckrone, GPS RWY 18, Orig
Bangor, ME, Bangor Intl, ILS RWY 15, Amdt 3
Rockland, ME, Knox County Regional, GPS RWY 31, Orig
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15L, Amdt 4
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15R, Amdt 14
Alma, MI, Gratiot Community, SDF RWY 9, Amdt 7
Alma, MI, Gratiot Community, NDB or GPS RWY 9, Amdt 6
Alma, MI, Gratiot Community, VOR/DME RNAV or GPS RWY 27, Amdt 7
Clare, MI, Clare Muni, VOR or GPS–A, Amdt 1
Mt. Pleasant, MI, Mt. Pleasant Muni, VOR or GPS RWY 27, Amdt 13, CANCELLED
Mt. Pleasant, MI, Mt. Pleasant Muni, VOR or GPS RWY 27, Orig
Faribault, MN, Faribault Muni, VOR/DME RNAV or GPS RWY 12, Amdt 4
Faribault, MN, Faribault Muni, VOR or GPS–A, Amdt 4
Owatonna, MN, Owatonna Muni, VOR/DME RWY 30, Amdt 3
Owatonna, MN, Owatonna Muni, VOR or GPS RWY 12, Amdt 9
Waseca, MN, Waseca Muni, NDB or GPS RWY 15, Amdt 4
Waseca, MN, Waseca Muni, VOR or GPS–A, Amdt 4
Wildwood, NJ, Cape May County, VOR OR GPS–A, Amdt 2
New York, NY, John F. Kennedy Intl, VOR OR GPS RWY 13L/13R, Amdt 18
Plattsburgh, NY, Clinton County, VOR/DME OR GPS–A, Amdt 2
Plattsburgh, NY, Clinton County, VOR OR GPS RWY 19, Amdt 3
Plattsburgh, NY, Clinton County, ILS RWY 1, Amdt 4
Saratoga Springs, NY, Saratoga County, VOR OR GPS–A, Amdt 5
Saratoga Springs, NY, Saratoga County, GPS RWY 23, Orig
Bowling Green, OH, Wood County, GPS RWY 27, Orig
Bristow, OK, Jones Meml, GPS RWY 17, Orig
Bristow, OK, Jones Meml, GPS RWY 35, Orig
Holdenville, OK, Holdenville Muni, GPS RWY 17, Orig
Holdenville, OK, Holdenville Muni, GPS RWY 35, Orig
Corvallis, OR, Corvallis Muni, VOR/DME RWY 35, Amdt 11
Corvallis, OR, Corvallis Muni, GPS RWY 17, Orig
Corvallis, OR, Corvallis, Muni, GPS RWY 35, Orig
Leighton, PA, Jake Arner Memorial, NDB RWY 8, Amdt 2
Lehighton, PA, Jake Arner Memorial, NDB RWY 26, Amdt 3
Greer, SC, Greenville—Spartanburg, GPS RWY 3, Orig
Greer, SC, Greenville, Spartanburg, GPS RWY 21, Orig
Greer, SC, Greenville—Spartanburg, RNAV RWY 21, Amdt 5, CANCELLED
Granbury, TX, Granbury Muni, GPS RWY 14, Orig
Beckley, WV, Raleigh County Memorial, ILS RWY 19, Amdt 4
Huntington, WV, Tri-State/Milton J. Ferguson Field, ILS RWY 12, Amdt 11
Platteville, WI, Platteville Municipal, GPS RWY 33, Orig

** * * Effective March 27, 1997*

Grafton, ND, Grafton Muni, GPS RWY 35, Orig

** * * Effective Upon Publication*

Las Cruces, NM, Las Cruces International, ILS RWY 30, Amdt 1

Note: The FAA published an amendment of the Federal Aviation Regulations (Vol 61, No. 231, page 60530, dated Friday, November 29, 1996) under Section 97.33, in Docket No. 28734, Amdt No. 1764 to Part 97, which is hereby amended as follows:

Change the effective date of publication from December 5, 1996 to January 2, 1997 for the following standard instrument approach procedure: Dayton, OH, Greene County, GPS RWY 7, Orig.

Note: The FAA published an amendment of the Federal Aviation Regulations (Vol 61, No. 235, page 64460, dated Thursday, December 5, 1996) under Section 97.33, in Docket No. 28738, Amdt No. 1767 to Part 97, with an effective publication date of January 30, 1997, which is hereby rescinded for the following procedure:

Fernandina Beach, FL, Fernandina Beach Muni, GPS RWY 13, Orig.

[FR Doc. 96–32689 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28757; Amdt. No. 1771]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designated to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAPs amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 13, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * *

Effective January 30, 1997

Cordova, AK, Merle K (Mudhole) Smith, NDB/DME or GPS RWY 27, Orig CANCELLED
Cordova, AK, Merle K (Mudhole) Smith, NDB/DME RWY 27, Orig
Kodiak, AK, Kodiak, VOR or TACAN RWY 25, Amdt 5 CANCELLED
Kodiak, AK, Kodiak, VOR or TACAN–1 RWY 25, Amdt 5
Greenville, IL, Greenville, NDB or GPS RWY 18, Amdt 4 CANCELLED
Greenville, IL, Greenville, NDB RWY 18, Amdt 4
Taylorville, IL, Taylorville Muni, NDB or GPS RWY 18, Amdt 3 CANCELLED
Taylorville, IL, Taylorville Muni, NDB RWY 18, Amdt 3
Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt 3 CANCELLED
Holdenville, OK, Holdenville Muni, NDB RWY 17, Amdt 3

Cincinnati, OH, Cincinnati-Blue Ash, NDB or GPS RWY 6, Orig-A CANCELLED
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Orig-A
Athens (Albany), OH, Ohio University, NDB or GPS RWY 25, Amdt 8 CANCELLED
Athens (Albany), OH, Ohio University, NDB RWY 25, Amdt 8
Greer, SC, Greenville-Spartanburg, NDB or GPS RWY 3, Amdt 14 CANCELLED
Greer, SC, Greenville-Spartanburg, NDB RWY 3, Amdt 14
Sumter, SC, Sumter Muni, NDB or GPS RWY 23, Amdt 2C CANCELLED
Sumter, SC, Sumter Muni, NDB RWY 23, Amdt 2C
Marshfield, WI, Marshfield Muni, NDB or GPS RWY 16, Amdt 9A CANCELLED
Marshfield, WI, Marshfield Muni, NDB RWY 16, Amdt 9A

[FR Doc. 96–32690 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28758; Amdt. No. 1772]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1992.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPS, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on December 13, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPS; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC No.	SIAP
11/27/96 ...	OH	Covington/Cincinnati	Cincinnati/Northern Kentucky Intl	FDC 6/8866	ILS Rwy 36L, Amdt 37...
11/28/96 ...	CA	Oakland	Metropolitan Oakland Intl	FDC 6/8892	GPS Rwy 11, Orig...
11/28/96 ...	CO	Rifle	Garfield County Regional	FDC 6/8880	LOC/DME–A, Amdt 5A...
11/28/96 ...	MI	Holland	Tulip City	FDC 6/8875	VOR or GPS–A, Amdt 10A...
11/28/96 ...	MI	Holland	Tulip City	FDC 6/8876	ILS/DME Rwy 26, Orig...
11/28/96 ...	MI	Holland	Tulip City	FDC 6/8877	VOR/DME RNAV or GPS Rwy 26, Amdt 5...
11/28/96 ...	MI	Holland	Tulip City	FDC 6/8878	VOR/DME RNAV or GPS Rwy 8, Amdt 2...
12/05/96 ...	FL	Stuart	Stuart/Witham Field	FDC 6/9024	GPS Rwy 11 Orig...
12/05/96 ...	ID	Idaho Falls	Fanning Field	FDC 6/9058	ILS Rwy 20, Amdt 11...
12/05/96 ...	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field ..	FDC 6/9033	VOR or GPS Rwy 4L, Amdt 16...
12/05/96 ...	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field ..	FDC 6/9034	VOR/DME Rwy 22R, Amdt 8...
12/05/96 ...	LA	Bogalusa	George R. Carr Memorial Airfield	FDC 6/9048	GPS Rwy 36, Orig...
12/05/96 ...	LA	Grand Isle	Grand Isle Seaplane Base	FDC 6/9047	NDB or GPS–B, Amdt 9...
12/05/96 ...	LA	Hammond	Hammond Muni	FDC 6/9037	VOR Rwy 18, Amdt 2B...
12/05/96 ...	LA	Hammond	Hammond Muni	FDC 6/9038	NDB or GPS Rwy 18, Amdt 2...
12/05/96 ...	LA	Hammond	Hammond Muni	FDC 6/9039	ILS Rwy 18, Amdt 2A...
12/05/96 ...	LA	Houma	Houma-Terrebonne	FDC 6/9049	VOR/DME or GPS Rwy 30, Amdt 11A...
12/05/96 ...	LA	Lafayette	LaFayette Regional	FDC 6/9046	VOR/DME Rwy 11, Amdt 1A...
12/05/96 ...	LA	New Orleans	New Orleans Intl (Moisant Field)	FDC 6/9020	ILS Rwy 1, Amdt 16...
12/05/96 ...	LA	New Orleans	New Orleans Intl (Moisant Field)	FDC 6/9021	ILS Rwy 10, Amdt 2...
12/05/96 ...	LA	New Orleans	New Orleans Intl (Moisant Field)	FDC 6/9022	NDB OR GPS Rwy 10, Rwy 26...
12/05/96 ...	LA	Slidell	Slidell	FDC 6/9045	GPS Rwy 36, Orig...
12/05/96 ...	MI	Iron Mountain/Kingsford	Ford	FDC 6/9069	ILS Rwy 1, Amdt 10...
12/05/96 ...	MO	Kansas City	Richards-Gebaur Memorial	FDC 6/9035	ILS Rwy 1, Amdt 4...
12/05/96 ...	OK	Antlers	Antlers Muni	FDC 6/9043	GPS Rwy 35, Orig...
12/05/96 ...	OK	Muskogee	Davis Field	FDC 6/9041	GPS Rwy 4, Orig...
12/05/96 ...	OR	Ok GPS Rwy IL	Richard Lloyd Jones Jr. Tulsa	FDC 6/9042	...
12/05/96 ...	TN	Memphis	Memphis Intl	FDC 6/9001	VOR or GPS Rwy 27, Amdt 1A...
12/05/96 ...	TN	Memphis	Memphis Intl	FDC 6/9002	ILS Rwy 36C, Amdt 10B...
12/05/96 ...	TN	Memphis	Memphis Intl	FDC 6/9065	ILS Rwy 18C, Amdt 7C...
12/06/96 ...	AZ	Phoenix	Williams Gateway	FDC 6/9134	ILS Rwy 30C, Orig-B...
12/06/96 ...	AZ	Phoenix	Williams Gateway	FDC 6/9136	VOR or TACAN or GPS Rwy 30C, Orig-A...
12/06/96 ...	KS	Salina	Salina Muni	FDC 6/9108	NDB or GPS Rwy 35, Amdt 16...
12/06/96 ...	KS	Salina	Salina Muni	FDC 6/9109	ILS Rwy 35, Amdt 18...
12/06/96 ...	KS	Salina	Salina Muni	FDC 6/9111	VOR or GPS Rwy 17, Orig...

FDC Date	State	City	Airport	FDC No.	SIAP
12/06/96 ...	MI	Boyne Falls	Boyne Mountain	FDC 6/9122	NDB or GPS–A Amdt 6...
12/06/96 ...	OH	Columbus	Port Columbus Intl	FDC 6/9114	ILS Rwy 10L, Amdt 16...
12/09/96 ...	LA	Hammond	Hammond Muni	FDC 6/9178	VOR Rwy 31, Amdt 3B...
12/10/96 ...	MN	Rochester	Rochester Intl	FDC 6/9235	ILS Rwy 13, Amdt 5...
12/10/96 ...	NC	Burlington	Burlington-Alamance Regional	FDC 6/9231	VOR or GPS Rwy 10, Amdt 7...
12/10/96 ...	NC	Fayetteville	Fayetteville Regional/Grannis Field	FDC 6/9206	VOR or GPS Rwy 22, Amdt 4...
12/10/96 ...	NE	McCook	McCook Muni	FDC 6/9219	VOR or GPS Rwy 21, Amdt 4...
12/10/96 ...	NE	McCook	McCook Muni	FDC 6/9220	VOR Rwy 12, Amdt 11...
12/10/96 ...	NE	McCook	McCook Muni	FDC 6/9221	GPS Rwy 12, Orig...
12/10/96 ...	NE	McCook	McCook Muni	FDC 6/9222	VOR or GPS Rwy 30, Amdt 10...
12/10/96 ...	OR	Portland	Portland Intl	FDC 6/9217	ILS Rwy 10R CAT II and CAT III, Amdt 30A...
12/11/96 ...	CA	Oakland	Metropolitan Oakland Intl	FDC 6/9289	ILS Rwy 29, Amdt 23...
12/11/96 ...	MA	Tewksbury	TEW–MAC	FDC 6/9279	NDB or GPS–A, Amdt 4...

[FR Doc. 96–32691 Filed 12–23–96; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 301

Rules and Regulations Under the Fur Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This document amends the Rules and Regulations under the Fur Products Labeling Act (Fur Rules) by adding the International System of Units (SI metric system) equivalents beside the inch/pound unit measurements in §§ 301.19 and 301.27. These metrication amendments are required by Executive Order 12770 of July 25, 1991, and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act. Section 301.43 is amended to replace the phrase ''capacity or tendency to mislead or deceive'' with language conforming with that set forth in recent Commission cases. Section 301.12(e)(2) is amended to eliminate obsolete country names. Section 301.19(k) is amended to change the reference to the Bureau of Textiles and Furs, which no longer exists, to the Bureau of Consumer Protection. Finally, § 301.1(a)(2) is republished to correct a typographical error in the CFR.

EFFECTIVE DATE: December 24, 1996.

ADDRESSES: Requests for copies of this final rule should sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–4040.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fur Products Labeling Act (Fur Act), 15 U.S.C. 69, requires covered furs and fur products to be labeled, invoiced, and advertised to show (1) the name(s) of the animal(s) that produced the fur(s); (2) that the fur product contains or is composed of used fur, when such is the fact; (3) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) the name under which the manufacturer or other responsible company does business, or in lieu there of, the RN issued to the company by the Commission; and (6) the name of the country of origin of any imported furs used in the fur product. Pursuant to Section 8(b) of the Fur Act, ''[t]he Commission is authorized and directed to prescribe rules and regulations * * * as may be necessary and proper for purposes of administration and enforcement of this Act.'' (15 U.S.C. 69f(b)) These implementing rules and regulations are set forth at 16 CFR part 301.

As part of the Commission's systematic review of all current Commission rules, regulations, and guides, the Commission published a Federal Register notice on May 6, 1994, 59 FR 23645, seeking public comment about the regulatory and economic costs and benefits of the Fur Rules. The notice also stated that the Commission proposed to amend §§ 301.19 and 301.27 to include the metric equivalents beside the inch/pound unit measurements already included in those Sections. Finally the notice stated that, should the Commission retain § 301.43, it would be amended to reflect language conforming with that set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

II. Amendments to the Fur Rules

In a separate notice of proposed rulemaking, the Commission summarizes the results of its regulatory review of the Fur Rules, and seeks comment on whether it should make additional substantive amendments to the rules. In this final rule, the Commission announces adoption of the amendments set out in the May 6, 1994, request for comment.

Currently, §§ 301.19 and 301.27 include measurements expressed exclusively in inch/pound units. Under Executive Order 12770 of July 25, 1991, 56 FR 35801 (July 29, 1991), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205b, all federal agencies are required to use the SI metric system of measurement in all

procurements, grants, and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

The proposed amendments to §§ 301.19 and 301.27 were set out in the regulatory review notice. Three of the seven comments submitted in response to the regulatory review expressed general support for the proposed metrication amendments; [1] the remaining comments did not address the metrication amendments at all. The proposed amendment to § 301.43 was also set out in the regulatory review notice; none of the seven comments addressed this proposed amendment.

The metrication amendments to §§ 301.19 and 301.27 are technical and non-substantive; they merely provide metric equivalents to the existing measurements expressed in inch/pound units and do not create any new requirements. The amendment to § 301.43 does not alter its substance; it merely replaces the phrase ''or has the capacity or tendency to mislead or deceive'' with language conforming with that set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

The changes to §§ 301.12(e)(1), 301.19(k), and 301.1(a)(2) are technical and non-substantive. The Commission finds that notice-and-comment rulemaking procedures are unnecessary for these minor changes because they will have no impact on industry or the public. Section 301.12(e)(1) lists in its examples of country of origin disclosures two country names that are now obsolete. These obsolete names are eliminated in the revised section. Section 301.19(k) makes reference to the FTC's ''Bureau of Textiles and Furs,'' which no longer exists. Those functions are now part of the Bureau of Consumer Protection. Section 301.19(k) is revised to reflect this change. Section 301.1(a)(2) contained a typographical error in the CFR publication; this is corrected here.

[1] Fieldcrest Cannon, Inc. (3) p. 6, American Textile Manufacturers Institute (4) p. 6, and Milliken & Company (7) p. 6. The number in parentheses denotes the number assigned by the Office of the Secretary to the comment in the public record of comments received in the regulatory review of the Fur Rules. The regulatory reviews of the Textile Rules, the Wool Rules, and the Fur Rules were undertaken simultaneously. In each case, these three Fur Rules comments are identical copies of submissions that were made under both the Textile Rules and the Wool Rules. The three comments express general support for adding metric equivalents to the inch/pound measurements in all three of the Commission's implementing Rules.

List of Subjects in 16 CFR Part 301

Furs, Labeling, Trade practices.

For the reasons set out above, the Commission amends 16 CFR Part 301 as follows:

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

1. The authority citation for part 301 continues to read as follows:

Authority: 15 U.S.C. 69.

2. Section 301.1(a)(2) is revised to read as follows:

§ 301.1 Terms defined.

(a) * * *

(2) The terms *rule, rules, regulations,* and *rules and regulations,* mean the rules and regulations prescribed by the Commission pursuant to section 8(b) of the act.

* * * * *

3. Section 301.12(e)(1) is revised to read as follows:

§ 301.12 Country of origin of imported furs.

* * * * *

(e) (1) The English name of the country of origin shall be used. Abbreviations which unmistakably indicate the name of a country, such as ''Gt. Britain'' for ''Great Britain,'' are acceptable. Abbreviations such as ''N.Z.'' for ''New Zealand'' are not acceptable.

* * * * *

4. In § 301.19, paragraphs (i)(1), (i)(2), (i)(3), (k) and (l)(2) are revised to read as follows:

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

* * * * *

(i) (1) Any person dressing, processing or treating a fur pelt in such a manner that it is required under paragraph (e) or (h) of this section to be described as ''color altered'' or ''color added'' shall place a black stripe at least one half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid black center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use black ink for all other stamps or markings on the leather side of the pelt.

(2) Any person dressing, processing or treating a fur pelt which after processing is considered natural under paragraph (g) of this section shall place a white stripe at least one half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid white center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use white ink for all other stamps or markings on the leather side of the pelt.

(3) Any person dressing, processing or treating a fur pelt in such a manner that it is considered dyed under paragraph (d) of this section shall place a yellow stripe at least one half inch (1.27 cm) in width across the leather side immediately above the rump or place a stamp with a solid yellow center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use yellow ink for all other stamps or markings on the leather side of the pelt.

* * * * *

(k) Any person who possesses fur pelts of a type which are always considered as dyed under paragraph (d) of this section after processing or any person who processes fur pelts which are always natural at the time of sale to the ultimate consumer, which pelts for a valid reason cannot be marked or stamped as provided in this section, may file an affidavit with the Federal Trade Commission's Bureau of Consumer Protection setting forth such facts as will show that the pelts are always dyed or natural as the case may be and that the stamping of such pelts cannot be reasonably accomplished. If the Bureau of Consumer Protection is satisfied that the public interest will be protected by the filing of the affidavit, it may accept such affidavit and advise the affiant that marking of the fur pelts themselves as provided in this section will be unnecessary until further notice. Any person filing such an affidavit shall promptly notify the Commission of any change in circumstances with respect to its operations.

(l) * * *

(2) A recommended method for preparation of samples would be: Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1⁄16 inch (1.59 mm). The pliers should be inserted at the same angle as the guard hairs with the tip opened to 1⁄4 inch (6.35 mm). After contact with the hide, the tip should be raised about 1⁄4 inch (6.35 mm), closed tightly and pulled quickly and firmly to remove the hair.

* * * * *

5. Section 301.27 is revised to read as follows:

§ 301.27 Label and method of affixing.

At all times during the marketing of a fur product the required label shall have a minimum dimension of one and three-fourths (1¾) inches by two and three-fourths (2¾) inches (4.5 cm × 7 cm). Such label shall be of a material of sufficient durability and shall be conspicuously affixed to the product in a secure manner and with sufficient permanency to remain thereon throughout the sale, resale, distribution and handling incident thereto, and shall remain on or be firmly affixed to the respective product when sold and delivered to the purchaser and purchaser-consumer thereof.

6. Section 301.43 is revised to read as follows:

§ 301.43 Use of deceptive trade or corporate names, trademarks or graphic representations prohibited.

No person shall use in labeling, invoicing or advertising any fur or fur product a trade name, corporate name, trademark or other trade designation or graphic representation which misrepresents directly or by implication to purchasers, prospective purchasers or the consuming public:

(a) The character of the product including method of construction;

(b) The name of the animal producing the fur;

(c) The method or manner of distribution; or

(d) The geographical or zoological origin of the fur.

By the direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32259 Filed 12–23–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 96N–0094]

Uniform Compliance Date For Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 1998, as its new uniform compliance date for all food labeling regulations that are issued after the publication of this final rule and before January 1, 1997. FDA has periodically announced uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. In 1992, FDA suspended this practice pending the issuance of regulations implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). With the adoption and implementation of those regulations, FDA is reinstating its previous practice of periodically announcing, as final rules, uniform compliance dates for food labeling regulations.

EFFECTIVE DATE: December 24, 1996.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of April 15, 1996 (61 FR 16422), FDA published a notice of proposed rulemaking entitled ''Uniform Compliance Date for Food Labeling Regulations'' (hereinafter referred to as the compliance date proposal) to establish a new uniform compliance date of January 1, 1998. FDA proposed that the new uniform compliance date would apply to all FDA regulations issued after publication of a final rule to the rulemaking and before December 31, 1996, that require changes in food labels or labeling, except where special circumstances require a different compliance date. The agency also proposed to reinstate its previous practice of periodically announcing uniform compliance dates for food labeling regulations by final rule. Interested persons were given until July 1, 1996, to comment.

FDA received five letters, each containing one or more comments, from trade associations and other representatives of the food industry, in response to the compliance date proposal. All of the comments supported the proposal generally. Some comments suggested modifications or revisions of aspects of the compliance date proposal. A summary of these comments and the agency's responses are provided below.

II. Comments

A. Uniform Compliance Date

1. Four comments opposed establishing January 1, 1998, as the next uniform compliance date on the grounds that it resulted in a ''compliance period'' that at its shortest possible length would be only 12 months long. The comments used the term ''compliance period'' to refer to the time interval between the publication of a final rule and the uniform compliance date; e.g., a final rule that publishes on December 30, 1996, would have a ''compliance period'' of just over 12 months before the January 1, 1998, uniform compliance date. Two of the comments suggested that the compliance period should be a minimum of 18 months and applicable to products labeled on or after the compliance date. One of these comments stated that the 18-month period for the final rules implementing the 1990 amendments provided sufficient time for manufacturers to process the required label changes such that incremental costs were minimized.

One of the comments stated that 2 years would be more appropriate if FDA insists on having the compliance date apply to the initial date of introduction of the food product into interstate commerce. This latter comment supported its arguments by including with its submission information on the costs of complying with the proposals to implement the 1990 amendments that it had developed and submitted as comments in response to FDA's ''Regulatory Impact Analysis of the Proposed Rules to Amend the Food Labeling Regulations,'' which published in the Federal Register of November 27, 1991 (56 FR 60856). The comment noted that the evidence submitted had persuaded FDA to establish a compliance period of 18 months for those regulations. The other two comments also suggested a 2-year compliance period. One of the comments argued that 1 year does not provide manufacturers with sufficient time to manage and exhaust existing label inventories. The comment stated that it anticipated that most manufacturers would be forced to request an extension of the uniform compliance date if FDA's final rule provided only a 12-month compliance period.

FDA disagrees with the comments. A compliance period that is 18 months or 2 years at its shortest is too long.

The agency points out that the comments are primarily concerned with the minimum time that a firm might face in bringing its labeling into compliance if a labeling final regulation were to publish at the end of a compliance period cycle, e.g., December 30, 1996. Manufacturers would have 1 year and 1 day to comply with the January 1, 1998, effective date. It is this time period that the comments claim is inadequate.

However, in establishing the uniform compliance date, FDA must consider the costs and benefits to both the food producer and the consumer. That is why

the agency did not choose a minimum compliance period of only 6 months. A compliance period of 6 months would increase the benefit to the consumer but would result in an even greater cost to the food producers than caused by a compliance period of 12 months. Although a lengthier compliance period would reduce the cost to food producers, it would delay implementation of the labeling changes thus decreasing the value of any benefits to the consumer.

The agency points out that the minimum compliance period of 1 year is the same compliance period that it used for all of its uniform effective date final rules, dating back to the 1970's, until it issued the labeling regulations that implemented the 1990 amendments. The agency is unaware, nor has anyone submitted, any information to demonstrate any problems with respect to bringing labels into compliance with the various uniform effective dates that it had established over the period of approximately 20 years during which it had announced uniform compliance dates. While there were instances in which the agency granted extensions beyond the uniform compliance date, generally firms came into compliance with little complaint to the agency. The agency is merely, as it proposed, reinstating its former practice.

The agency acknowledges that an 18-month compliance period was given for the labeling final rules implementing the 1990 amendments. However, the agency points out that additional time was necessary in that instance because of the extensive changes being made in the labeling requirements, the complicated nature of those changes, and the fact that the changes affected the entire food industry. Future food labeling regulations promulgated by FDA will not likely be as complicated or as comprehensive. If such a situation were to arise, the agency can and will adjust the compliance period to fit that particular situation.

FDA recognizes that some manufacturers believe that a 12-month compliance period for a particular regulation might create an economic hardship. The agency points out that any final rule that it promulgates is preceded by a proposal setting forth the labeling changes the agency intends to require. The proposal, as a general rule, precedes the final rule by a year or more and, therefore, gives manufacturers more than ample notice that they should start thinking about how they will respond if the changes are finalized.

Finally, the agency reiterates its statement in the proposal concerning its willingness to consider comments (to a particular labeling proposal) as to why a particular labeling regulation should not be subject to the uniform compliance date and modify the effective date for an individual regulation accordingly.

B. Applicability of Compliance Date

2. One comment urged that FDA make clear in its final rule the basis for the uniform compliance date, i.e., whether the uniform compliance date would apply to products labeled on or after the compliance date or to products introduced into interstate commerce on or after the compliance date. The comment stated that, if the compliance date applied to products labeled on or after that date, 18 months would be adequate as the minimum compliance period. If, however, the compliance date applies to the initial date of introduction of the product into interstate commerce, the comment recommended that FDA establish the uniform compliance date as being no shorter than 2 years after any such labeling regulations are published as final rules. The comment argued that 2 years would provide an adequate opportunity for many food processors, especially those who manufacture seasonal products, to exhaust remaining label and package inventories before they would be required to introduce products with new labels and packages into interstate commerce.

The agency advises that the uniform compliance date will apply to food products initially introduced into interstate commerce on or after that date. FDA does not agree with the suggestion that the compliance date be tied to the date that products are labeled. The agency has for many years used the date of initial introduction into interstate commerce as the effective date for compliance with regulations because the Federal Food, Drug, and Cosmetic Act (the act) applies to products when they are introduced or delivered for introduction into interstate commerce. Using the date of initial introduction into interstate commerce is a more efficient enforcement approach because this date is easier for FDA to determine (e.g., from shipping documents) than the date the food was labeled (e.g., from manufacturers' records that are not necessarily available to the agency). An exception to this approach was in the case of the 1990 amendments that established the effective date as the date on which the label was applied to the food (see section 10(a)(2) of the 1990 amendments). However, there is no indication in the 1990 amendments or in their legislative history that Congress intended this exception to change the approach to effective dates for labeling changes that the agency has traditionally used.

C. Safe Harbors

3. One comment, which stated that the compliance date should apply to the date the food product is packaged, requested that the agency provide ''safe harbors'' for companies to follow in determining when their products will have been considered to have been introduced into interstate commerce if the agency concludes that the uniform effective date should be applicable to the initial introduction of a food product into interstate commerce. The comment stated that doing so would provide companies some assistance in coordinating label changes and in minimizing their costs.

FDA presumes that the comment concerning ''safe harbor'' is asking FDA to define what is meant by ''initial introduction into interstate commerce.'' In other words, the comment is asking FDA to advise what a firm has to do to initially introduce a product into interstate commerce before a new uniform compliance date so that the product would not be subject to the requirements that become effective on the new uniform compliance date. FDA is concerned that an attempt to provide a detailed discussion of all instances that are considered or are not considered to represent ''initial introduction into interstate commerce'' would be incomplete and, therefore, misleading. A clear understanding of this term is available from the act and the applicable case law. Thus, FDA is not defining ''initial introduction into interstate commerce'' in this final rule.

D. Harmonious Uniform Compliance Date for U.S. Department of Agriculture (USDA)–FDA Food Labeling Regulations

4. One comment urged that FDA work with USDA–Food Safety and Inspection Service to establish a harmonious uniform compliance date for all food labeling regulations.

FDA agrees to the extent both agencies are issuing regulations that will affect similar foods or address similar concerns, it would be best for FDA and USDA to have a consistent uniform compliance date. However, FDA does not agree that it is necessary as part of this rulemaking to ''establish a harmonious uniform compliance date for all food labeling regulations'' issued by the two agencies. Where it is appropriate, FDA works with USDA to coordinate, to the extent possible, the issuance of food labeling regulations. For example, in issuing regulations on

the nutrition labeling of foods, FDA and USDA coordinated the publication of proposals and final rules, including consideration of the best approaches for each to use to address specific issues, such as the nutrition facts format and the wording of nutrient content claims. However, even then, because of differences between the two agencies and their authorities, there were slight differences in the effective dates for their respective final rules concerning nutrition labeling.

Moreover, to establish harmonious compliance dates as suggested by the comment would require a separate rulemaking on the part of USDA, which would act to delay final action on this rulemaking. Therefore, FDA concludes that it is not necessary or appropriate at this time for FDA and USDA to establish a harmonious uniform compliance date for their labeling regulations. FDA notes that comments on future FDA or USDA proposals are free to urge consistent effective dates as they consider appropriate.

E. Establishment of Future Uniform Compliance Dates

5. Three of the comments specifically supported the agency's returning to its practice of periodically establishing uniform compliance dates and doing so as final rules without providing an opportunity for public comment. No comments were opposed.

Having received only favorable comments that it reinstate this practice, FDA is announcing that it will establish future uniform compliance dates for its food labeling regulations under the provisions of § 10.40(e)(1) (21 CFR 10.40(e)(1)). Section 10.40(e)(1) does provide for the submission of comments to the final rule. FDA will publish before December 31, 1996, a final rule establishing the next uniform compliance date of January 1, 2000, for all final regulations published in the Federal Register between January 1, 1997, and December 31, 1998. After that, every other year, FDA will publish additional final rules to establish subsequent uniform compliance dates.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the economic implications of this final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 606–612). Executive Order 12866 directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of conditions, including having an annual effect on the economy of $100 million, or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the impact of that rule on small entities.

Four of the comments stated that a uniform compliance date that provided a minimum compliance period of 12 months would have a substantial financial impact on the food industry.

This final rule will potentially reduce costs by providing a uniform compliance date that will provide firms with the opportunity to combine required label changes in one label redesign effort rather than potentially suffering from sequential, duplicative efforts. Alternative approaches that FDA considered included setting a uniform compliance date such that firms have either more or less time to comply with labeling regulations. In general, providing a minimum compliance period of 2 years would be half as expensive as the proposed compliance date but would delay implementation of labeling changes, thus decreasing the value of any benefits. A minimum compliance period of 6 months, although providing earlier labeling changes that would increase the value of the benefits, would be twice as expensive as the proposed 1 year.

For future labeling requirements, FDA will assess the costs and benefits of the uniform compliance date as well as the options of setting alternative dates, especially with regard to the impact on small entities. Because the establishment of a uniform compliance date imposes neither costs nor benefits, the agency certifies that the final rule is not a significant rule as defined by Executive Order 12866, and finds under the Regulatory Flexibility Act that the final rule will not have a significant economic impact on a substantial number of small entities. Similarly, FDA has determined that this rule is not a major rule for the purpose of Congressional review (Pub. L. 104–121).

V. Conclusion

Having considered all comments to the proposal on this matter, the agency has decided that a new uniform compliance date of January 1, 1998, should be established for future FDA regulations requiring changes in food labels where special circumstances do not justify a different compliance date. The agency has selected January 1, 1998, to ensure adequate time for implementation of the pending changes in food labeling.

The agency generally encourages industry to comply with new labeling regulations as quickly as is feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

The new uniform compliance date will apply only to final FDA food labeling regulations published before January 1, 1997. Those regulations will specifically identify January 1, 1998, as their compliance date. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 1998, the agency will determine for that regulation an appropriate compliance date that will be specified when the regulation is published.

This final rule is not intended to change existing requirements for compliance dates that have been set in final rules. Therefore, all final FDA regulations that have published in the Federal Register but that are not yet effective and that have effective dates other than January 1, 1998, will still go into effect on the date stated in the respective final rule.

FDA is making this document effective upon publication because of the short time to January 1, 1997.

In the absence of comments to the contrary and following publication of this final rule, FDA will return to its former practice of establishing uniform compliance dates through issuance of a final rule without the opportunity for comment. Thus, for example, on or before December 31, 1996, FDA will issue a final rule establishing January 1, 2000, as the uniform compliance date for regulations published in the Federal Register between January 1, 1997, and December 31, 1998. Subsequently, on or before December 31, 1998, FDA will issue a final rule establishing January 1, 2002, as the uniform compliance date for regulations published in the Federal

Register between January 1, 1999, and December 31, 2000.

Dated: December 13, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–32552 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA provides for use of tylosin Type A medicated articles to make Type C medicated swine feeds for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.

EFFECTIVE DATE: December 24, 1996.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 12–491, which provides for use of 40 and 100 grams per pound (g/lb) tylosin Type A medicated articles to make 100 g/ton tylosin Type C medicated feeds to be fed for 21 days for the prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis.* The supplemental NADA is approved as of November 8, 1996, and the regulations are amended by adding new 21 CFR 558.625(f)(1)(vi)(*e*) to reflect the approval.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning November 8, 1996, because the supplement contains substantial evidence of the effectiveness of the drug involved, studies of animal safety, or in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.625 is amended by adding new paragraph (f)(1)(vi)(*e*) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(1) * * *

(vi) * * *

(*e*) (1) *Indications for use*. Prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.

(2) *Limitations*. As tylosin phosphate, administer for 21 days.

Dated: December 5, 1996.

Robert C. Livingston,

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

[FR Doc. 96–32549 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 884

[Docket No. 95N–0139]

Medical Devices; Reclassification and Exemption From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying scented or scented deodorized menstrual pads from class II into class I based on new information respecting such device. FDA is also exempting this device, and one already classified generic type of class I device, unscented menstrual pads, from the requirement of premarket notification, with limitations. FDA has determined that manufacturers' submissions of premarket notifications for these devices are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. These exemptions allow the agency to make better use of its resources and thus better serve the public.

DATES: Effective February 24, 1997. Beginning on February 24, 1997, all device manufacturers who have 510(k) submissions pending FDA review for devices falling within a generic category that is subject to this rule, will receive a letter stating that the device is exempt from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of July 28, 1995 (60 FR 38902), FDA issued a proposed rule to reclassify 112 generic types of class II devices into class I based on new information respecting such devices and to exempt the 112 generic types of devices, and 12 already classified generic types of class I devices, from the requirement of premarket notification, with limitations. Interested persons were given until October 11, 1995, to comment on the proposed rule.

In the Federal Register of January 16, 1996 (61 FR 1117), FDA issued a final rule reclassifying 111 of the 112 generic

types of class II devices included in the July 28, 1995, proposed rule into class I and exempting 111 of them, and 11 of the already classified generic types of class I devices from the requirement of premarket notification, with limitations. In the preamble to the final rule, the agency stated the following: (1) FDA was deferring action on scented or scented deodorized menstrual pads (§ 884.5425 (21 CFR 884.5425)) and unscented menstrual pads (§ 884.5435 (21 CFR 884.5435)) in order to review the comments more closely and to reevaluate whether the devices should be reclassified and/or exempted from the requirement of premarket notification, with limitations; (2) FDA was considering the comments requesting FDA to add 18 additional devices to the list of devices that the agency was reclassifying into class I and/or exempting from the requirement of premarket notification; (3) FDA was considering expanding the reclassification and exemption for the endoscope and accessories to include additional endoscope accessories; and (4) FDA would address all these comments in a future issue of the Federal Register.

During the comment period, FDA received three comments questioning the appropriateness of the proposed reclassification and exemption for scented or scented deodorized menstrual pads (§ 884.5425) and the proposed exemption for unscented menstrual pads (§ 884.5435).

After careful review of the comments and reconsideration of the appropriateness of the proposed reclassification and exemption for scented or scented deodorized menstrual pads (§ 884.5425) and the proposed exemption for unscented menstrual pads (§ 884.5435), the agency has decided to revise: (1) The limitation placed upon the proposed reclassification into class I; (2) the exemptions from the requirement of premarket notification; and (3) the proposed requirements for safety testing.

FDA will address the comments regarding the other devices included in the July 28, 1995, proposed rule in a future issue of the Federal Register.

Three comments questioned the appropriateness of the proposed reclassification and exemption for scented or scented deodorized menstrual pads (§ 884.5425) and the proposed exemption for unscented menstrual pads (§ 884.5435). All three comments requested that the ''made from cotton or rayon'' limitation placed upon the proposed reclassification into class I and the exemption from the requirement of premarket notification be eliminated or revised to provide for a wider range of materials that are currently in use. In addition, two of the comments said that the proposed requirements for safety testing were inappropriate and unnecessary.

The agency has decided to revise the limitation placed upon the reclassification and exemption for scented or scented deodorized menstrual pads (§ 884.5425) into class I and the exemption for unscented menstrual pads (§ 884.5435). FDA has concluded, based on new information that, when these devices are made of common cellulosic and synthetic material with an established safety profile, general controls will provide reasonable assurance of the safety and effectiveness of these devices. Finally, FDA has concluded that the exemption for class I scented or scented deodorized menstrual pads (§ 884.5425) and unscented menstrual pads (§ 884.5435) will be limited and would apply only to menstrual pads made of common cellulosic and synthetic material with an established safety profile. For the two devices for which exemptions are being granted, FDA has concluded that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule would reduce the regulatory burden for all manufacturers of menstrual pads covered by this rule, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director of the Center for Devices and Radiological Health, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 884.5425 is amended by revising paragraph (b) to read as follows:

§ 884.5425 Scented or scented deodorized menstrual pad.

* * * * *

(b) *Classification*. (1) Class I (general controls) for menstrual pads made of common cellulosic and synthetic material with an established safety profile. The devices subject to this paragraph (b)(1) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. This exemption does not include the intralabial pads and reusable menstrual pads.

(2) Class II (special controls) for scented or scented deodorized menstrual pads made of materials not described in paragraph (b)(1).

3. Section 884.5435 is amended by revising paragraph (b) to read as follows:

§ 884.5435 Unscented menstrual pad.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is made of common cellulosic and synthetic material with an established safety

profile. This exemption does not include the intralabial pads and reusable menstrual pads.

Dated: December 16, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–32550 Filed 12–23–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8700]

RIN 1545–AS30

Mark to Market for Dealers in Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations providing guidance to enable taxpayers to comply with the mark-to-market requirements applicable to dealers in securities. The Revenue Reconciliation Act of 1993 amended the applicable tax law. These regulations provide guidance to dealers in securities.

DATES: These final regulations are effective December 24, 1996, except paragraph (a) of § 1.475(c)–1T is removed effective December 24, 1996, and the remainder of § 1.475(c)–1T is removed effective January 23, 1997.

For dates of applicability, see § 1.475(e)–1.

FOR FURTHER INFORMATION CONTACT: Robert B. Williams at (202) 622–3960 or Jo Lynn Ricks at (202) 622–3920 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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 1545–1496. Responses to this collection of information are required for a taxpayer to obtain the benefit of an exemption from marking to market under section 475 for those securities (see § 1.475(b)–2) and for a consolidated group of taxpayers to obtain the benefit of treating inter-member transactions as customer transactions for purposes of the definition of dealer in securities (the intragroup-customer election, § 1.475(c)–1(a)(3)(iii)).

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 recordkeeper regarding § 1.475(b)–2 varies from .25 to 3 hours, depending on individual circumstances, with an estimated average of 1 hour. Section 1.475(b)–4 (formerly § 1.475(b)–2T), which permitted a taxpayer to add or remove certain identifications on or before January 31, 1994, does not impose a recordkeeping burden into the future. The estimated burden per respondent in making the intragroup-customer election in §§ 1.475(c)–1(a)(3)(iii) varies from .25 to 1 hour, depending on individual circumstances, with an estimated average of .5 hour.

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 under section 475 (relating to mark-to-market accounting for dealers in securities). Section 475 was added by section 13223 of the Revenue Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 481, and is effective for all taxable years ending on or after December 31, 1993.

On December 29, 1993, temporary regulations (TD 8505, 58 FR 68747) (hereinafter sometimes referred to as the temporary regulations) and cross-referenced proposed regulations (FI–72–93, 58 FR 68798) (hereinafter sometimes referred to as the 1993 proposed regulations) were published to furnish guidance on several issues, including the scope of exemptions from the mark-to-market requirements, certain transitional issues relating to the scope of exemptions, and the meaning of the statutory terms *security, dealer in securities,* and *held for investment.* Various comments were received regarding those regulations, and a hearing was held on April 12, 1994.

Additional regulations were proposed on January 4, 1995 (60 FR 397) (hereinafter sometimes referred to as the 1995 proposed regulations), and on June 20, 1996 (61 FR 31474) (hereinafter sometimes referred to as the 1996 proposed regulations). The 1995 and 1996 proposed regulations supplemented, and in a few cases revised, the 1993 proposed regulations. Hearings on the 1995 and 1996 proposed regulations were held on May 3, 1995, and October 15, 1996, respectively.

The final regulations in this document generally adopt the 1993 proposed regulations, as revised by the 1995 and 1996 proposed regulations, with certain changes reflecting comments that were received. These final regulations also adopt additional portions of the 1995 proposed regulations. The sections that are not adopted at this time remain proposed.

The provisions governing mark to market of debt instruments, which were proposed in January 1995, attracted substantial comment. The IRS and Treasury intend to finalize those regulations in a substantially revised form in response to those taxpayer comments.

Explanation of Provisions

Acquisition by a Dealer of a Security With a Substituted Basis

The final regulations adopt without change the provisions in the 1995 proposed regulations that provide rules for situations where a dealer in securities receives a security with a basis in its hands that is determined, in whole or in part, either by reference to the basis of the security in the hands of the transferor or by reference to other property held at any time by the dealer. In these cases, section 475(a) applies only to post-acquisition gain and loss with respect to the security. That is, section 475(a) applies only to changes in value of the security occurring after its acquisition. See section 475(b)(3).

The character of the mark-to-market gain or loss is determined as provided under section 475(d)(3). The character of pre-acquisition gain or loss (that is, the built-in gain or loss at the date the dealer acquires the security) and the time for taking that gain or loss into account are determined without regard to section 475. The fact that a security has a substituted basis in the dealer's hands does not affect the security's date of acquisition for purposes of

determining the timeliness of an identification under section 475(b).

Scope of Exemptions From Mark-to-Market Requirement

Section 475(b) exempts certain securities from mark-to-market accounting under section 475(a). Among the exempted securities are those held for investment and debt securities not held for sale. Section 1.475(b)–1(a) of the regulations, like the temporary rule that preceded it, provides that held for investment, as used in section 475(b)(1)(A), and not held for sale, as used in section 475(b)(1)(B), have the same meaning. The regulations provide that both terms refer to a security that is not held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. By providing that a security is held for investment (or not held for sale) if it is not held primarily for sale to customers in the ordinary course of a trade or business, the regulations adopt the concept of held for investment in section 1236(a). Thus, under these regulations, a dealer in securities may identify as held for investment a security that it holds primarily for sale to non-customers (for example, a trading security). The IRS and the Treasury believe that providing a single standard for purposes of sections 475 and 1236 is consistent with the purpose of section 475. These rules apply to taxable years ending on or after December 31, 1993.

The final regulations require a taxpayer that identifies a security as exempt from being marked to market to state (on its books and records) whether the security is, on the one hand, exempt as held for investment or not held for sale or, on the other hand, exempt because it is a hedge of an item not subject to mark to market. This regulation applies to identifications made on or after July 1, 1997.

The temporary and 1993 proposed regulations provide that stock in a 50-percent-controlled subsidiary, and interests in 50-percent-controlled partnerships and trusts, are deemed properly identified as held for investment and thus are excluded from mark-to-market accounting. The 1996 proposed regulations reproposed this rule with two changes. First, the IRS believed that the rationale for the rule applies equally to equity interests in most related persons and not just to persons controlled by the taxpayer. Second, after considering various comments received, the IRS proposed that this rule prohibiting marking a security to market should not apply if two requirements are met: (1) The security is actively traded on a national securities exchange or through an interdealer quotation system; and (2) the taxpayer who marks owns less than 5 percent of all shares or interests of the same class. Comments were requested as to whether it is appropriate to allow any equity interests in related parties to be marked to market, and, if so, whether the proposed limitations are the most appropriate ones.

After considering the comments received in response, the IRS and the Treasury have decided to adopt the provisions in the 1996 proposed regulations with certain modifications. First, the general threshold above which even actively traded stock in a related party may not be marked to market has been increased from 5% to 15%. The 15% limit, however, includes shares held both by the dealer and by certain related parties. Second, shares that a dealer acquires from a related party cannot be marked to market unless, after the time they were acquired, both one full business day has passed and there has been significant trading in the security involving persons who are not related to the taxpayer.

Section 475(b)(3) applies when a security has been exempt from marking to market and the exemption then ceases to apply. Thus, changes in a security's value that occur while section 475(a) does not apply are suspended. This rule has additional significance for certain members of consolidated groups because § 1.1502–13(f)(6) disallows certain losses recognized by members of consolidated groups on common parent stock if the loss is not taken into account pursuant to section 475(a).

The final regulations provide that, except as determined by the Commissioner, notional principal contracts and derivative securities described in section 475(c)(2) (D) or (E) that are held by a dealer in those securities are not eligible to be exempted from mark-to-market treatment as held for investment.

Under the temporary and 1993 proposed regulations, however, an analogous barrier to exemption from mark-to-market treatment did not apply if the taxpayer established unambiguously that the security was acquired other than in the taxpayer's capacity as a dealer in such securities. It was anticipated that this exception would apply only in rare instances. Commenters suggested an easing of the standard for establishing that a security was acquired other than in the taxpayer's capacity as a dealer in such securities.

These suggestions are specifically rejected in the final regulations set forth in § 1.475(b)–1(c). Instead, as described above, to avoid uncertainty and ambiguity, the rule barring exemption from mark-to-market treatment for certain notional principal contracts and derivative securities applies unless the Commissioner explicitly determines otherwise. For securities acquired or entered into before January 23, 1997, however, the final regulations continue the rule found in the temporary regulations.

Commenters suggested that changes are needed to allow taxpayers that are dealers in notional principal contracts and derivative securities (described in section 475(c)(2) (D) or (E)) to identify as exempt from mark-to-market treatment a notional principal contract or derivative that is held as a hedge of a position that is not marked to market.

No change was made to the temporary regulations to reflect these comments because none was necessary. Section 1.475(b)–1(c) limits exemptions only under section 475(b)(1)(A) (concerning securities held for investment). Section 1.475(b)–1(c) does not limit exemptions under section 475(b)(1)(C) (concerning securities that are hedges of non-mark-to-market positions). Although the flush language at the end of section 475(b)(1) authorizes analogous regulatory limitations on exemption under section 475(b)(1)(C), as of this time, no such regulation has been issued or proposed. Accordingly, if a dealer in notional principal contracts or derivatives enters into a notional principal contract or derivative as a hedge of a position that is not marked to market, the dealer may properly identify it under section 475(b)(1)(C) as exempt from mark-to-market treatment.

In response to comments, the final regulations expand the securities that a taxpayer may identify under section 475(b)(1)(C) as exempt from mark-to-market accounting. Under the final regulations, a taxpayer can identify as exempt from mark-to-market treatment under section 475(b)(1)(C) a security that hedges a position of another member of the taxpayer's consolidated group and meets the following three requirements: the security is a hedging transaction within the meaning of § 1.1221–2(b); the security is timely identified as a hedging transaction under § 1.1221–2(e) (including satisfaction of the requirement that the hedged item be identified); and the security hedges a position that is not marked to market under section 475(a). Although identification of the hedged item is not required under § 1.1221–2 until some time after the day the hedging transaction is entered into, the identification of the hedge under section 475(b)(2) must still be made no later

than the close of the day on which the hedge is acquired, originated, or entered into.

Permitting taxpayers to identify these securities as exempt from mark-to-market accounting is consistent with the single-entity approach of the consolidated group hedging regulations under § 1.1221–2(d)(1). As a result of the identification, the timing of the gain or loss on the hedge is matched with the timing of the gain or loss on the hedged item without forcing taxpayers to use back-to-back hedges and the separate-entity election under § 1.1221–2(d)(2). This rule is effective for hedges entered into on or after January 23, 1997.

Exemptions—Transitional Issues

The final regulations adopt without substantive change a number of transitional rules relating to various exemption and identification issues. These transitional rules, now found in § 1.475(b)–4, were contained in § 1.475(b)–2T of the temporary regulations. A more complete description of these provisions may be found in the preamble of TD 8505 at 58 FR 68747 (1994–1 C.B. 152).

Dealer in Securities—The Dealer-Customer Relationship

The final regulations retain the rules in the 1995 proposed regulations concerning the dealer-customer relationship. Thus, the final regulations provide that determination of whether a transaction is with a customer is based on all of the facts and circumstances. Further, under section 475(c)(1)(B), the term *dealer in securities* includes a taxpayer that, in the ordinary course of its trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B).

The final regulations retain the general rule in the 1996 proposed regulations that transactions with related persons may be transactions with customers for purposes of section 475. In response to comments, however, in § 1.475(c)–1(a)(3) the final regulations provide both a special rule for members of a consolidated group and an election for the rule not to apply. If the special rule applies, then, solely for purposes of determining whether the taxpayer meets the definition of a dealer in securities, a taxpayer's transactions with other members of its consolidated group are not transactions with customers. Thus, a member whose only customers are other members of its consolidated group generally is not a dealer in securities. Treating intragroup transactions as noncustomer transactions is consistent with the single-entity approach of §§ 1.1221–2(d)(1) and 1.1502–13. (The IRS expects to provide additional guidance on whether there are any circumstances in which the special rule applies for other purposes, such as whether a security may be exempted from mark-to-market treatment because it is not held for sale to customers.)

A consolidated group may elect not to apply the special rule. If a group has made this intragroup customer election, a member of a group may be a dealer in securities even if its only customer transactions are with other members of its consolidated group. Once made, the election continues for all subsequent taxable years and may be revoked only with the consent of the Commissioner.

These final regulations significantly alter the proposed default rule for intragroup transactions. Under the proposed regulations, a taxpayer's intragroup transactions would have been customer transactions for purposes of section 475. Because the final regulations reverse this rule (making noncustomer status the default and requiring an affirmative election to consider intragroup transactions in applying the dealer definition), the rules for intragroup transactions are effective for taxable years beginning on or after December 24, 1997. (The general rule for related party transactions other than intragroup transactions is effective for taxable years beginning on or after June 20, 1996.) The IRS will soon publish guidance to assist taxpayers who may have to change their methods of accounting because their status as a dealer changes as a result of the application of § 1.475(c)–1(a)(3).

For prior years, the Service generally will not challenge a taxpayer's treatment of intragroup transactions as customer or noncustomer transactions, provided the taxpayer had a reasonable basis for its treatment of the transactions and consistently applied that basis from year to year. In this regard, a taxpayer does not fail this consistency requirement solely because it changed its treatment of its intragroup transactions in order: (1) to avail itself of the separate-entity election under the consolidated group hedging regulations, or (2) to coincide with the expected effective date of either Notice 96–12 (1996–10 I.R.B. 29) or the related party rules in the 1996 proposed regulations. (If a taxpayer wishes to change its treatment of prior open years to be consistent with its status during the first year that § 1.475(c)–1(a)(3) applies, see § 301.9100–1T(a).) Dealer in securities—sellers of nonfinancial goods and services

In general, the final regulations exclude from dealer status any taxpayer that would not be a dealer in securities but for its purchases and sales of debt instruments that, at the time of purchase or sale, are customer debt with respect to the taxpayer or another member of the taxpayer's consolidated group. A debt instrument is customer debt at a particular time with respect to a person if three conditions are met: (1) The person's principal activity is selling nonfinancial goods or providing nonfinancial services; (2) the debt instrument was issued by a purchaser of the goods or services at the time of purchase of those items in order to finance their purchase; and (3) at all times after the debt instrument was issued, it has been owned by the person who sold the goods or services or by a member of its consolidated group. If, however, a taxpayer is a dealer in securities despite this provision, customer debt remains a security in the taxpayer's hands and must be marked to market unless exempted by another rule.

The temporary regulations contain a narrower provision—that a seller of nonfinancial goods or services is not a dealer in securities for purposes of section 475 solely by virtue of extending credit to its nonfinancial customers (even if it sells the debt instruments so acquired). In response to comments, the final regulations extend this principle to accommodate consolidated groups that include both a seller of nonfinancial goods or services and a captive finance subsidiary.

The rule in the final regulations exempting from dealer status most captive finance subsidiaries of retailers and other sellers of nonfinancial goods and services applies to all taxable years ending on or after December 31, 1993, unless the taxpayer elects for the exemption not to apply. If the election is made, it continues for all subsequent taxable years and may be revoked only with the consent of the Commissioner.

Under the final regulations, there are two additional circumstances in which this exemption from dealer status does not apply. The first is when, for purposes of the inventory accounting rules under section 471, the taxpayer accounts for any security (as defined in section 475(c)(2)) as inventory. The second circumstance is when the taxpayer is not itself the seller of nonfinancial goods and services and the customer debt is accounted for by the taxpayer or by a member of its consolidated group under a method that permits either the recognition of unrealized gains or losses or deductions for additions to a reserve for bad debts. This rule does not affect the seller of nonfinancial goods and services itself

but is designed to prevent groups from having one captive finance subsidiary that is treated as a nondealer and another member of the group that is a dealer or a financial institution that accounts for customer debt under a method that takes into account mark-to-market gains or losses or reserve deductions.

Dealer in Securities—The Negligible Sales Exemption

Under the final regulations, in general, if a taxpayer purchases securities from customers (including originating loans in the ordinary course of the taxpayer's trade or business of originating loans) but engages in no more than negligible sales of the securities so acquired, the purchases do not cause the taxpayer to be a dealer in securities. This negligible sales rule does not apply if the taxpayer so elects or accounts for any security as inventory for purposes of section 471. A taxpayer that would be a dealer in securities but for the negligible sales rule elects to be a dealer simply by filing a federal income tax return reflecting the application of section 475(a) in computing its taxable income. The final regulations differ from the proposed regulations by explicitly making the negligible sales rule elective.

In response to comments, the final regulations clarify the test for determining negligible sales of debt instruments acquired from customers. Under this rule, a taxpayer has engaged in no more than negligible sales of the debt instruments (or portions of the debt instruments) that it regularly purchases from customers in the ordinary course of its business if, and only if, during the year, either (1) it sells all or part of fewer than 60 debt instruments (regardless how acquired), or (2) the total adjusted basis of the debt instruments or portions of debt instruments (regardless how acquired) that it sells is less than 5 percent of the total basis, immediately after acquisition, of the debt instruments that it acquires during the year.

This special test replaces the examples in the temporary regulations illustrating the negligible sales provision. Some commenters noted that § 1.475(c)–1T(b)(2) *Example 1* of the temporary regulations is ambiguous because it refers to a taxpayer that both ''retains almost all of the loans that it acquires'' and ''sells fewer than 60 loans.'' The final regulations eliminate the ambiguity by making no reference to how many loans are retained.

In response to comments, the final regulations contain two special rules for applying the negligible sales test to members of a consolidated group. Under the first rule, if a taxpayer is a member of a consolidated group that has made the intragroup-customer election, described above, it must apply the negligible sales test for debt instruments by taking into account all of its sales of debt instruments to other group members. On the other hand, if the taxpayer is a member of a consolidated group that has not made the intragroup-customer election, the negligible sales test is satisfied if either of two criteria is met: first, if the taxpayer satisfies the negligible sales test, taking into account all sales of debt instruments including sales to other group members; or second, if the taxpayer's consolidated group would satisfy the test if it were a single corporation and the members of the group were divisions of that corporation. This group-wide approach to the negligible sales test is consistent with the single-entity approach of §§ 1.1221–2(d)(1) and 1.1502–13.

Under a new rule in the final regulations, if a debt instrument is qualitatively different from all of the debt instruments that the taxpayer purchases from customers, a sale of that debt instrument does not count as one of the 60 instruments sold, and that debt instrument is not included in either the numerator or the denominator under the 5% test. The regulations contain an example that illustrates this principle.

The rules regarding the negligible sales exemption are generally effective for taxable years ending on or after December 31, 1993. The special rules for members of a consolidated group, however, are effective for taxable years beginning on or after January 23, 1997. Further, a taxpayer may rely on the rules set out in § 1.475(c)–1T(b) (as contained in 26 CFR part 1 revised April 1, 1996) for taxable years beginning before January 23, 1997, provided the taxpayer applies that paragraph reasonably and consistently.

Dealer in Securities—Issuance of Life Insurance Products

The final regulations adopt without change a provision in the 1995 proposed regulations to clarify that a life insurance company does not become a dealer in securities solely by selling annuity, endowment, or life insurance contracts to its customers.

Under the final regulations and the December 28, 1993, proposed regulations, a contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract is deemed to have been identified as held for investment, and is therefore not marked to market by the policy holder. This rule was necessary because variable life and annuity products fall within the literal language of section 475(c)(2)(E). Because many life insurance companies sell these insurance contracts to their customers, some commenters on the 1993 proposal had asked whether these life insurance companies were dealers in securities. There is no indication that Congress intended for a life insurance company that was not otherwise a dealer in securities to be characterized as a dealer merely because it sells life insurance policies to its customers.

Several commenters requested that certain activities not cause dealer status under section 475 because those activities, although described by section 475, traditionally had not been considered dealer activities. Those comments were generally rejected. Congress determined that section 475 would bestow dealer status on taxpayers who had not been thought of as dealers prior to the enactment of section 475. Thus, the final regulations do not adopt proposals that making and selling policy loans should not cause an insurance company to be a dealer in securities and that sales of student loans or auto loans and sales of loan participations should not be taken into account in determining whether a taxpayer is a dealer in securities. Of course, if a lead bank never owns a particular portion of a loan for tax purposes (because some other participating lender always had the economic benefits and burdens of that portion), then the lead bank cannot sell that portion to that other participating lender. Thus, the lead bank is not a dealer in securities by reason of these participations.

Definition of Security

Under the final regulations, certain items are not securities within the meaning of section 475(c)(2). These items include both debt issued by the taxpayer and any security (determined without regard to this provision) if section 1032 bars recognition of gain or loss by the taxpayer with respect to that security.

The final regulations adopt without change the provisions in the 1995 proposed regulations that exclude from the definition of security all REMIC residual interests acquired on or after January 4, 1995. This rule was adopted because applying section 475 to residual interests would undermine the Congressional design for taxing REMIC income, including the intended operation of sections 860C and 860E (relating to excess inclusions).

Unlike the 1995 proposed regulations, the temporary regulations excluded only some residual interests from the definition of security. Specifically, the

temporary regulations excluded only negative value residual interests (NVRIs) in a REMIC and other arrangements that are determined to have substantially the same economic effect as NVRIs. Under the final regulations, this exclusion continues to apply to NVRIs acquired before January 4, 1995.

One commenter acknowledged the tension between mark-to-market accounting and the excess inclusion rules, but proposed to address that problem in another way. Under the commenter's proposal, a dealer would be permitted to mark to market a residual interest, but any loss resulting from the mark would be taken into account only to the extent that the loss exceeded the amount of excess inclusion with respect to that residual interest for the taxable year.

The IRS and Treasury believe that this comment does not address the tension between mark-to-market accounting and section 860C. Apart from the excess inclusion rules, the REMIC provisions contemplate income inclusions (and corresponding basis increases) that are not necessarily associated with increases in the value of the residual interest. Under the commenter's proposal, a dealer could claim a loss by marking to market a residual interest where the increased basis in the interest resulted from an allocation of REMIC income that was unaccompanied by an increase in value. Thus, the dealer could avoid its allocable share of REMIC income and thereby frustrate the taxing regime contemplated for residual interests.

Moreover, adopting this comment would require additional, complex rules, and the burden of administering those rules would not be justified by the potential benefit. For example, under the proposal, a taxpayer would have one basis in a residual interest for purposes of section 475 and a different basis in the residual interest for purposes of section 860C(d). Also, adopting the proposal would require rules to coordinate losses that are limited under section 475 with losses that are limited under section 860C(e)(2).

Some commenters suggested that certain types of assets should not be marked to market because they may be difficult to value. Under section 475, however, ease of valuation is not relevant in determining whether a security is required to be marked to market.

Character of Gain or Loss

The regulations adopt without change the proposed provision to clarify that marking to market a security that is not held in connection with a taxpayer's activities as a dealer in securities does not affect the character of gain or loss from that security.

In addition, under a new provision in the final regulations that responds to comments from taxpayers, if a dealer in certain notional principal contracts or derivative securities (described in section 475(c)(2) (D) or (E)) marks those securities to market because it is precluded from identifying them as exempt from mark-to-market treatment on the grounds that they are held for investment, the dealer recognizes ordinary gain or loss with respect to those securities.

Effective Dates

These final regulations generally apply to taxable years ending on or after December 31, 1993, except as otherwise noted.

Miscellaneous

Some of the 1993 and 1995 proposed regulations are reordered.

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) does not apply to these regulations. The collection of information required by § 1.475(b)–2 was contained in a notice of proposed rulemaking preceding these regulations that was issued prior to March 29, 1996. Moreover, it is hereby certified that the collection of information required by § 1.475(c)–1 of these regulations (regarding the intragroup customer election) does not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the election is generally attractive only to an affiliated group of taxpayers that files a consolidated return (generally large businesses), that has elected separate entity treatment under § 1.1221–2, and that has an in-house hedge center or securities dealer which deals solely with other group members and which uses mark-to-market accounting for book purposes. Thus, the election is likely to be made only by, and the collection of information applies only to, a very small number of large taxpayers. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) 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 authors of these regulations are Robert B. Williams and Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. 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 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§ 1.475(b)–1T, 1.475(b)–2T, 1.475(c)–1T, 1.475(c)–2T, 1.475(d)–1T, and 1.475(e)–1T and adding entries in numerical order to read as follows:

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

Section 1.475(a)–3 also issued under 26 U.S.C. 475(e).

Section 1.475(b)–1 also issued under 26 U.S.C. 475(b)(4) and 26 U.S.C. 475(e).

Section 1.475(b)–2 also issued under 26 U.S.C. 475(b)(2) and 26 U.S.C. 475(e).

Section 1.475(b)–4 also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(e), and 26 U.S.C. 6001.

Section 1.475(c)–1 also issued under 26 U.S.C. 475(e).

Section 1.475(c)–2 also issued under 26 U.S.C. 475(e) and 26 U.S.C. 860G(e).

Section 1.475(d)–1 also issued under 26 U.S.C. 475(e).

Section 1.475(e)–1 also issued under 26 U.S.C. 475(e). * * *

§ 1.475(b)–1T, 1.475(b)–2T, 1.475(c)–1T, 1.475(c)–2T, 1.475(d)–1T, and 1.475(e)–1T [Removed]

Par. 2. Sections 1.475(b)–1T, 1.475(b)–2T, 1.475(c)–2T, 1.475(d)–1T, and 1.475(e)–1T are removed.

Par. 2a. Paragraph (a) of § 1.475(c)–1T is removed effective December 24, 1996, and the remainder of § 1.475(c)–1T is removed January 23, 1997.

Par. 3. Sections 1.475–0, 1.475(a)–3, 1.475(b)–1, 1.475(b)–(2), 1.475(b)–4, 1.475(c)–1, 1.475(c)–2, 1.475(d)–1, and 1.475(e)–1 are added to read as follows:

§ 1.475–0 Table of contents.

This section lists the major captions in §§ 1.475(a)–3, 1.475(b)–1, 1.475(b)–2, 1.475(b)–4, 1.475(c)–1, 1.475(c)–2, 1.475(d)–1, and 1.475(e)–1.

§ 1.475(a)–1 [Reserved]

§ 1.475(a)–2 [Reserved]

§ 1.475(a)–3 Acquisition by a dealer of a security with a substituted basis.

(a) Scope.
(b) Rules.

§ 1.475(b)–1 Scope of exemptions from mark-to-market requirement.

(a) Securities held for investment or not held for sale.
(b) Securities deemed identified as held for investment.
(1) In general.
(2) Relationships.
(i) General rule.
(ii) Attribution.
(iii) Trusts treated as partnerships.
(3) Securities traded on certain established financial markets.
(4) Changes in status.
(i) Onset of prohibition against marking.
(ii) Termination of prohibition against marking.
(iii) Examples.
(c) Securities deemed not held for investment; dealers in notional principal contracts and derivatives.
(d) Special rule for hedges of another member's risk.
(e) Transitional rules.
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§ 1.475(a)–3 Acquisition by a dealer of a security with a substituted basis.

(a) *Scope.* This section applies if—

(1) A dealer in securities acquires a security that is subject to section 475(a) and the dealer's basis in the security is determined, in whole or in part, by reference to the basis of that security in the hands of the person from whom the security was acquired; or

(2) A dealer in securities acquires a security that is subject to section 475(a) and the dealer's basis in the security is determined, in whole or in part, by reference to other property held at any time by the dealer.

(b) *Rules.* If this section applies to a security—

(1) Section 475(a) applies only to changes in value of the security occurring after the acquisition; and

(2) Any built-in gain or loss with respect to the security (based on the difference between the fair market value of the security on the date the dealer acquired it and its basis to the dealer on that date) is taken into account at the time, and has the character, provided by the sections of the Internal Revenue Code that would apply to the built-in gain or loss if section 475(a) did not apply to the security.

§ 1.475(b)–1 Scope of exemptions from mark-to-market requirement.

(a) *Securities held for investment or not held for sale.* Except as otherwise provided by this section and subject to the identification requirements of section 475(b)(2), a security is held for investment (within the meaning of section 475(b)(1)(A)) or not held for sale (within the meaning of section 475(b)(1)(B)) if it is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(b) *Securities deemed identified as held for investment*—(1) *In general.* The following items held by a dealer in securities are per se held for investment within the meaning of section 475(b)(1)(A) and are deemed to be properly identified as such for purposes of section 475(b)(2)—

(i) Except as provided in paragraph (b)(3) of this section, stock in a corporation, or a partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust, to which the taxpayer has a relationship specified in paragraph (b)(2) of this section; or

(ii) A contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract (see sections 72, 817, and 7702).

(2) *Relationships*—(i) *General rule.* The relationships specified in this paragraph (b)(2) are—

(A) Those described in section 267(b)(2), (3), (10), (11), or (12); or

(B) Those described in section 707(b)(1)(A) or (B).

(ii) *Attribution.* The relationships described in paragraph (b)(2)(i) of this

section are determined taking into account sections 267(c) and 707(b)(3), as appropriate.

(iii) *Trusts treated as partnerships.* For purposes of this paragraph (b)(2), the phrase partnership or trust is substituted for the word *partnership* in sections 707(b) (1) and (3), and a reference to beneficial ownership interest is added to each reference to capital interest or profits interest in those sections.

(3) *Securities traded on certain established financial markets.* Paragraph (b)(1)(i) of this section does not apply to a security if—

(i) The security is actively traded within the meaning of § 1.1092(d)–1(a) taking into account only established financial markets identified in § 1.1092(d)–1(b)(1) (i) or (ii) (describing national securities exchanges and interdealer quotation systems);

(ii) Less than 15 percent of all of the outstanding shares or interests in the same class are held by the taxpayer and all persons having a relationship to the taxpayer that is specified in paragraph (b)(2) of this section; and

(iii) If the security was acquired (e.g., on original issue) from a person having a relationship to the taxpayer that is specified in paragraph (b)(2) of this section, then, after the time the security was acquired—

(A) At least one full business day has passed; and

(B) There has been significant trading involving persons not having a relationship to the taxpayer that is specified in paragraph (b)(2) of this section.

(4) *Changes in status*—(i) *Onset of prohibition against marking*—(A) Once paragraph (b)(1) of this section begins to apply to the security and for so long as it continues to apply, section 475(a) does not apply to the security in the hands of the taxpayer.

(B) If a security has not been timely identified under section 475(b)(2) and, after the last day on which such an identification would have been timely, paragraph (b)(1) of this section begins to apply to the security, then the dealer must recognize gain or loss on the security as if it were sold for its fair market value as of the close of business of the last day before paragraph (b)(1) of this section begins to apply to the security, and gain or loss is taken into account at that time.

(ii) *Termination of prohibition against marking.* If a taxpayer did not timely identify a security under section 475(b)(2), and paragraph (b)(1) of this section applies to the security on the last day on which such an identification would have been timely but thereafter ceases to apply—

(A) An identification of the security under section 475(b)(2) is timely if made on or before the close of the day paragraph (b)(1) of this section ceases to apply; and

(B) Unless the taxpayer timely identifies the security under section 475(b)(2) (taking into account the additional time for identification that is provided by paragraph (b)(4)(ii)(A) of this section), section 475(a) applies to changes in value of the security after the cessation in the same manner as under section 475(b)(3).

(iii) *Examples.* These examples illustrate this paragraph (b)(4):

Example 1. *Onset of prohibition against marking*—(A) *Facts.* Corporation *H* owns 75 percent of the stock of corporation *D,* a dealer in securities within the meaning of section 475(c)(1). On December 1, 1995, *D* acquired less than half of the stock in corporation *X*. *D* did not identify the stock for purposes of section 475(b)(2). On July 17, 1996, *H* acquired from other persons 70 percent of the stock of *X*. As a result, *D* and *X* became related within the meaning of paragraph (b)(2)(i) of this section. The stock of *X* is not described in paragraph (b)(3) of this section (concerning some securities traded on certain established financial markets).

(B) *Holding.* Under paragraph (b)(4)(i) of this section, *D* recognizes gain or loss on its *X* stock as if the stock were sold for its fair market value at the close of business on July 16, 1996, and the gain or loss is taken into account at that time. As with any application of section 475(a), proper adjustment is made in the amount of any gain or loss subsequently realized. After July 16, 1996, section 475(a) does not apply to D's *X* stock while paragraph (b)(1)(i) of this section (concerning the relationship between *X* and *D*) continues to apply.

Example 2. Termination of prohibition against marking; retained securities identified as held for investment—(A) *Facts.* On July 1, 1996, corporation *H* owned 60 percent of the stock of corporation *Y* and all of the stock of corporation *D,* a dealer in securities within the meaning of section 475(c)(1). Thus, *D* and *Y* are related within the meaning of paragraph (b)(2)(i) of this section. Also on July 1, 1996, *D* acquired, as an investment, 10 percent of the stock of *Y*. The stock of *Y* is not described in paragraph (b)(3) of this section (concerning some securities traded on certain established financial markets). When *D* acquired its shares of *Y* stock, it did not identify them for purposes of section 475(b)(2). On December 24, 1996, *D* identified its shares of *Y* stock as held for investment under section 475(b)(2). On December 30, 1996, *H* sold all of its shares of stock in *Y* to an unrelated party. As a result, *D* and *Y* ceased to be related within the meaning of paragraph (b)(2)(i) of this section.

(B) *Holding.* Under paragraph (b)(4)(ii)(A) of this section, identification of the *Y* shares is timely if done on or before the close of December 30, 1996. Because *D* timely identified its *Y* shares under section 475(b)(2), it continues after December 30, 1996, to refrain from marking to market its *Y* stock.

Example 3. Termination of prohibition against marking; retained securities not identified as held for investment— (A) *Facts.* The facts are the same as in *Example 2* above, except that *D* did not identify its stock in *Y* for purposes of section 475(b)(2) on or before December 30, 1996. Thus, *D* did not timely identify these securities under section 475(b)(2) (taking into account the additional time for identification provided in paragraph (b)(4)(ii)(A) of this section).

(B) *Holding.* Under paragraph (b)(4)(ii)(B) of this section, section 475(a) applies to changes in value of *D*'s *Y* stock after December 30, 1996, in the same manner as under section 475(b)(3).

Thus, any appreciation or depreciation that occurred while the securities were prohibited from being marked to market is suspended. Further, section 475(a) applies only to those changes occurring after December 30, 1996.

Example 4. Acquisition of actively traded stock from related party—(A) *Facts.* Corporation *P* is the parent of a consolidated group whose taxable year is the calendar year, and corporation *M*, a member of that group, is a dealer in securities within the meaning of section 475(c)(1). Corporation *M* regularly acts as a market maker with respect to common and preferred stock of corporation *P*. Corporation *P* has outstanding 2,000,000 shares of series *X* preferred stock, which are traded on a national securities exchange. During the business day on December 29, 1997, corporation *P* sold 100,000 shares of series *X* preferred stock to corporation *M* for $100 per share. Subsequently, also on December 29, 1997, persons not related to corporation *M* engaged in significant trading of the series *X* preferred stock. At the close of business on December 30, 1997, the fair market value of series *X* stock was $99 per share. At the close of business on December 31, 1997, the fair market value of series *X* stock was $98.50 per share. Corporation *M* sold the series *X* stock on the exchange on January 2, 1998. At all relevant times, corporation *M* and all persons related to *M* owned less than 15% of the outstanding series *X* preferred stock.

(B) *Holding.* The 100,000 shares of series *X* preferred stock held by corporation *M* are not subject to mark-to-market treatment under section 475(a) on December 29, 1997, because at that time the stock was held for less than one full business day and is therefore treated as properly identified as held for investment. At the close of business on December 30, 1997, that prohibition on marking ceases to apply, and section 475(b)(3) begins to apply. The built-in loss is suspended, and subsequent appreciation and depreciation are subject to section 475(a). Accordingly, when corporation *M* marks the series *X* stock to market at the close of business on December 31, 1997, under section 475(a) it recognizes and takes into account a loss of $.50 per share. Under section 475(b)(3), when corporation *M* sells the series *X* stock on January 2, 1998, it takes into account the suspended loss, that is, the difference between the $100 per share it paid

corporation *P* for that stock and the $99-per-share fair market value when section 475(b)(1) ceased to be applied to the stock. No deduction, however, is allowed for that loss. (See § 1.1502–13(f)(6), under which no deduction is allowed to a member of a consolidated group for a loss with respect to a share of stock of the parent of that consolidated group, if the member does not take the gain or loss into account pursuant to section 475(a).)

(c) *Securities deemed not held for investment; dealers in notional principal contracts and derivatives*—(1) Except as otherwise determined by the Commissioner in a revenue ruling, revenue procedure, or letter ruling, section 475(b)(1)(A) (exempting from mark-to-market accounting certain securities that are held for investment) does not apply to a security if—

(i) The security is described in section 475(c)(2) (D) or (E) (describing certain notional principal contracts and derivative securities); and

(ii) The taxpayer is a dealer in such securities.

(2) See § 1.475(d)–1(b) for a rule concerning the character of gain or loss on securities described in this paragraph (c).

(d) *Special rule for hedges of another member's risk.* A taxpayer may identify under section 475(b)(1)(C) (exempting certain hedges from mark-to-market accounting) a security that hedges a position of another member of the taxpayer's consolidated group if the security meets the following requirements—

(1) The security is a hedging transaction within the meaning of § 1.1221–2(b);

(2) The security is timely identified as a hedging transaction under § 1.1221–2(e) (including identification of the hedged item); and

(3) The security hedges a position that is not marked to market under section 475(a).

(e) *Transitional rules*—(1) *Stock, partnership, and beneficial ownership interests in certain controlled corporations, partnerships, and trusts before January 23, 1997*—

(i) *In general.* The following items held by a dealer in securities are per se held for investment within the meaning of section 475(b)(1)(A) and are deemed to be properly identified as such for purposes of section 475(b)(2)—

(A) Stock in a corporation that the taxpayer controls (within the meaning of paragraph (e)(1)(ii) of this section); or

(B) A partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust that the taxpayer controls (within the meaning of paragraph (e)(1)(ii) of this section).

(ii) *Control defined.* Control means the ownership, directly or indirectly through persons described in section 267(b) (taking into account section 267(c)), of—

(A) 50 percent or more of the total combined voting power of all classes of stock entitled to vote; or

(B) 50 percent or more of the capital interest, the profits interest, or the beneficial ownership interest in the widely held or publicly traded partnership or trust.

(iii) *Applicability.* The rules of this paragraph (e)(1) apply only before January 23, 1997.

(2) *Dealers in notional principal contracts and derivatives acquired before January 23, 1997*—

(i) *General rule.* Section 475(b)(1)(A) (exempting certain securities from mark-to-market accounting) does not apply to a security if—

(A) The security is described in section 475(c)(2) (D) or (E) (describing certain notional principal contracts and derivative securities); and

(B) The taxpayer is a dealer in such securities.

(ii) *Exception for securities not acquired in dealer capacity.* This paragraph (e)(2) does not apply if the taxpayer establishes unambiguously that the security was not acquired in the taxpayer's capacity as a dealer in such securities.

(iii) *Applicability.* The rules of paragraph (e)(2) apply only to securities acquired before January 23, 1997.

§ 1.475(b)–2 Exemptions—identification requirements.

(a) *Identification of the basis for exemption.* An identification of a security as exempt from mark to market does not satisfy section 475(b)(2) if it fails to state whether the security is described in—

(1) Either of the first two subparagraphs of section 475(b)(1) (identifying a security as held for investment or not held for sale); or

(2) The third subparagraph thereof (identifying a security as a hedge).

(b) *Time for identifying a security with a substituted basis.* For purposes of determining the timeliness of an identification under section 475(b)(2), the date that a dealer acquires a security is not affected by whether the dealer's basis in the security is determined, in whole or in part, either by reference to the basis of the security in the hands of the person from whom the security was acquired or by reference to other property held at any time by the dealer. See § 1.475(a)–3 for rules governing how the dealer accounts for such a security if this identification is not made.

(c) *Integrated transactions under § 1.1275–6*—(1) *Definitions.* The following terms are used in this paragraph (c) with the meanings that are given to them by § 1.1275–6: integrated transaction, legging into, legging out, qualifying debt instrument, § 1.1275–6 hedge, and synthetic debt instrument.

(2) *Synthetic debt held by a taxpayer as a result of legging in.* If a taxpayer is treated as the holder of a synthetic debt instrument as the result of legging into an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the synthetic debt instrument is treated as having the same acquisition date as the qualifying debt instrument. A pre-leg-in identification of the qualifying debt instrument under section 475(b)(2) applies to the integrated transaction as well.

(3) *Securities held after legging out.* If a taxpayer legs out of an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the qualifying debt instrument, or the § 1.1275–6 hedge, that remains in the taxpayer's hands is generally treated as having been acquired, originated, or entered into, as the case may be, immediately after the leg-out. If any loss or deduction determined under § 1.1275–6(d)(2)(ii)(B) is disallowed by § 1.1275–6(d)(2)(ii)(D) (which disallows deductions when a taxpayer legs out of an integrated transaction within 30 days of legging in), then, for purposes of this section and section 475(b)(2), the qualifying debt instrument that remains in the taxpayer's hands is treated as having been acquired on the same date that the synthetic debt instrument was treated as having been acquired.

§ 1.475(b)–4 Exemptions—transitional issues.

(a) *Transitional identification*—(1) *Certain securities previously identified under section 1236.* If, as of the close of the last taxable year ending before December 31, 1993, a security was identified under section 1236 as a security held for investment, the security is treated as being identified as held for investment for purposes of section 475(b).

(2) *Consistency requirement for other securities.* In the case of a security (including a security described in section 475(c)(2)(F)) that is not described in paragraph (a)(1) of this section and that was held by the taxpayer as of the close of the last taxable year ending before December 31, 1993, the security is treated as having been properly identified under section 475(b)(2) or 475(c)(2)(F)(iii) if the

information contained in the dealer's books and records as of the close of that year supports the identification. If there is any ambiguity in those records, the taxpayer must, no later than January 31, 1994, place in its records a statement resolving this ambiguity and indicating unambiguously which securities are to be treated as properly identified. Any information that supports treating a security as having been properly identified under section 475(b)(2) or (c)(2)(F)(iii) must be applied consistently from one security to another.

(b) *Corrections on or before January 31, 1994*—(1) *Purpose.* This paragraph (b) allows a taxpayer to add or remove certain identifications covered by § 1.475(b)–1.

(2) *To conform to § 1.475(b)–1(a)*—(i) *Added identifications.* To the extent permitted by paragraph (b)(2)(ii) of this section, a taxpayer may identify as being described in section 475(b)(1) (A) or (B)—

(A) A security that was held for immediate sale but was not held primarily for sale to customers in the ordinary course of the taxpayer's trade or business (for example, a trading security); or

(B) An evidence of indebtedness that was not held for sale to customers in the ordinary course of the taxpayer's trade or business and that the taxpayer intended to hold for less than one year.

(ii) *Limitations.* An identification described in paragraph (b)(2)(i) of this section is permitted only if—

(A) Prior to December 28, 1993, the taxpayer did not identify as being described in section 475(b)(1) (A) or (B) any of the securities described in paragraph (b)(2)(i) of this section;

(B) The taxpayer identifies every security described in paragraph (b)(2)(i) of this section for which a timely identification of the security under section 475(b)(2) cannot be made after the date on which the taxpayer makes these added identifications; and

(C) The identification is made on or before January 31, 1994.

(3) *To conform to § 1.475(b)–1(c).* On or before January 31, 1994, a taxpayer described in § 1.475(b)–1(e)(2)(i)(B) may remove an identification under section 475(b)(1)(A) of a security described in § 1.475(b)–1(e)(2)(i)(A).

(c) *Effect of corrections.* An identification added under paragraph (a)(2) or (b)(2) of this section is timely for purposes of section 475(b)(2) or (c)(2)(F)(iii). An identification removed under paragraph (a)(2) or (b)(3) of this section does not subject the taxpayer to the provisions of section 475(d)(2).

§ 1.475(c)–1 Definitions—dealer in securities.

(a) *Dealer-customer relationship.* Whether a taxpayer is transacting business with customers is determined on the basis of all of the facts and circumstances.

(1) [Reserved].

(2) *Transactions described in section 475(c)(1)(B)*—(i) *In general.* For purposes of section 475(c)(1)(B), the term *dealer in securities* includes, but is not limited to, a taxpayer that, in the ordinary course of the taxpayer's trade or business, regularly holds itself out as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (a)(2). In the following examples, B is a bank and is not a member of a consolidated group:

Example 1. B regularly offers to enter into interest rate swaps with other persons in the ordinary course of its trade or business. B is willing to enter into interest rate swaps under which it either pays a fixed interest rate and receives a floating rate or pays a floating rate and receives a fixed rate. B is a dealer in securities under section 475(c)(1)(B), and the counterparties are its customers.

Example 2. B, in the ordinary course of its trade or business, regularly holds itself out as being willing and able to enter into either side of positions in a foreign currency with other banks in the interbank market. B's activities in the foreign currency make it a dealer in securities under section 475(c)(1)(B), and the other banks in the interbank market are its customers.

Example 3. B engages in frequent transactions in a foreign currency in the interbank market. Unlike the facts in *Example 2,* however, B does not regularly hold itself out as being willing and able to enter into either side of positions in the foreign currency, and all of B's transactions are driven by its internal need to adjust its position in the currency. No other circumstances are present to suggest that B is a dealer in securities for purposes of section 475(c)(1)(B). B's activity in the foreign currency does not qualify it as a dealer in securities for purposes of section 475(c)(1)(B), and its transactions in the interbank market are not transactions with customers.

(3) *Related parties*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section (concerning transactions between members of a consolidated group, as defined in § 1.1502–1(h)), a taxpayer's transactions with related persons may be transactions with customers for purposes of section 475. For example, if a taxpayer, in the ordinary course of the taxpayer's trade or business, regularly holds itself out to its foreign subsidiaries or other related persons as being willing and able to enter into either side of transactions enumerated in section 475(c)(1)(B), the taxpayer is a dealer in securities within the meaning of section 475(c)(1), even if it engages in no other transactions with customers.

(ii) *Special rule for members of a consolidated group.* Solely for purposes of paragraph (c)(1) of section 475 (concerning the definition of dealer in securities) and except as provided in paragraph (a)(3)(iii) of this section, a taxpayer's transactions with other members of its consolidated group are not with customers. Accordingly, notwithstanding paragraph (a)(2) of this section, the fact that a taxpayer regularly holds itself out to other members of its consolidated group as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B) does not cause the taxpayer to be a dealer in securities within the meaning of section 475(c)(1)(B).

(iii) *The intragroup-customer election*—(A) *Effect of election.* If a consolidated group makes the intragroup-customer election, paragraph (a)(3)(ii) of this section (special rule for members of a consolidated group) does not apply to the members of the group. Thus, a member of a group that has made this election may be a dealer in securities within the meaning of section 475(c)(1) even if its only customer transactions are with other members of its consolidated group.

(B) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the intragroup-customer election is made by filing a statement that says, ''[Insert name and employer identification number of common parent] hereby makes the Intragroup-Customer Election (as described in § 1.475(c)–1(a)(3)(iii) of the income tax regulations) for the taxable year ending [describe the last day of the year] and for subsequent taxable years.'' The statement must be signed by the common parent and attached to the timely filed federal income tax return for the consolidated group for that taxable year. The election applies for that year and continues in effect for subsequent years until revoked. The election may be revoked only with the consent of the Commissioner.

(iv) *Examples.* The following examples illustrate this paragraph (a)(3):

General Facts. HC, a hedging center, provides interest rate hedges to all of the members of its affiliated group (as defined in section 1504(a)(1)). Because of the efficiencies created by having a centralized risk manager, group policy prohibits members other than *HC* from entering into derivative interest rate positions with outside parties. *HC* regularly holds itself out as being

willing and able to, and in fact does, enter into either side of interest rate swaps with its fellow members. *HC* periodically computes its aggregate position and hedges the net risk with an unrelated party. *HC* does not otherwise enter into interest rate positions with persons that are not members of the affiliated group. *HC* attempts to operate at cost, and the terms of its swaps do not factor in any risk of default by the affiliate. Thus, *HC*'s affiliates receive somewhat more favorable terms then they would receive from an unrelated swaps dealer (a fact that may subject *HC* and its fellow members to reallocation of income under section 482). No other circumstances are present to suggest that *HC* is a dealer in securities for purposes of section 475(c)(1)(B).

Example 1. General rule for related persons. In addition to the *General Facts* stated above, assume that *HC*'s affiliated group has not elected under section 1501 to file a consolidated return. Under paragraph (a)(3)(i) of this section, *HC*'s transactions with its affiliates can be transactions with customers for purposes of section 475(c)(1). Thus, under paragraph (a)(2)(i) of this section, *HC* is a dealer in securities within the meaning of section 475(c)(1)(B), and the members of the group with which it does business are its customers.

Example 2. Special rule for members of a consolidated group. In addition to the *General Facts* stated above, assume that *HC*'s affiliated group has elected to file consolidated returns and has not made the intragroup-customer election. Under paragraph (a)(3)(ii) of this section, *HC*'s interest rate swap transactions with the members of its consolidated group are not transactions with customers for purposes of determining whether *HC* is a dealer in securities within the meaning of section 475(c)(1). Further, the fact that *HC* regularly holds itself out to members of its consolidated group as being willing and able to enter into either side of a transaction enumerated in section 475(c)(1)(B) does not cause *HC* to be a dealer in securities within the meaning of section 475(c)(1)(B). Because no other circumstances are present to suggest that *HC* is a dealer in securities for purposes of section 475(c)(1)(B), *HC* is not a dealer in securities.

Example 3. Intragroup-customer election. In addition to the *General Facts* stated above, assume that *HC*'s affiliated group has elected to file a consolidated return but has also made the intragroup-customer election under paragraph (a)(3)(iii) of this section. Thus, the analysis and result are the same as in *Example 1.*

(b) *Sellers of nonfinancial goods and services*—(1) *Purchases and sales of customer paper.* Except as provided in paragraph (b)(3) of this section, if a taxpayer would not be a dealer in securities within the meaning of section 475(c)(1) but for its purchases and sales of debt instruments that, at the time of purchase or sale, are customer paper with respect to either the taxpayer or a corporation that is a member of the same consolidated group (as defined in § 1.1502–1(h)) as the taxpayer, then for purposes of section 475 the taxpayer is not a dealer in securities.

(2) *Definition of customer paper.* A debt instrument is customer paper with respect to a person at a point in time if—

(i) The person's principal activity is selling nonfinancial goods or providing nonfinancial services;

(ii) The debt instrument was issued by a purchaser of the goods or services at the time of the purchase of those goods or services in order to finance the purchase; and

(iii) At all times since the debt instrument was issued, it has been held either by the person selling those goods or services or by a corporation that is a member of the same consolidated group as that person.

(3) *Exceptions.* Paragraph (b)(1) of this section does not apply if—

(i) For purposes of section 471, the taxpayer accounts for any security (as defined in section 475(c)(2)) as inventory;

(ii) The taxpayer is subject to an election under paragraph (b)(4) of this section; or

(iii) The taxpayer is not described in paragraph (b)(2)(i) of this section and one or more debt instruments that are customer paper with respect to a corporation that is a member of the same consolidated group as the taxpayer are accounted for by the taxpayer, or by a corporation that is a member of the same consolidated group as the taxpayer, in a manner that allows recognition of unrealized gains or losses or deductions for additions to a reserve for bad debts.

(4) *Election not to be governed by the exception for sellers of nonfinancial goods or services*—(i) *Method of making the election.* Unless the Commissioner otherwise prescribes, an election under this paragraph (b)(4) must be made in the manner, and at the time, prescribed in this paragraph (b)(4)(i). The taxpayer must file with the Internal Revenue Service a statement that says, ''[Insert name and taxpayer identification number of the taxpayer] hereby elects not to be governed by § 1.475(c)–1(b)(1) of the income tax regulations for the taxable year ending [describe the last day of the year] and for subsequent taxable years.''

(A) *Taxable years ending after December 24, 1996.* If the first taxable year subject to an election under this paragraph (b)(4) ends after December 24, 1996, the statement must be attached to a timely filed federal income tax return for that taxable year.

(B) *Taxable years ending on or before December 24, 1996.* If the first taxable year subject to an election under this paragraph (b)(4) ends on or before December 24, 1996 and the election changes the taxpayer's taxable income for any taxable year the federal income tax return for which was filed before February 24, 1997, the statement must be attached to an amended return for the earliest such year that is so affected, and that amended return (and an amended return for any other such year that is so affected) must be filed not later than June 23, 1997. If the first taxable year subject to an election under this paragraph (b)(4) ends on or before December 24, 1996 but the taxpayer is not described in the preceding sentence, the statement must be attached to the first federal income tax return that is for a taxable year subject to the election and that is filed on or after February 24, 1997.

(ii) *Continued applicability of an election.* An election under this paragraph (b)(4) continues in effect for subsequent taxable years until revoked. The election may be revoked only with the consent of the Commissioner.

(c) *Taxpayers that purchase securities from customers but engage in no more than negligible sales of the securities*—(1) *Exemption from dealer status*—(i) *General rule.* A taxpayer that regularly purchases securities from customers in the ordinary course of a trade or business (including regularly making loans to customers in the ordinary course of a trade or business of making loans) but engages in no more than negligible sales of the securities so acquired is not a dealer in securities within the meaning of section 475(c)(1) unless the taxpayer elects to be so treated or, for purposes of section 471, the taxpayer accounts for any security (as defined in section 475(c)(2)) as inventory.

(ii) *Election to be treated as a dealer.* A taxpayer described in paragraph (c)(1)(i) of this section elects to be treated as a dealer in securities by filing a federal income tax return reflecting the application of section 475(a) in computing its taxable income.

(2) *Negligible sales.* Solely for purposes of paragraph (c)(1) of this section, a taxpayer engages in negligible sales of debt instruments that it regularly purchases from customers in the ordinary course of its business if, and only if, during the taxable year, either—

(i) The taxpayer sells all or part of fewer than 60 debt instruments, regardless how acquired; or

(ii) The total adjusted basis of the debt instruments (or parts of debt instruments), regardless how acquired, that the taxpayer sells is less than 5 percent of the total basis, immediately

after acquisition, of the debt instruments that it acquires in that year.

(3) *Special rules for members of a consolidated group*—(i) *Intragroup-customer election in effect.* If a taxpayer is a member of a consolidated group that has made the intragroup-customer election (described in paragraph (a)(3)(iii) of this section), the negligible sales test in paragraph (c)(2) of this section takes into account all of the taxpayer's sales of debt instruments to other group members.

(ii) *Intragroup-customer election not in effect.* If a taxpayer is a member of a consolidated group that has not made the intragroup-customer election (described in paragraph (a)(3)(iii) of this section), the taxpayer satisfies the negligible sales test in paragraph (c)(2) of this section if either—

(A) The test is satisfied by the taxpayer, taking into account sales of debt instruments to other group members (as in paragraph (c)(3)(i) of this section); or

(B) The test is satisfied by the group, treating the members of the group as if they were divisions of a single corporation.

(4) *Special rules.* Whether sales of securities are negligible is determined without regard to—

(i) Sales of securities that are necessitated by exceptional circumstances and that are not undertaken as recurring business activities;

(ii) Sales of debt instruments that decline in quality while in the taxpayer's hands and that are sold pursuant to an established policy of the taxpayer to dispose of debt instruments below a certain quality; or

(iii) Acquisitions and sales of debt instruments that are qualitatively different from all debt instruments that the taxpayer purchases from customers in the ordinary course of its business.

(5) *Example.* The following example illustrates paragraph (c)(4)(iii) of this section:

Example. I, an insurance company, regularly makes policy loans to its customers but does not sell them. *I,* however, actively trades Treasury securities. No other circumstances are present to suggest that *I* is a dealer in securities for purposes of section 475(c)(1). Since the Treasuries are qualitatively different from the policy loans that *I* originates, under paragraph (c)(4)(iii) of this section, *I* disregards the purchases and sales of Treasuries in applying the negligible sales test in paragraph (c)(2) of this section.

(d) *Issuance of life insurance products.* A life insurance company that is not otherwise a dealer in securities within the meaning of section 475(c)(1) does not become a dealer in securities solely because it regularly issues life insurance products to its customers in the ordinary course of a trade or business. For purposes of the preceding sentence, the term *life insurance product* means a contract that is treated for federal income tax purposes as an annuity, endowment, or life insurance contract. See sections 72, 817, and 7702.

§ 1.475(c)–2 Definitions—security.

(a) *Items that are not securities.* The following items are not securities within the meaning of section 475(c)(2) with respect to a taxpayer and, therefore, are not subject to section 475—

(1) A security (determined without regard to this paragraph (a)) if section 1032 prevents the taxpayer from recognizing gain or loss with respect to that security;

(2) A debt instrument issued by the taxpayer (including a synthetic debt instrument, within the meaning of § 1.1275–6(b)(4), that § 1.1275–6(b) treats the taxpayer as having issued); or

(3) A REMIC residual interest, or an interest or arrangement that is determined by the Commissioner to have substantially the same economic effect, if the residual interest or the interest or arrangement is acquired on or after January 4, 1995.

(b) *Synthetic debt that § 1.1275–6(b) treats the taxpayer as holding.* If § 1.1275–6 treats a taxpayer as the holder of a synthetic debt instrument (within the meaning of § 1.1275–6(b)(4)), the synthetic debt instrument is a security held by the taxpayer within the meaning of section 475(c)(2)(C).

(c) *Negative value REMIC residuals acquired before January 4, 1995.* A REMIC residual interest that is described in paragraph (c)(1) of this section or an interest or arrangement that is determined by the Commissioner to have substantially the same economic effect is not a security within the meaning of section 475(c)(2).

(1) *Description.* A residual interest in a REMIC is described in this paragraph (c)(1) if, on the date the taxpayer acquires the residual interest, the present value of the anticipated tax liabilities associated with holding the interest exceeds the sum of—

(i) The present value of the expected future distributions on the interest; and

(ii) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(2) *Special rules applicable to negative value REMIC residuals acquired before January 4, 1995.* Solely for purposes of this paragraph (c)—

(i) If a transferee taxpayer acquires a residual interest with a basis determined by reference to the transferor's basis, then the transferee is deemed to acquire the interest on the date the transferor acquired it (or is deemed to acquire it under this paragraph (c)(2)(i)).

(ii) Anticipated tax liabilities, expected future distributions, and anticipated tax savings are determined under the rules in § 1.860E–2(a)(3) and without regard to the operation of section 475.

(iii) Present values are determined under the rules in § 1.860E–2(a)(4).

§ 1.475(d)–1 Character of gain or loss.

(a) *Securities never held in connection with the taxpayer's activities as a dealer in securities.* If a security is never held in connection with the taxpayer's activities as a dealer in securities, section 475(d)(3)(A) does not affect the character of gain or loss from the security, even if the taxpayer fails to identify the security under section 475(b)(2).

(b) *Ordinary treatment for notional principal contracts and derivatives held by dealers in notional principal contracts and derivatives.* Section 475(d)(3)(B)(ii) (concerning the character of gain or loss with respect to a security held by a person other than in connection with its activities as a dealer in securities) does not apply to a security if § 1.475(b)–1(c) and the absence of a determination by the Commissioner prevent section 475(b)(1)(A) from applying to the security.

§ 1.475(e)–1 Effective dates.

(a) and (b) [Reserved].

(c) Section 1.475(a)–3 (concerning acquisition by a dealer of a security with a substituted basis) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(d) Except as provided elsewhere in this paragraph (d), § 1.475(b)–1 (concerning the scope of exemptions from the mark-to-market requirement) applies to taxable years ending on or after December 31, 1993.

(1) Section 1.475(b)–1(b) applies as follows:

(i) Section 1.475(b)–1(b)(1)(i) (concerning equity interests issued by a related person) applies beginning June 19, 1996. If, on June 18, 1996, a security is subject to mark-to-market accounting and, on June 19, 1996, § 1.475(b)–1(b)(1) begins to apply to the security solely because of the effective dates in this paragraph (d) (rather than because of a change in facts), then the rules of § 1.475(b)–1(b)(4)(i)(A) (concerning the prohibition against marking) apply, but § 1.475(b)–1(b)(4)(i)(B) (imposing a

mark-to-market on the day before the onset of the prohibition) does not apply.

(ii) Section 1.475(b)–1(b)(2) (concerning relevant relationships for purposes of determining whether equity interests in related persons are prohibited from being marked to market) applies beginning June 19, 1996.

(iii) Section 1.475(b)–1(b)(3) (concerning certain actively traded securities) applies beginning June 19, 1996, to securities held on or after that date, except for securities described in § 1.475(b)–1(e)(1)(i) (concerning equity interests issued by controlled entities). If a security is described in § 1.475(b)–1(e)(1)(i), § 1.475(b)–1(b)(3) applies only on or after January 23, 1997 if the security is held on or after that date. If § 1.475(b)–1(b)(1) ceases to apply to a security by virtue of the operation of this paragraph (d)(1)(iii), the rules of § 1.475(b)–1(b)(4)(ii) apply to the cessation.

(iv) Except to the extent provided in paragraph (d)(1) of this section, § 1.475(b)–1(b)(4) (concerning changes in status) applies beginning June 19, 1996.

(2) Section 1.475(b)–1(c) (concerning securities deemed not held for investment by dealers in notional principal contracts and derivatives) applies to securities acquired on or after January 23, 1997.

(3) Section 1.475(b)–1(d) (concerning the special rule for hedges of another member's risk) is effective for securities acquired, originated, or entered into on or after January 23, 1997.

(e) Section 1.475(b)–2 (concerning identification of securities that are exempt from mark-to-market treatment) applies as follows:

(1) Section 1.475(b)–2(a) (concerning the general rules for identification of basis for exemption from mark to market treatment) applies to identifications made on or after July 1, 1997.

(2) Section 1.475(b)–2(b) (concerning time for identifying a security with a substituted basis) applies to securities acquired, originated, or entered into on or after January 4, 1995.

(3) Section 1.475(b)–2(c) (concerning identification in the context of integrated transactions under § 1.1275–6) applies on and after August 13, 1996 (the effective date of § 1.1275–6).

(f) [Reserved].

(g) Section 1.475(b)–4 (concerning transitional issues relating to exemptions) applies to taxable years ending on or after December 31, 1993.

(h) Section 1.475(c)–1 applies as follows:

(1) Except as otherwise provided in this paragraph (h)(1), § 1.475(c)–1(a) (concerning the dealer-customer relationship) applies to taxable years beginning on or after January 1, 1995.

(i) [Reserved].

(ii) Section 1.475(c)–1(a)(2)(ii) (illustrating rules concerning the dealer-customer relationship) applies to taxable years beginning on or after June 20, 1996.

(iii) (A) Section 1.475(c)–1(a)(3) applies to taxable years beginning on or after June 20, 1996, except for transactions between members of the same consolidated group.

(B) For transactions between members of the same consolidated group, paragraph § 1.475(c)–1(a)(3) applies to taxable years beginning on or after December 24, 1996.

(2) Section 1.475(c)–1(b) (concerning sellers of nonfinancial goods and services) applies to taxable years ending on or after December 31, 1993.

(3) Except as otherwise provided in this paragraph (h)(3), section 1.475(c)–1(c) (concerning taxpayers that purchase securities but engage in no more than negligible sales of the securities) applies to taxable years ending on or after December 31, 1993.

(i) Section 1.475(c)–1(c)(3) (special rules for members of a consolidated group) is effective for taxable years beginning on or after December 24, 1996.

(ii) A taxpayer may rely on the rules set out in § 1.475(c)–1T(b) (as contained in 26 CFR part 1 revised April 1, 1996) for taxable years beginning before January 23, 1997, provided the taxpayer applies that paragraph reasonably and consistently.

(4) Section 1.475(c)–1(d) (concerning the issuance of life insurance products) applies to taxable years beginning on or after January 1, 1995.

(i) Section 1.475(c)–2 (concerning the definition of security) applies to taxable years ending on or after December 31, 1993. By its terms, however, § 1.475(c)–2(a)(3) applies only to residual interests or to interests or arrangements that are acquired on or after January 4, 1995; and the integrated transactions that are referred to in §§ 1.475(c)–2(a)(2) and 1.475(c)–2(b) exist only after August 13, 1996 (the effective date of § 1.1275–6).

(j) Section 1.475(d)–1 (concerning the character of gain or loss) applies to taxable years ending on or after December 31, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101 paragraph (c) is amended by:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.475(b)–2T	1545–1422
* * * * *	

2. Adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.475(b)–4	1545–1496
* * * * *	

Approved: December 6, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–32248 Filed 12–23–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that prior certifications of noncompliance for USS BUTTE (AE 27), USS SANTA BARBARA (AE 28), and USS MOUNT BAKER (AE 34) should be amended. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant T.M. Carlos, JAGC, USNR, Associate Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400,Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has determined that certain navigation lights on USS BUTTE (AE 27), USS SANTA BARBARA (AE 28), and USS MOUNT BAKER (AE 34), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements. Specifically, the horizontal separation between the forward and aft masthead lights on each vessel is now greater than one half of the length of the vessel as required by Annex I, paragraph 3(a).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by deleting the entries for USS BUTTE (AE 27), USS SANTA BARBARA (AE 28), and USS MOUNT BAKER (AE 34).

Dated: December 10, 1996.

Approved:

W.T. Storz,

Commander, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty), Acting.

[FR Doc. 96–32574 Filed 12–23–96; 8:45 am]

BILLING CODE 3810–FF–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–112; RM–8663]

Radio Broadcasting Services; Lordsburg, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hildalgo County Broadcasters, allots Channel 279C3 to Lordsburg, New Mexico, as the community's second local FM service. *See* 60 FR 39142, August 1, 1995. Channel 279C3 can be allotted to Lordsburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32–20–48 North Latitude and 108–42–36 West Longitude. Mexican concurrence in the allotment has been received since Lordsburg is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective February 3, 1997. The window period for filing applications will open on February 3, 1997, and close on March 6, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–112, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 279C3 at Lordsburg.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32557 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–174; RM–8849]

Radio Broadcasting Services; Thomaston, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 249A to Thomaston, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed by Andrea Reynolds. See 61 FR 47470, September 9, 1996. Coordinates used for Channel 249A at Thomaston, are 32–14–11 North Latitude and 87–40–46 West Longitude. With this action, the proceeding is terminated.

DATES: Effective February 3, 1997. The window period for filing applications for Channel 249A at Thomaston, Alabama, will open on February 3, 1997, and close on March 6, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 249A at Thomaston, Alabama, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–174, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Thomaston, Channel 249A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32559 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–194; RM–8866]

Radio Broadcasting Services; Nocatee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken in this document allots Channel 287A to Nocatee, Florida, in response to a petition filed by Mario Trevino. See 61 FR 51074, September 30, 1996. The coordinates for Channel 287A are 27–16–07 and 81–53–41. There is a site restriction 12.1 kilometers (7.5 miles) north of the community. With this action this proceeding is terminated.

DATES: Effective February 3, 1997. The window period for filing applications for Channel 287A at Nocatee, Florida, will open on February 3, 1997, and close on March 6, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–194, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Nocatee, Channel 287A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32560 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–80; RM–8758 and RM–8833]

Radio Broadcasting Services; Alva, Bartlesville and Ponca City, OK, and Deerfield, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document is taken in response to a proposal filed by Dale Hendrix requesting the allotment of Channel 261C3 at Deerfield, Missouri. See 61 FR 18540, April 26, 1996. The proposal for Deerfield is being dismissed for lack of interest. Action taken in response to a counterproposal filed by KYFM Radio, Inc., substitutes Channel 261C1 for Channel 261A at Bartlesville, Oklahoma, and modifies the license for Station KYFM(FM) to specify the higher class channel. The coordinates for Channel 261C1 are 36–53–55 and 96–12–00. To accommodate the substitution at Bartlesville, we shall also substitute Channel 284A for Channel 261A at Ponca City, Oklahoma, and modify the license for Station KIXR(FM) accordingly and substitute Channel 278C1 for vacant Channel 284C1 at Alva, Oklahoma. The coordinates for Channel 284A at Ponca City are 36–47–19 and 97–02–53. The coordinates for Channel 278C1 at Alva are 36–34–55 and 98–52–13. There is a site restriction 30.4 kilometers (18.9 miles) southwest of Alva. With this action, this proceeding is terminated.

DATES: Effective February 3, 1997. The window period for filing applications for Channel 278C1 at Alva, Oklahoma, will open on February 3, 1997, and close on March 6, 1997.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–80, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 284C1 and adding Channel 278C1 at Alva, and by removing Channel 261A and adding Channel 261C1 at Bartlesville, and by removing Channel 261A and adding Channel 284A at Ponca City.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32631 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 61, No. 248
Tuesday, December 24, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB74

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing for comment a notice of proposed rulemaking that would amend its regulations governing recordkeeping and confirmation requirements for securities transactions. The proposed rulemaking updates, clarifies and streamlines the FDIC regulations and reduces unnecessary regulatory costs and other burdens. The proposed rule reorganizes the regulation, clarifies areas where the rule was confusing, incorporates significant interpretive positions, and updates various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by banks.

DATES: Comments must be received by January 23, 1997.

ADDRESSES: Comments should be directed to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to Room F–402, 1776 F Street, N.W., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. or transmitted by fax or the Internet. The FDIC's fax number is (202) 898–3838 and its Internet address is: COMMENTS@FDIC.GOV. Comments will be available for inspection and photocopying in Room 100, 801 17th Street, NW, Washington, DC between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Miguel D. Browne, Deputy Assistant Director, Division of Supervision, Securities, Capital Markets and Trust Branch, (202) 898–6789; John F. Harvey, Review Examiner (Trust), Securities, Capital Markets and Trust Branch, Division of Supervision, (202) 898–6762; Patrick J. McCarty, Counsel, Regulations and Legislation Section, Legal Division, (202) 898–8708, and Gerald Gervino, Senior Attorney, Regulations and Legislation Section, Legal Division, (202) 898–3723.

SUPPLEMENTARY INFORMATION:

Background

In 1979, the FDIC adopted Part 344 to require banks under its jurisdiction to establish uniform procedures and recordkeeping and confirmation requirements with respect to effecting securities transactions for customers. The requirements reflected, in part, the recommendations of the Securities and Exchange Commission's (SEC) Final Report of the Securities and Exchange Commission on Bank Securities Activities (June 30, 1977). Part 344's recordkeeping and confirmation requirements were patterned after the SEC's rules applicable to broker/dealers and were intended to serve similar purposes for banks involved in effecting customers' securities transactions.[1] See 44 FR 43261 (July 24, 1979). The Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC) also adopted regulations substantially identical to part 344 in 1979. See 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 344, 44 FR 43254 (July 24, 1979) (OCC regulation).

On December 22, 1995, the OCC published a notice of proposed rulemaking (60 FR 66517) (OCC proposal) to revise 12 CFR part 12, the OCC's Recordkeeping and Confirmation Requirements for Securities Transactions regulation. The purpose of the proposal was to modernize part 12, address various market developments and regulatory changes, and reduce regulatory burden, where possible. The FRB published a substantially similar yet somewhat differently worded proposed rule on December 26, 1995. See 60 FR 66759. The FDIC published an advance notice of proposed rulemaking on May 24, 1996, soliciting comment on issues similar to those raised in the OCC's and FRB's proposed rules, as well as issues which the OCC and FRB proposals did not address. See 61 FR 26135. The OCC published its final rule revising part 12 on December 2, 1996. See 61 FR 63958.

The FDIC and the other federal banking agencies are required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) to review their regulations to streamline them to improve efficiency, to reduce unnecessary costs and to eliminate unwarranted constraints on credit availability. 12 U.S.C. 4803(a). Section 303(a) also requires the Federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. As noted above, on July 24, 1979 the FDIC and the other Federal banking agencies promulgated regulations addressing recordkeeping and confirmation requirements for securities transactions effected by banks. These regulations were virtually identical.

Consistent with section 303 of CDRI, the FDIC has reviewed the OCC and FRB proposals and attempted to draft its notice of proposed rulemaking in order that it will be nearly uniform with the other proposals. We note at the outset that the FDIC would prefer a rule which is uniform with the other agencies. The FDIC's proposed rule is closer in structure, definitions, language and form to that of the FRB's proposal than the OCC's final rule. The FDIC requests comment on all aspects of the notice of proposed rulemaking.

Comments Received and Changes Made

The FDIC received 10 comments on the advance notice of proposed rulemaking. The comment letters included four from banks and bank holding companies, four from trade associations, and two from broker/dealers. Commenters generally supported the proposed changes to part

[1] Brokers and dealers generally must register with the Securities and Exchange Commission under the Securities Exchange Act of 1934. See 15 U.S.C. 78o(a)(1). Banks are excluded from the definitions of ''broker'' and ''dealer'' and thus are not subject to the registration provisions. See 15 U.S.C. 78c(a)(4) and (5).

344, but several commenters requested changes. One commenter stated that it was imperative that the Federal banking agencies work together to issue identical regulations governing securities confirmation and recordkeeping requirements. The FDIC has carefully considered each of the comments and has made several changes in response to the comments received.

Overall, the notice of proposed rulemaking adopts many of the changes to part 344 which were identified in the ANPR. The section-by-section discussion in the preamble identifies substantive changes made to certain sections of the existing rule.

Section-by-Section Discussion

Purpose and Scope (§ 344.1)

The notice of proposed rulemaking makes some very minor language changes to the ''Purpose'' part of § 344.1 to clarify which banks are subject to the jurisdiction of the FDIC.

The ''Scope'' part of § 344.1 has also been revised and reorganized to clarify the types of securities transactions which are generally subject to the regulation. Generally, any state nonmember insured bank effecting a securities transaction for a customer is subject to the requirements of part 344, unless the transaction specifically is exempted.

Exceptions (§ 344.2)

The notice of proposed rulemaking relocates and expands the ''Exceptions'' section of part 344 from the end of the regulation to near the beginning so that it will be clearer as to what types of transactions are not subject to the regulation. The proposal provides in paragraph (a) five exceptions for: (1) Banks conducting a small number of securities transactions; (2) certain government securities transactions; (3) certain municipal securities transactions; (4) securities transactions conducted by a foreign branch of a bank; and (5) certain securities transactions with a broker/dealer. The notice of proposed rulemaking also clarifies that even though these types of transactions are excepted from compliance with all or certain sections of part 344, the FDIC expects a bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations.

The FDIC is including in the notice of proposed rulemaking a new exception (5) for certain securities transactions effected through broker/dealers. The FDIC requested comment in the ANPR on whether part 344 ought to apply to securities transactions effected by broker/dealers who have entered into ''networking arrangements'' with banks. Most commenters believe that the FDIC's recordkeeping and confirmation requirements should not apply to these type of bank operations with a registered broker/dealer. Registered broker/dealers are already subject to the SEC's recordkeeping and confirmation rules and are required to provide their customers with confirmations similar to those which banks must provide their customers under part 344.[2] The FDIC has determined that part 344 should not generally apply to securities transactions effected by these registered broker/dealers where the bank customer has in fact knowingly become a customer of the broker/dealer. Language has been added to § 344.2(a)(5) to establish a two-part test. In order for the exception to apply: (A) The broker/dealer must be fully disclosed to the customer and (B) the customer must have a direct contractual agreement, e.g. a signed account agreement, with the broker/dealer. The FDIC believes it is very important that the customer understand that they are dealing with a broker/dealer and not the bank. Banks which enter into networking arrangements with broker/dealers and who do not want those securities transactions to be subject to Part 344 should take adequate steps to make sure that the two-part test is being observed. Full disclosure by the broker/dealer to the bank customers is consistent with the Interagency Statement on Retail Sale of Nondeposit Investment Products.[3] The FDIC also agrees that when an employee of the bank is working for and under the control and supervision of a registered broker/dealer while soliciting, recommending, purchasing or selling securities to customers pursuant to a networking arrangement, Part 344 requirements would not apply. Exception (5) has been drafted to make it clear that dual employee arrangements are not subject to Part 344.

With respect to networking arrangements, the FDIC requests comment regarding whether it is common for banks with networking arrangements to receive separate surcharges or fees from bank customers in addition to the transaction volume compensation they receive from the broker/dealer. The FDIC would also like to receive comment on whether banks which impose these additional surcharges or fees should be required to comply with Part 344 or separately disclose those additional fees in some other manner.

Definitions (§ 344.3)

The notice of proposed rule adds eight new definitions and requests comment on modifying two existing definitions. Six of the definitions—''asset-backed security,'' ''completion of the transaction,'' ''crossing of buy and sell orders,'' ''debt security,'' ''government security,'' and ''municipal security''—were identified in the ANPR and are included unchanged in the notice of proposed rulemaking. The FDIC has defined these terms the same way that the Federal Reserve has proposed them. The OCC proposal has the same terms but the structure and language used are somewhat different.

The FDIC is also proposing to add two new definitions; ''bank'' and ''cash management sweep account'' which weren't in the ANPR. With respect to the term ''Bank,'' the FDIC proposes to define the term to mean ''state nonmember insured bank (except a District bank) or a foreign bank having an insured branch.'' This change is consistent with the minor language modifications made to § 344.1 and shortens the regulation by eliminating the need to repeat ''state nonmember insured bank (except a District bank) or a foreign bank having an insured branch'' where ''Bank'' is currently found.

The other new definition would be ''Cash management sweep account.'' The FDIC requested comment in the ANPR with respect to bank ''sweep account'' activities. Most commenters thought that part 344 should clarify how ''sweep accounts'' are treated under the rule. While several commenters recommended that sweep accounts be included in the definition of periodic accounts the FDIC has decided not to do so for several reasons. First, the FDIC believes that sweep accounts are different in kind from typical periodic plans such as dividend reinvestment plans (DRIPs) and automatic investment plans. Sweep accounts do not normally invest in securities at the regular intervals (i.e; monthly or quarterly) as do DRIPs and automatic investment plans. Second, sweep accounts are a significant product/service in their own right which account for several billions of dollars worth of transactions on a daily basis and probably exceed the dollar volume in traditional periodic plans. Due to these differences, the FDIC

[2] It is not unusual for a bank effecting a securities transaction to forward orders to a registered broker/dealer for execution and clearing. Under these circumstances, the requirements of part 344 would apply because the bank is effecting the securities transaction for its customer.

[3] FDIC Financial Institutions Letter 9–94 (February 17, 1994); and FDIC Financial Institutions Letter 61–95 (September 13, 1995).

believes it is not appropriate to include sweep accounts in the definition of periodic plans. Third, the FDIC believes that bank customers with sweep accounts should receive confirmations more frequently than periodic plan account holders. The FDIC is proposing that banks be required to issue confirmations for sweep accounts at least monthly, if there are securities transactions in the account, and at least quarterly when there are no transactions. Quarterly confirmations are proposed for periodic plans. The FDIC believes it would be confusing if sweep accounts were to be included in the definition of periodic plans and yet be subject to a more frequent confirmation requirement. For these reasons, the FDIC is proposing a separate definition for sweep accounts and requests comment on the adequacy of such definition.

The term ''cash management sweep account'' would cover any prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain dollar level with the proceeds being transferred into a deposit account. The term would only cover transactions involving the purchase or sale of securities. The FDIC requests comment on whether it is necessary to provide clarification regarding reporting requirements where monies (interest, dividends, etc.) earned on a security are deposited into a sweep account. The FDIC also requests comment on whether the term ''cash management sweep account'' is appropriate.

The FDIC notes that not all sweep accounts will be treated the same under part 344. First, totally excluded from the coverage of part 344 would be sweep accounts which sweep from a deposit account into another deposit account such as a money market deposit account (MMDA). According to a recently published Federal Reserve study, billions of dollars are being swept from noninterest bearing deposit accounts into MMDAs.[4] Since there is no purchase or sale of a security involved in this type of sweep transaction, part 344 would not apply.

While very similar to sweeps into MMDAs, sweep accounts which automatically transfer idle cash from a deposit account into a money market mutual fund would be subject to part 344. Shares of money market mutual funds, or any other interest in an open-end investment company, are ''securities'' within the Federal securities laws as well as the definition of ''security'' in part 344. Sweep accounts which automatically purchase or sell shares in money market mutual funds, or any other mutual fund, would therefore be subject to the regulation. As noted above, the FDIC is proposing in § 344.6(d) that banks be required to provide either monthly or quarterly statements to its customers depending upon the frequency of securities transactions. Banks would be required to provide notifications to customers at the end of the month if a purchase or sale of a security has occurred in their cash management sweep account. Banks would be required to provide quarterly statements to cash management sweep account customers at a minimum.

A third common type of sweep account offered by banks involves transferring idle cash into a repurchase agreement on government securities. This type of transaction is clearly within the scope of part 344, since there is a security being purchased or sold.

However, government securities are subject to the Government Securities Act of 1986, 15 U.S.C. 78o–5, and the rulemaking authority of the Bureau of the Public Debt, Department of Treasury. The Treasury Department requires broker/dealers and banks to provide next day confirmations on hold in custody repurchase agreements on government securities. See 17 CFR parts 400 through 405, 449, and 450. We note that banks offering sweep transactions involving repurchase agreements on government securities will be subject to more frequent confirmation requirements than other sweep accounts under part 344.

The FDIC is also requesting comment on modifications to two definitions. The FDIC proposes to modify the existing definition of ''customer'' to specifically exclude those persons and accounts who enter into written agreements with fully disclosed broker/dealers for securities transactions. This modification, which parallels the proposed exception in § 344.2(a)(5), is intended to make it clear that bank customers who enter into written agreements with fully disclosed broker/dealers, such as broker/dealers with networking agreements with the bank, are not ''customers'' of the bank for purposes of part 344.

The other proposed modification is to the term ''investment discretion.'' The FDIC proposes to replace the word ''recommendations'' with the word ''decisions.'' The result would be to narrow the definition of investment discretion to situations in which the bank actually makes investment decisions with respect to a customer's account as opposed to where the bank merely makes recommendations to the customer. This change would conform the FDIC's definition to the OCC and FRB's regulatory language as well as track the definition in the Securities Exchange Act of 1934, as amended. 15 U.S.C. 78c(a)(35). We note that the OCC proposed in December of 1995 a different definition of the term ''investment discretion'' in connection with its Trust Regulations. See 60 FR 66163. The FDIC requests comment on whether an alternate definition should be considered.

Recordkeeping (§ 344.4)

With respect to recordkeeping, the notice of proposed rulemaking makes several non-substantive changes. Section 344.4 (a) remains identical in substance to the existing rule. The FDIC proposes to add headings and paragraphs to make the rule easier to read. A new paragraph (5) has been added to require banks to retain copies of all written notifications which are provided. This is not a new requirement, but is merely a relocation of the recordkeeping requirement which is found in current § 344.4.

The FDIC proposes to make similar changes to the section of the rule regarding record maintenance. A new heading for § 344.4(b), entitled ''Manner of maintenance'' is proposed. Language has been added which attempts to make it clear that banks do not have to maintain their records in any particular form or format, as long as the records are clear, and accurately reflect the information required under § 344.4(a). This provision is intended to give banks flexibility in the maintenance of records required by part 344. The FDIC also recognizes that better and more affordable technology will increase banks' interest in replacing paper files with electronic data bases and filing systems. The FDIC has no objection to a bank using an electronic or automated recordkeeping system. Accordingly, the proposed rule specifically permits the use of electronic or automated records as long as the records are easily retrievable and readily available for inspection and the bank has the capability to reproduce the records in hard copy form. Further, the FDIC proposes to add language which makes it clear that a bank using a third party service provider to maintain the records would meet the rule's recordkeeping requirements.

[4] Senior Financial Officer Survey May 1996, Division of Monetary Affairs, Board of Governors of the Federal Reserve System (August 8, 1996).

Content and Time of Customer Notification (§ 344.5)

The FDIC is proposing to revise existing § 344.4 ''Content and time of customer notification'' in several material respects. The FDIC has added language to the beginning of § 344.5 to make it clear that banks may provide the written confirmations required by mail, facsimile or other electronic means. The SEC recently issued guidance to the broker/dealer community regarding the delivery of confirmations by electronic means. SEC Release No. 33–7288, 61 FR 24644 (May 15, 1996). The FDIC recognizes that banks will want to, and should be permitted to, use new confirmation delivery systems as technology advances. In appropriate situations, a bank may satisfy the ''written'' notification requirement through electronic communications. Where a customer has a facsimile machine, a bank may fulfill its notification delivery requirement by sending the notification by facsimile transmission. Similarly, consistent with SEC guidance a bank may satisfy the notification delivery requirement by other electronic communications when the parties agree to use electronic instead of hard-copy notifications; the parties have the ability to print or download the notification; the recipient affirms or rejects the trade through electronic notification; the system cannot automatically delete the electronic notification; and both parties have the capacity to receive electronic messages. The FDIC will consider granting banks permission to use electronic confirmations in other situations depending upon advances in technology and other regulatory developments.

In proposed § 344.5(a)(1) the FDIC has added clarifying language regarding the use of broker/dealer confirmations to satisfy the written notification requirements. There has been some confusion regarding direct mailing of broker/dealer confirmations to bank customers. The FDIC has added language which would make it clear that banks have the option of either (1) having a broker/dealer executing a transaction for the bank to send a confirmation directly to the bank's customer or (2) choosing to forward a copy of the broker/dealer confirmation to the bank customer when it is received. The FDIC believes banks should have the option of directing a broker/dealer to send a confirmation directly to the bank's customer as this will improve bank service by accelerating the delivery of confirmations to its customer. Banks using this option are ultimately responsible for the timely delivery of confirmations as well as accurate disclosure of all information required therein.

Another significant change in proposed § 344.5(a)(1) is the shortening of the timeframe banks have for forwarding broker/dealer confirmations to customers. Under existing § 344.4, banks are required to forward a broker/dealer's confirmation within five business days of receipt. With the settlement period being shortened to T+3, see proposed § 344.7, and general improvement in communications, the FDIC believes that shortening the timeframe for banks sending out broker/dealer confirmations is justified. The proposed rule requires banks to send broker/dealer confirmations within one business day of receipt.

With respect to disclosure of other remuneration, the FDIC is adding clarifying language to proposed § 344.5(a)(2). Even when banks use a broker/dealer confirmation, they must provide a statement regarding the amount of any remuneration the bank will receive from the customer or any other source in connection with the transaction. There are certain exceptions—where there is a written agreement between the bank and the customer, in government and municipal securities transactions where the bank acts as a dealer, and in mutual fund transactions where the customer receives a current prospectus. Proposed paragraph (a)(2) is being revised to make it consistent with the remuneration disclosure requirements found in paragraph (b)(6).

With respect to the content of the written notification issued by a bank, the first seven requirements under the proposed rule are virtually identical to the existing rule. § 344.4(b)(1)–(7). The FDIC has added new language to proposed paragraph (b)(6) regarding the exceptions from the disclosure of remuneration requirement for mutual fund transactions. Banks are not required to provide a statement regarding the source and amount of other remuneration if the bank provides the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction. This exception is consistent with current securities industry practice which is based on a 1979 SEC No Action Letter. See Letter to the Investment Company Institute, reprinted in [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) 82041 (Mar. 19, 1979). The FDIC believes adding this language to the text of the regulation will provide clearer guidance to banks, their counsel and examiners in this area.

The FDIC is proposing to add five confirmation disclosure requirements for debt security transactions. See proposed § 344.5(b)(8)–(12). Paragraphs (b)(8)–(11) address yield information disclosure, while paragraph (b)(12) requires disclosure that a debt security has not been rated by a nationally recognized statistical rating organization, if that is the case. These requirements are consistent with those of the SEC's confirmation rule, Rule 10b–10. See 17 CFR 240.10b–10(a)(2)(i)(D).

Notification By Agreement; Alternative Forms and Times of Notification (§ 344.6)

In addition to the notification requirements in proposed § 344.5, the regulation authorizes alternative forms and times of notification under § 344.6 for certain specific types of accounts. These are: (1) Accounts in which the bank exercises investment discretion in other than an agency capacity; (2) accounts in which the bank exercises investment discretion in an agency capacity; (3) cash management sweep accounts; (4) transactions for a collective investment fund account; and (5) transactions for a periodic plan account. The proposed rule makes very minor changes to the current § 344.5. The proposed rule revises the name of the section and adds headings in an effort to eliminate confusion and enhance readability. The one major change is the addition of a subsection addressing the notification requirements for cash management sweep accounts.

Under proposed § 344.6(a) a bank and its customer can agree, in writing, to a different arrangement as to the time and content of written notification to be received. This provision may be of benefit to both banks and their customers in that it permits bank customers to opt for periodic statements—monthly or quarterly—if they do not desire to receive confirmations within 3 days of the transaction. Banks may benefit by not having to produce as many confirmations for the same account and/or not having to produce confirmations as quickly. The FDIC would like to receive comment regarding the typical written notification timeframes in standard bank account documents. The FDIC would like to know if bank customers who sign bank account agreements providing for alternate notification arrangements are aware of their right to receive written notifications in as little as 3 days. Comment is specifically requested as to

whether the FDIC should require banks to provide more disclosure to its customers regarding when they are entitled to receive written notifications. Commenters who support requiring additional disclosures by banks should provide specific examples of the types or forms of disclosure that are, or should be, made.

The FDIC proposes to add a new paragraph (d) to § 344.6 to address the notification requirements for cash management sweep accounts. The FDIC believes that banks offering cash management sweep accounts should provide notification similar to that provided by registered broker/dealers offering similar services. As discussed under § 344.3, the FDIC has proposed a new definition ''cash management sweep accounts''. Section 344.6(d) in the proposed rule provides the timeframe for notification for cash management sweep accounts. The proposed rule clarifies that, with respect to cash management sweep accounts, the time for notification is each month in which a purchase or sale of securities takes place in the customer's account and not less than once every 3 months if there are no securities transactions in the account. Under the SEC's Rule 10b–10, broker/dealers must provide a confirmation after the end of each monthly period for transactions in money market mutual funds. See 17 CFR 240.10b–10(b)(2).

As discussed above, § 344.6(d) does not control the notification requirements for cash management sweep accounts which sweep idle funds into repurchase agreements on government securities. Confirmation requirements for sweeps into repurchase agreements on government securities are subject to the Government Securities Act of 1986 and the Treasury Department regulations thereunder. The Treasury Department regulations normally require next day confirmations on sweeps into hold in custody repurchase agreements on government securities.

Under proposed § 344.6(f) the FDIC is proposing to revise the time frame for providing confirmations for periodic plan accounts. The FDIC proposes to loosen the confirmation requirements for periodic plans from ''as soon as possible'' to ''not less than once every three months''. The FDIC believes that this timeframe is consistent with current industry practice and the SEC's notification requirements. This timeframe also will serve to reduce unnecessary regulatory burden.

Settlement of Securities Transactions (§ 344.7)

The FDIC's ANPR requested comment on the need for, and effect of, adopting the T+3 securities settlement requirement for banks. The FDIC was considering whether part 344 should adopt a provision which tracks the SEC's securities settlement rule or whether part 344 should merely cross reference the SEC's rule. We note that the FRB's proposal would have required banks to comply with the standard settlement cycle observed by the United States securities industry.[5] While the cross referencing of the SEC's settlement rule would provide uniformity with the securities industry and avoid the time consuming task of the FDIC amending part 344 when the SEC makes material changes to their rule, the rule would not be clear on its face as to the settlement requirements expected of banks. In addition, cross referencing would require many small banks to have access to the SEC's rules and be aware of current SEC interpretations of such rules. The notice of proposed rulemaking sets forth a new section, § 344.7, with a T+3 settlement rule which tracks the SEC's settlement rule.[6]

Securities Trading Policies and Procedures (§ 344.8)

In the notice of proposed rulemaking the FDIC proposes to split the existing § 344.6 ''Securities trading policies and procedures'' in two, separating the trading policies and procedures from the bank personnel securities trading reporting requirements. New § 344.8 would retain virtually unchanged paragraphs (a), (b) and (c) of the existing § 344.6 addressing orders and execution of trades, the equitable allocation of securities and prices for accounts and the crossing of buy and sell orders. The one substantive change to be found in the proposal addresses the separation of order and execution functions from the traditional back office clearing functions. See proposed § 344.8(a)(2). The FRB proposal raised this issue and the FDIC believes, based on the recent highly publicized cases involving a lack of internal controls for securities and commodities trading, that such a provision is appropriate. The proposed rulemaking adds a new provision which would require banks to adopt written policies and procedures with separate supervisory procedures and reporting lines for back office functions.

Personal Securities Trading Reporting by Directors, Officers and Employees (§ 344.9)

The FDIC proposes to create a new § 344.9 addressing personal securities trading reporting by bank personnel. The FDIC believes that a separate section is warranted. The FDIC proposes to relocate the substance of paragraph (d) of existing § 344.6 to new § 344.9. In addition, the FDIC is proposing to add two new paragraphs: one which requires certain bank directors to report personal securities trading and the other which identifies an alternate report which bank personnel subject to the reporting requirement can use. New headings have been added to identify more clearly the requirements of the section.

There are two substantive changes proposed to new § 344.9. The first substantive change proposed is to expand the scope of the regulation to cover certain bank directors. The existing regulation only applies to bank officers and employees even though bank directors may be involved in making investment recommendations or decisions for customer accounts. The proposed paragraph (b) would require those bank directors who are (1) involved in making investment recommendations or decisions for customer accounts or (2) participate in the determination of such recommendations or decisions to provide the same quarterly reports on personal securities trading which bank officers and employees are required to provide. As a point of clarification, individuals who are both officers and directors of a bank are subject to the provisions and reporting requirement of paragraph (a).

This proposed reporting requirement would not apply to all bank directors, nor would it necessarily require reporting by all the bank directors who serve on the bank's investment or trust committee. For example, the proposed reporting requirement would not apply to directors who, through their position on the trust or investment committee, approve or become aware of the trust department's general asset allocation recommendations or those directors who approve of or who know that the bank is recommending specific industries, sectors or foreign markets. Directors who receive monthly or quarterly reports detailing past trading activity in specific securities for

[5] The text of the FRB's proposal is as follows: ''*Settlement of securities transactions.* All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker/dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.'' See 60 FR 66764.

[6] See Securities Exchange Act of 1934 Rule 15c6–1, 17 CFR 240.15c6–1; 58 FR 52891 (Oct. 13, 1993); 60 FR 26604 (May 17, 1995) (amendments to the rule).

customer accounts wouldn't be subject to the proposed reporting requirement because such information would not provide such directors with any advantage for personal trading. For this reason the FDIC has left out the provision requiring officers or employees who, in connection with their duties, obtain information concerning which securities are being purchased, sold or recommended. The FDIC requests comment regarding whether this provision should be included in new paragraph (b).

The proposed reporting requirement in new paragraph (b) would apply, however, to those directors who actively participate in making decisions or recommendations with respect to the purchase or sale of specific securities (both debt and equity) for customer accounts prior to transactions taking place. Directors who have such information could possibly use such information to trade for their own gain. The FDIC would like to remind bank directors, officers and employees that the use of such information for personal trading is illegal and could result in significant criminal and regulatory actions against the individual as well as the bank.

The second substantive change identifies an alternate report for personal securities trading. The proposed § 344.9(a) and (b) continue to provide that personal securities trading reports must be filed with the bank within 10 business days[7] of the end of the calendar quarter. New paragraph (d) clarifies that a bank director, officer or employee may fulfill the reporting requirement under proposed § 344.9 (a) or (b) by providing a copy of the report required under SEC Rule 17j–1. If a bank acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the bank's directors, officers and employees—as ''access persons''—would be required to comply with and file a personal securities trading report with the bank. Proposed paragraph (d) makes it clear that the Rule 17j–1 report, which is more detailed than the report required under § 344.9, will be accepted by the FDIC in lieu of filing the § 344.9 report. This proposed change is consistent with the OCC's interpretative position published as part of their final rule.

[7] The FDIC has added the word ''business'' to the regulation to make it clear that the personal securities trading reports must be filed within 10 business, as opposed to calendar, days after the end of the calendar quarter. This is consistent with past interpretations and merely serves to clarify existing regulatory practice.

Waivers (§ 344.10)

The notice of proposed rulemaking restates the FDIC's existing waiver provision found in existing § 344.8.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3064–0028), Washington DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–454, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

The collection of information requirements in this proposed rule are found in 12 CFR §§ 344.2(b), 344.4(a), 344.5(a) and (b), 344.8, and 344.9. The collections consist of recordkeeping requirements, §§ 344.2(b) and 344.4(a); the provision of written confirmations, §§ 344.5 (a) and (b) and 344.6; the establishment of written policies and procedures for placing orders and executing trades as well as back office functions, § 344.8; the reporting of personal securities trading by certain bank directors, officers and employees, § 344.9.

The likely respondents/recordkeepers are state nonmember insured banks.

Estimated average annual burden hours per respondent/recordkeeper: 19.43 hours.

Estimated number of respondents and/or recordkeepers: 5,663 state nonmember insured banks.

Estimated total annual reporting and recordkeeping burden: 109,818 hours.

Start-up costs to respondents: None.

Records under this part are to be maintained for at least three years.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its general notice of proposed rulemaking.

The FDIC hereby certifies that the proposal will not have a significant economic impact on a substantial number of small entities. The proposal should result in a net benefit to all banks regardless of size due to the streamlining and clarifications provided in the proposed rule, but the economic impact on small banks will not be significant. Most banks with total assets of under $100 million will not engage in securities activities in a manner covered by this regulation. Rather, a small bank typically will use either a registered broker/dealer who has rented space on the bank's premises in what is commonly referred to as a ''networking arrangement'' or an ''introducing broker'' who will refer a customer to a dealer that can effect the desired transaction, both of which situations are outside the scope of part 344, as proposed.

List of Subjects in 12 CFR Part 344

Banks, Banking, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, the FDIC proposes to revise Part 344 of title 12 of the Code of Federal Regulations to read as follows:

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

344.1 Purpose and scope.
344.2 Exceptions.
344.3 Definitions.
344.4 Recordkeeping.
344.5 Content and time of notification.
344.6 Notification by agreement; alternative forms and times of notification.
344.7 Settlement of securities transactions.
344.8 Securities trading policies and procedures.
344.9 Personal securities trading reporting by bank directors, officers and employees.
344.10 Waivers.

Authority: 12 U.S.C. 1817, 1818 and 1819.

§ 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch are provided adequate information regarding transactions. This part is also designed to ensure that banks subject to this part maintain adequate records and controls with respect to the securities transactions they effect.

(b) *Scope*; *General.* Any security transaction effected for a customer by a bank is subject to this part unless

excepted by § 344.2. A bank effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a bank that is not registered as a ''municipal securities dealer'' with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o–4.

§ 344.2 Exceptions.

(a) A bank effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:

(1) *Small number of transactions.* The requirements of §§ 344.4(a) (2) through (4) and 344.8(a) (1) through (3) do not apply to a bank effecting an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(2) *Government securities.* The recordkeeping requirements of § 344.4 do not apply to banks effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by banks.

(3) *Municipal securities.* This part does not apply to transactions in municipal securities effected by a bank registered with the Securities and Exchange Commission as a ''municipal securities dealer'' as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o–4.

(4) *Foreign branches.* Activities of foreign branches of a bank shall not be subject to the requirements of this part.

(5) *Transactions effected by registered broker/dealers.* (i) This part does not apply to securities transactions effected for a bank customer by a registered broker/dealer if:

(A) The broker/dealer is fully disclosed to the bank customer; and

(B) The bank customer has a direct contractual agreement with the broker/dealer.

(ii) This exemption extends to bank arrangements with broker/dealers which involve bank employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.

(b) *Safe and sound operations.* Notwithstanding this section, every bank effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

§ 344.3 Definitions.

(a) *Asset-backed security* means a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(b) *Bank* means a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch.

(c) *Cash management sweep account* means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

(d) *Collective investment fund* means funds held by a bank as fiduciary and, consistent with local law, invested collectively:

(1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (Title 26 of the United States Code).

(e) *Completion of the transaction* means:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

(f) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(g) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which a bank makes or participates in making the purchase or sale of securities, but does not include a person or account having a direct, contractual agreement with a fully disclosed broker/dealer, broker, dealer, dealer bank or issuer of the securities that are the subject of the transaction.

(h) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

(i) *Government security* means:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (i) (1), (2), or (3) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

(j) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(k) *Municipal security* means a security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5) and (7) were not included in such section 103(c), paragraph (1) of such section 103(c) does not apply to such security.

(l) *Periodic plan* means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(m) *Security* means any interest or instrument commonly known as a security, whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtness or any participation in or right to subscribe to or purchase any of the foregoing. The term security does not include:

(1) A deposit or share account in a federally or state insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; or

(8) U.S. Savings Bonds.

§ 344.4 Recordkeeping.

(a) *General rule.* A bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(i) The accounts for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or cancelled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.

(b) *Manner of maintenance.* Records may be maintained in whatever manner, form or format a bank deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every bank effecting a securities transaction for a customer shall give, send or have sent, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) *Broker/dealer's confirmations.* (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. A bank may either have the broker/dealer send the confirmation directly to the bank's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the bank. If a bank chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the bank's receipt of the broker/dealer's confirmation; and

(2) If the bank is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

(1) Name of the bank;

(2) Name of the customer;

(3) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution, or the fact that the time of execution will be furnished within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6)(i) The amount of any remuneration received or to be received by the bank

from the customer, and the source and amount of any other remuneration received or to be received by the bank in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the bank and the customer; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the bank has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (b)(6)(i) (A), (B), or (C) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information within a reasonable time upon written request;

(8) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, provided however, that this shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided however, that this paragraph (b)(10) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 344.6 Notification by agreement; alternative forms and times of notification.

A bank may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5 (a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the bank exercises investment discretion in other than in an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the bank exercises investment discretion in an agency capacity, in which instance:

(1) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in § 344.5. The bank may charge a reasonable fee for providing the information described in § 344.5.

(d) *Cash management sweep accounts.* A bank effecting a securities transaction for a cash management sweep account shall give or send its customer a written notification as described in § 344.5 for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account.

(e) *Collective investment fund accounts.* The bank shall at least annually furnish to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(f) *Periodic plan accounts.* The bank shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the bank;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the bank shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The bank may charge a reasonable fee for providing information described in § 344.5.

§ 344.7 Settlement of securities transactions.

(a) A bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association; or

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, or sold to an initial purchaser by a bank participating in the offering. A bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

§ 344.8 Securities trading policies and procedures.

(a) *Policies and procedures.* Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers; and

(2) Assignment of responsibility for supervision and reporting, separate from those in paragraph (a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; and

(3) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination; and

(4) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction.

§ 344.9 Personal securities trading reporting by bank directors, officers and employees.

(a) *Officers and employees subject to reporting.* Bank officers and employees who:

(1) Make investment recommendations or decisions for the accounts of customers;

(2) Participate in the determination of such recommendations or decisions; or

(3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the bank, within ten business days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

(b) *Directors subject to reporting.* Bank directors who:

(1) Make investment recommendations or decisions for the accounts of customers; or

(2) Participate in the determination of such recommendations or decisions must report to the bank, within ten business days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

(c) *Exempt transactions.* Excluded from this reporting requirement are:

(1) Transactions for the benefit of the director, officer or employee over which the director, officer or employee has no direct or indirect influence or control;

(2) Transactions in mutual fund shares;

(3) Transactions in government securities; and

(4) All transactions involving in the aggregate $10,000 or less during the calendar quarter.

(d) *Alternative report.* Where a bank acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the bank's directors, officers and employees may fulfill their reporting requirement under paragraph (a) or (b) of this section by filing with the bank the ''access persons'' personal securities trading report required by (SEC) Rule 17j–1, 17 CFR 270.17j–1.

§ 344.10 Waivers.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

Dated at Washington, D.C., this 11th day of December, 1996.

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–32275 Filed 12–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 95–AWP–26]

Proposed Establishment of Class D Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: This notice announces the extension of the comment period on a Notice of Proposed Rulemaking (NPRM), which proposes to establish Class D airspace at Victorville, CA. This action is being taken due to an administrative oversight, wherein the comment period did not allow adequate time for interested persons to have the opportunity to comment.

DATES: Comments must be received on or before January 30, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 95–AWP–26, Air Traffic Divisions, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 95–AWP–26, published on November 20, 1996 (61 FR 59040) proposed to establish Class D airspace area at Victorville, CA. This action will extend the comment period closing date on that airspace docket from November 30, 1996, to January 30, 1997, to allow for a 30-day comment period instead of the existing 10-day abbreviated comment period.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air)

Extension of Comment Period

The comment period closing date Airspace Docket No. 95–AWP–26, is hereby extended to January 30, 1997.

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.

Issued in Los Angeles, California, on December 10, 1996.

Leonard A. Mobley,

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

[FR Doc. 96–32692 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 300

Rules and Regulations Under the Wool Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (Commission or FTC) has completed its regulatory review of the Rules and Regulations under the Wool Products Labeling Act (Wool Rules). Pursuant to that review the Commission concludes that the Wool Rules continue to be valuable to both consumers and firms. The regulatory review comments suggested various substantive amendments to the Wool Rules. The Commission has considered these proposals and other proposals that it believes merit further inquiry. The Commission seeks comment on whether it should amend the Wool Rules to: Allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a wool product, without requiring disclosure of the functional significance of the fiber, as presently required by Wool Rule 3(b); eliminate the requirement of Wool Rule 10(a) that the front side of a cloth label, which is sewn to the product so that both sides of the label are readily accessible to the prospective purchaser, bear the wording ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label; allow for a system of shared information for manufacturer, importer, or other marketer identification among the North American Free Trade Agreement (NAFTA) countries; add a provision to Wool Rule 4 specifying that a Commission registered identification number (RN) will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted; allow the use of abbreviations for generic fiber names; and allow the use of abbreviations and symbols in country of origin labeling. The Commission also seeks comment on the possible need to expand the fiber content disclosure requirement in Wool Rule 19 to include specialty fibers other than the hair or fleece of the angora or cashmere goat.

DATES: Written comments will be accepted until January 22, 1997.

ADDRESSES: Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. Submissions should be identified as ''Rules and Regulations under the Wool Act, 16 CFR Part 300—Comment.'' If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–4040 or Edwin Rodriguez, Attorney, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3147.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Wool Products Labeling Act of 1939 (Wool Act), 15 U.S.C. 68, requires marketers of covered wool products to mark each product with (1) the generic names and percentages by weight of the constituent fibers present in the product; (2) the name under which the manufacturer or other responsible company does business, or in lieu thereof, the RN issued to the company by the Commission; and (3) the name of the country where the product was processed or manufactured. The Wool Act also contains advertising and recordkeeping provisions. Pursuant to Section 6(a) of the Act, 15 U.S.C. 68d, the Commission has issued implementing regulations, the Wool Rules, which are found at 16 CFR Part 300.

As part of the Commission's ongoing regulatory review of all its rules, regulations, and guides, on May 6, 1994, the Commission published a Federal Register notice (FRN), 59 FR 23645, seeking public comment on the Wool Rules. That same day a similar FRN was published, 59 FR 23646, seeking public comment on the Textile Rules, which are required by the Textile Fiber Products Identification Act.[1] Though not identical, the Wool Rules and the

[1] 15 U.S.C. 70 *et seq.* The Rules and Regulations under the Textile Fiber Products Identification Act are found at 16 CFR Part 303. A Notice of Proposed Rulemaking seeking comment on proposed changes to the Textiles Rules was published earlier this year, 61 FR 5340 (February 12, 1996). The comment period closed on May 13, 1996, and Commission staff members are currently analyzing the submissions. Most of the proposals discussed in this Notice with regard to the Wool Rules parallel similar proposals advanced with regard to the Textile Rules.

Textile Rules are closely related. Generally, the former covers products comprised in whole or in part of wool, while the latter covers products containing no wool at all. The FRNs solicited comments about the overall costs and benefits of the Wool Rules and the Textile Rules, as well as their regulatory and economic impact. The FRNs also sought comment on what changes in these Rules would increase their benefits to purchasers and how those changes would affect the costs the Rules impose on firms subject to their requirements. The deadline for submission of comments was extended twice, on July 7, 1994 and September 12, 1994. The final deadline for comments was October 15, 1994.

II. Regulatory Review Questions and Comments

A. Introduction

The Commission received twenty-eight comments in response to the Textile Rules FRN and twelve comments in response to the Wool Rules FRN. Seven of the twelve Wool Rules comments were merely copies of correspondence submitted in response to the Textile Rules FRN. Because of the many points in common between the Textile Rules and the Wool Rules provisions, Textile Rules submissions that contain recommendations or comments relevant to both sets of Rules will be considered as responses to the Wool Rules as well.[2] The comments were submitted by trade associations [3] and companies subject to the Textile Rules and the Wool Rules.[4] In addition, one comment was submitted by an industry-wide committee formed to address issues concerning the harmonization of textile regulations among the NAFTA countries.[5]

B. Specific Comments

Twelve comments explicitly express support for the Wool Rules as a whole [6] because the Wool Rules protect consumers from deceptive fiber claims and provide them with valuable information about the fiber content of apparel, allowing them to make educated product comparisons and purchasing decisions.[7] The comments recognize minimal costs but do not identify any specific costs imposed by the Wool Rules on consumers.[8]

In addition, the comments show that the Wool Rules are valuable to manufacturers and firms. They allow firms to distinguish their products from others in the marketplace based on the products' fiber content.[9] They improve the credibility of firms and their products by assuring consumers that the products they are purchasing will meet specific standards and consumer tastes.[10] The Wool Rules also ''maintain the integrity of fiber type information from the fiber supplier to the textile manufacturer to the apparel manufacturer to the consumer.'' [11]

Although the Wool Rules impose labeling and packaging costs,[12] they are small and have become an accepted part of doing business in the textile industry.[13] The commenters consider the costs of compliance to be minimal and the benefits to companies and consumers to be tangible and great.

The comments submitted in response to the regulatory review of the Wool Rules propose certain amendments to the Rules. On the basis of the comments and other available information, the Commission has considered recommendations to amend the Wool Rules to: (1) Allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a wool product, without requiring disclosure of the functional significance of the fiber, as presently required by Wool Rule 3(b); (2) require labels of covered products containing reprocessed fibers to disclose whether such reprocessed fibers consist of all new pre-consumer or untreated post-consumer materials; (3) state specifically that selvages are exempt; (4) modify country of origin disclosure requirements; and (5) eliminate the requirement of Wool Rule 10(a) that the front side of a cloth label, only one end of which is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, bear the wording ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label.

C. NAFTA Related Comments

The goal of NAFTA is to establish a trade zone in which goods can flow freely among Canada, Mexico, and the United States, a goal that may be impeded by the multiple burdens imposed on companies by regulations in the NAFTA countries. Several comments discussed NAFTA and the need for regulatory convergence. For example, some comments focus on the problems posed by linguistic differences among the NAFTA countries, and

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[2] Unless otherwise identified (*e.g.*, ''Wool Rules Submission), all footnote citations to comments refer to Textile Rules submissions.

[3] National Knitwear & Sportswear Association [NKSA] (1), National Association of Hosiery Manufacturers [NAHM] (2), American Textile Manufacturers Institute [ATMI] (3), Cordage Institute [CORD] (4), National Retail Federation [NRF] (5), American Fiber Manufacturers Association, Inc. [AFMA] (7), American Textile Manufacturers Institute [ATMI] (10), Ross & Hardies, on behalf of United States Association of Importers of Textiles and Apparel [USA–ITA] (11), American Apparel Manufacturers Association [AAMA] (15), Liz Claiborne, Inc. and Labeling Committee, Industry Sector Advisory Committee on Wholesaling and Retailing [ISAC 17] (17). Wool Rules Submissions: Wool Bureau [WB] (1), Northern Textile Association [NTA] (4), Harris Tweed Authority [HT] (6), Northern Textile Association [NTA] (7).

[4] Warren Featherbone Company [WFC] (6), Dan River Inc. [DR] (8), Ruff Hewn [RUFF] (9), Gap, Inc. [GAP] (12), Fieldcrest Cannon, Inc. [FIELD] (13), Fruit of the Loom [FRUIT] (14), Wemco Inc. [WEMCO] (18), Sara Lee Knit Products [SARA] (19), Horace Small Apparel Company [HORACE] (20), Perry Manufacturing Company [PERRY] (21), Milliken & Company [MILL] (22), Cranston Print Works Company [CRAN] (23), Angelica Corporation [ANGEL] (24), Russell Corporation [RUSS] (25), Haggar Apparel Company [HAGGAR] (26), Capital Mercury Shirt Corp. [CAP] (27), Biderman Industries Corporation [BIDER] (28). Wool Rules Submission: Northwest Woolen Mills [NWM] (2).

[5] Trilateral Labeling Committee [TLC] (16). Other comments appear to track TLC's recommendations closely: WFC (6), RUFF (9), WEMCO (18), SARA (19), ANGEL (24), RUSS (25) HAGGAR (26), CAP (27), and BIDER (28) explicitly adopt or endorse the recommendations of TLC (16).

[6] NKSA (1) p.1, NAHM (2) p.1, ATMI (3) p.1, CORD (4) p.2, DR (8) p.1, ATMI (10) p.1, FIELD (13) p.1, FRUIT (14) p.1, PERRY (21) p.1, MILL (22) p.1. Wool Rules Submissions: NTA (4) pp. 1–2, HT (6) pp. 2–4. These comments were submitted by companies covered by the Textile and Wool Rules, but they express the belief that the Wool Rules help consumers.

[7] NAHM (2) states, at p.1, that the regulations should be retained ''because they provide a framework for fiber content disclosure, labeling, country-of-origin clarification, and provisions for guarantees, all of which protect manufacturers, buyers, and retail consumers.'' NKSA (1) states, at p.1, that the Rules serve an important and useful purpose for consumers who may not be aware of the various fibers in the multi-fiber blends that have become common in the marketplace. PERRY (21) states, at p.1, that the Rules are ''both necessary and desirable if we are to have orderly trade within this hemisphere.''

[8] NAHM (2) states, at p.1, that the Rules impose costs on consumers, but does not identify what the costs are. The comment states that ''the assurances offered by the Rules to purchasers far outweigh the costs associated with fiber content disclosure on labeling and the use of guarantees.'' ATMI (10) states, at p.1, that it ''has no knowledge of additional imposed costs to the consumer because of the rules.''

[9] NKSA (1) p.1.

[10] NAHM (2) p.2.

[11] ATMI (3) p.1. See also DR (8) p.1; ATMI (10) p.1, MILL (22) p.2.

[12] NAHM (2) p.2. ATMI (3) states, at p.1, that ''[t]here are minimal costs associated with the manufacture of the label, its attachment to the textile product, and costs carried by the manufacturer to maintain records.''

[13] NKSA (1) p.1, ATMI (3) pp.1–2, DR (8) p.1, ATMI (10) p.5, FIELD (13) p.6, MILL (22) p.6. ATMI (3) states, at pp.1–2, that ''[p]rior to the rules, textile mills typically kept records of fiber content and performed fiber identification tests to certify that fiber being supplied to the mill was indeed what the supplier stated. These costs and practices have become a generic part of textile business operations. The rules only add the cost of a consumer label.''

regulations based on these differences, that affect the printing of fiber content information, country of origin names, and care instructions.[14] Manufacturers must either print separate labels for each market, which may inhibit the efficient allocation of inventories within the NAFTA territory and increase costs to consumers,[15] or print unwieldy, multilingual labels that satisfy all of the regulatory requirements of each NAFTA country.[16] In addition, some comments suggested that differences in labeling requirements, including label attachment requirements, the definition of key terms, and responsible party identification systems in the NAFTA countries, may also impede trade.[17] The comments generally agree that the NAFTA signatories must consult and coordinate with each other to simplify textile and apparel labeling so that differences in labeling rules and the manner in which compliance is determined do not pose trade barriers.[18]

NAFTA requires the harmonization of labeling regulations. Article 906 of NAFTA states that ''the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.'' Article 913 of the Act requires the creation of a Committee on Standards-Related Measures, including a Subcommittee on Labelling of Textile and Apparel Goods.

Many of the comments contend that harmonizing labels would benefit manufacturers and consumers alike by decreasing the costs of production and distribution. One commenter stated that prices charged to consumers may decline if the costs associated with labeling decline.[19] A few comments contend that harmonized labeling would be less confusing to consumers.[20]

The Commission has considered the comments and other available information and NAFTA-related proposals to amend the Wool Rules to: (1) Allow for a system of shared information for manufacturer or importer identification among the NAFTA countries; (2) add a provision specifying that a Commission RN will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted; (3) allow the use of abbreviations for generic fiber names; and (4) allow the use of abbreviations and symbols in country of origin labeling.

D. Conclusion

Although no comments were received from consumers or consumer groups, the Commission believes that consumers benefit directly from the Wool Rules and consider the mandated disclosures material in making purchase decisions. A consumer with a preference for a particular fiber can readily determine the presence and percentage of that fiber in covered products. Likewise, a consumer who is allergic to a certain fiber can avoid textiles containing that fiber. Companies at all levels of manufacture, distribution, and sales of textile products support and accept these regulations. The Commission has decided, however, to seek additional comment on possible amendments to the Wool Rules.

Passage of NAFTA, which highlighted the importance of reconciling the labeling requirements of the member countries, prompted many of the changes proposed in the comments. After reviewing specific recommendations, the Commission is considering some of the suggested changes, as well as other possible amendments. The Commission has, however, rejected other changes to the Wool Rules proposed in the comments as infeasible or unnecessary. This Notice of Proposed Rulemaking (NPR) seeks comment concerning the proposed changes. All of the recommendations for change are discussed below.

III. Proposals for Amendments to the Wool Rules

This section discusses specific recommendations and proposed changes on which the Commission sought comment in the FRN and additional issues raised by the comments or the Commission. This discussion includes a summary and analysis of the comments and a discussion of the proposed changes that the Commission has made.

A. Use of Generic Fiber Names for Fibers with a Functional Significance Present in the Amount of Less Than 5% of the Total Weight of a Wool Product

One commenter recommended that the Commission revise Wool Rule 3(b) to allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a textile product, without disclosing the functional significance of the fibers, as the Wool Rule currently requires.[21] The commenter maintains that the existing Wool Rule is ''archaic'' because consumers know, for example, that the functional significance of spandex is elasticity. In addition, the commenter expresses the view that the Rule is not well known in the international textile industry. As a result, wool imports into the United States may be held by the Customs Service until they have been marked in a manner consistent with U.S. law. Such delays may be costly to businesses and ultimately to consumers.

Another commenter[22] specifically recommended that the Wool Rules be amended to recognize the relatively recent and growing trend of manufacturers' blending small amounts (less than 5%) of nylon (or perhaps some other synthetic fiber) with ''coarser, less expensive wool fibers * * *. to give the lightweight wool yarn sufficient strength to be woven or knitted into fabric form.''

The Commission believes that amending Wool Rule 3(b) to dispense with an unnecessary labeling requirement might benefit manufacturers, importers and other marketers, as well as consumers. In addition, the cost to consumers is likely to be low because consumers generally may know the functional significance of many fibers, and manufacturers are likely to disclose voluntarily the functional significance of others that may be less familiar. Therefore, the Commission proposes to amend Wool Rule 3(b) to read as follows:

§ 300.3 Required Label Information.

(a) * * *

[14] This notice does not address the issue of the use of symbols in care labeling. The Commission has published separately a notice regarding that issue. 60 FR 57552 (Nov., 16, 1995).

[15] FRUIT (14) p.3.

[16] USA–ITA (11) p.2, see also FRUIT (14) p.2. The comments, however, do not provide extrinsic evidence that long labels cause consumer confusion or that they are financially burdensome to manufacturers or distributors.

[17] AFMA (7) p.1, FRUIT (14) p.2, SARA (19) p.4. FRUIT states that differences in labeling requirements may ''function as non-tariff trade barriers and significantly impede the free flow of goods within the NAFTA territory,'' inhibiting sales and harming American industry.

[18] WFC (6) p.1, AFMA (7) p.1, DR (8) p.1, RUFF (9) pp.1–2, ATMI (10) pp.1–2, USA–ITA (11) p.2, FIELD (13) pp.1–2, FRUIT (14) pp.1–2, AAMA (15) p.1, TLC (16) p.1, ISAC 17 (17) p.1 WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.2, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[19] FRUIT (14) p.2.

[20] WFC (6) p.1, AAMA (15) pp.1, 2, TLC (16) p.2, WEMCO (18) p.1, SARA (19) pp.2, 3, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[21] GAP (12) pp.1–2.

[22] Wool Rules Submission: WB (1) pp.1–12

(b) In disclosing the constituent fibers in information required by the Act and regulations or in any non-required information, no fiber present in the amount of less than five percentum may be designated by its generic name or fiber trademark but shall be designated as ''other fiber,'' except that the percentage of wool or recycled wool shall always be stated, in accordance with Section 4(a)(2)(A) of the Act. Where more than one of such fibers, other than wool or recycled wool, are present in amounts of less than five percentum, they shall be designated in the aggregate as ''other fibers.'' *Provided, however,* that nothing contained herein shall prevent the disclosure of any fiber present in the product which has a clearly established and demonstrable functional significance when present in the amount stated, as for example:

98% wool
2% nylon

when nylon has a functional significance (*e.g.*, adding strength to the fabric).

The only difference between existing Wool Rule 3(b) and the proposed amendment is that the requirement to disclose the fiber's functional significance has been deleted. The proposed amendment would still prohibit disclosing generic fiber names for fibers present in an amount of less than 5% that do not have a functional significance when present in the amount contained in the wool product. Thus, the proposed amendment would still allow the consumer to distinguish between fibers constituting less than 5% of the total weight that have a functional significance and those that do not. The statement, ''98% wool, 2% nylon,'' is a common example of a disclosure that includes a fiber constituting less than 5% of a covered product's weight yet having a demonstrable functional significance when present in such small amounts. The Commission solicits comment on the benefits and costs to consumers and manufacturers of this proposed amendment.

B. Labels of Covered Products Containing Reprocessed Fibers

One commenter[23] suggests that certain untreated ''post-consumer'' reprocessed textiles might contain harmful bacteria and organisms and consequently might be a breeding ground for disease. The commenter says that the same potential for disease does not arise with respect to reprocessed fibers derived from ''pre-consumer'' (or manufacturer) materials. The commenter recommends that the Wool Rules be amended to require products containing reprocessed fibers to disclose whether the reprocessed fibers were reclaimed from ''pre-consumer'' or ''post-consumer'' materials.

The Commission does not propose to amend the Wool Rules to require such disclosures because it does not believe factual support exists for this contention or other problems relating to reprocessed fibers. Should evidence of a health hazard arise, the Commission will address the issue at that time.

C. Fiber Content of Selvages

One commenter[24] recommends that the Wool Rules be amended to state specifically that the fiber content of selvages need not be taken into account in the calculation and disclosure of fiber content. Selvages are narrow strips of material attached or woven to the edges of a bolt of fabric and used by the manufacturer to hold the fabric while it is being dyed. Selvages also prevent the fabric from fraying or raveling. Selvages are not incorporated into a garment or other finished product, but are discarded during the manufacturing process. The Commission does not construe the Wool Act and the disclosure provisions in the Wool Rules to cover selvages. Consequently, because the selvages at issue are not subject to the Wool Act marking requirements, there is no need to amend the Wool Rules.

D. Country of Origin Labeling

Under the Wool Act and Wool Rule 25a, an imported wool product must bear a label disclosing the name of the country where the product was processed or manufactured. One commenter recommends that domestic companies that add value to imported greige goods (unfinished plain fabric) through printing and finishing be allowed to label the finished product simply as ''Made in USA,'' without mention of imported fabric, to encourage value-added manufacturing in the United States.[25] Such a label would not comply with Wool Rule 25a, which states that a wool product made in the United States of imported fabric must contain a label disclosing those facts, as for example: ''Made in USA of imported fabric.'' Only wool products completely made in the United States of fabric that was also made in the United States may be labeled ''Made in USA'' without qualification.[26] At present, the Commission does not propose any amendments to this Wool Rule.[27]

E. Label Mechanics and Wool Rule 10(a)'s ''Fiber Content on Reverse Side'' Disclosure Requirement

Several comments addressed the interrelated issues of label type, label attachment, label placement, and use of both sides of a label to set out required information.[28] The comments recommend that the Wool Rules not specify a type of label (*e.g.*, woven, non-woven, printed) to be used or the method of label attachment, to allow for changes in labeling technology. The comments recommend that the Wool Rules require only that the label remain securely affixed to the product and that the information be legible and remain legible for the useful life of the product. The comments also recommend that the Wool Rules allow both sides of a label to be used to display the required information.[29] The comments discuss the issue of label attachment in the context of NAFTA and recommend that U.S. label attachment regulations be harmonized with those of the NAFTA countries.

The current Wool Rules already address many of the recommendations made by the comments regarding the mechanics of labeling. Rule 5—''Required Label and Method of Affixing''—allows any type of label (e.g., a hangtag; a gummed-on label; a woven, non-woven, or printed label) to be used, so long as the label is securely affixed and durable enough to remain attached to the product until the consumer receives it. There is no requirement in the Wool Rules that the label be permanently attached to the covered

[23] Wool Rules Submission: NWM (2) pp.2–3.

[24] Wool Rules Submission: HT (6) pp. 1–6.

[25] CRAN (23) pp. 1–2.

[26] In determining the appropriate disclosure for country of origin, the manufacturer or processor needs to look only one step back in the process. For example, the label ''Made in USA'' would be appropriate if the finished article were made from fabric produced in the U.S., regardless of whether the yarn that went into the fabric was imported.

[27] The Commission is currently examining issues pertaining to ''Made in USA'' advertising and labeling claims generally in a separate context. On July 11, 1995, the Commission announced that it would re-examine its ''Made in U.S.A.'' policy by (1) conducting a comprehensive review of consumers' perceptions of ''Made in USA'' and similar claims and (2) holding a public workshop to examine issues relevant to the standard. The Commission issued a notice, 60 FR 53922 (Oct. 18, 1995), requesting public comment in preparation for the workshop. The workshop was held on March 26–27, 1996. Following the workshop, the Commission sought further public comment on the issues. 61 FR 18600 (April 26, 1996). The second comment period closed on June 30, 1996.

[28] WFC (6) p.1 DR (8) p.1, RUFF (9) p.2, ATMI (10) p.5, FIELD (13) p.6, FRUIT (14) p.5, AAMA (15) p.3, TLD (16) p.4, WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.6, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1. The work program of the NAFTA subcommittee on labeling includes ''a uniform method of attachment'' as one of its issues.

[29] WFC (6) p.1, DR (8) p.1, RUSS (9) p.2, ATMI (10) p.5, FIELD (13) p.6, AAMA (15) p.3, TLC (16) p.4, WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.6, ANGEL (24) p.1, russ (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

product and therefore no requirement that the label remain legible for the useful life of the product. Wool Rule 10(a) provides that: ''The required information may appear on any label attached to the product, provided all the pertinent requirements of the Act and Regulations are met and so long as the combination of required information and non-required information is not misleading.''

Wool Rule 10(a) further requires in general that all three Wool Act disclosures—country of origin, company name or RN, and fiber content—be made in immediate conjunction with one another. It, provides, however, that the company name or RN may appear on the back of the required label or on the front of another label in immediate proximity to the required label, in accordance with Rule 21—''Use of a Separate Label for Name or Registered Identification Number.'' It also provides that when a cloth label is used, and only one end is sewn to the product, the fiber content disclosure may be placed on the back of the label, ''if the front side of such label clearly and conspicuously shows the wording Fiber Content on Reverse Side.''

One commenter proposed that this second provision of Wool Rule 10(a) be amended to eliminate the requirement that manufacturers place the phrase ''Fiber Content on Reverse Side'' on the front side of the required label because ''consumers today are aware that both sides of the label contain information important to their purchasing decision.'' [30] The Commission agrees that consumers are likely to look on the back of labels for information without an express direction to do so, particularly because under the Commission's Care Labeling Rule, 16 CFR Part 423, garment care instructions may, and often do, appear on the reverse side of a label. The required disclosure, therefore, may be unnecessary.

The Commission proposes to amend Wool Rule 10(a). The Rule might be amended narrowly to eliminate the ''Fiber Content on Reverse Side'' disclosure requirement for cloth labels with one end sewn to textile products. Another alternative would be to amend Wool Rule 10(a) to allow the required fiber content information to appear on the reverse side of any kind of permissible label as long as the information remains ''conspicuous and accessible.'' The Commission also solicits other language alternatives relating to the mechanics of labeling, as well as comment on the benefits and costs to consumers and manufacturers.

The Commission also requests comment on whether fiber content identification should be printed on labels that are permanently attached to a wool product,[31] and on whether the other two required disclosures should similarly appear on a permanent label. This information may continue to be useful to consumers throughout the life of the product. For example, fiber content identification may assist professional cleaners in determining whether certain cleaning techniques are appropriate for an item of wool apparel. Moreover, advances in labeling technology make it unlikely that requiring a permanent label would unduly burden manufacturers. Many manufacturers already make the required disclosures on permanent labels. Finally, the Commission seeks comment concerning any specific conflicting rules and regulations for label attachment in Mexico and Canada, and whether such conflicts might pose trade impediments that could be removed by changing the Commission's Wool Rules.

F. System of Shared Information for Manufacturer or Importer Identification Among the NAFTA Countries

Under the Textile Act and the Fur Products Labeling Act,[32] as well as under the Wool Act, the required label on covered products must bear the identification of one or more companies responsible for the manufacture, importation, offering for sale, or other handling of the product, either by the full name under which the company does business or, in lieu thereof, by the RN issued by the Commission. Canada has a similar system of identification numbers known as CA numbers. Mexico does not have a similar system, but the Mexican government issues tax identification numbers to companies.

To eliminate the need for a company to register in more than one country, the comments recommend that the FTC and appropriate government agencies in the NAFTA countries develop an integrated system by allowing any RN, CA, or Mexican tax identification number to suffice as legal company identification in all three NAFTA countries.[33] The comments repeatedly state that it would not be necessary to create one identification number system. They recommend that each NAFTA country continue its policy and procedure of registration, with the U.S. continuing the present system of RN numbers. The countries could exchange information on computer databases so that a covered product can be traced to a manufacturer or other responsible party using either an RN number, a CA number, or a Mexican tax number.

Congress would need to amend the Wool Act to allow CA numbers and Mexican tax numbers, which are not registered by the Commission, to be used on wool products shipped for distribution in the United States. For present purposes, the Commission seeks comment on the advantages and disadvantages of a system of shared information, the feasibility of implementing such a system across borders, and the impact such a system might have on the ability of the Commission, consumers, and firms to track responsible parties. Alternatively, the Commission might consider whether simply to permit the use of the identification numbers of a NAFTA trading partner, provided that the partner made the identifying information readily available to anyone seeking it. The Commission seeks comment on the advantages and disadvantages of this alternative, which also would require statutory amendment.

G. Require Holders of RN Numbers to Update Their Registration Information When Changes in That Information Occur

The success of a system of shared information would depend to a great extent on the availability and the quality of the information in the Commission's RN registry and the registration systems of Canada and Mexico. To increase the usefulness of the RN registry, the Commission plans to improve its accuracy and the ease of access to its contents.

Since initially being issued their RNs, many companies have changed their legal business name, business address, and/or company type (*e.g.*, from proprietorship to corporation) without notifying the FTC about the change(s) as requested in the RN application. Since the 1940's many RN holders have gone out of existence, and others, while still in existence, no longer have any need for their RNs. As a result, although the records accurately reflect the original application information, a large percentage of the official FTC records do not reflect an actual user's current

[30] FRUIT (14) p. 5.

[31] Comment on this issue was also requested in a Federal Register notice seeking comment on proposed amendments to the Commission's Care Labeling Rule, 16 CFR part 423, 60 FR 67102 (Dec. 28, 1995).

[32] 15 U.S.C. 69.

[33] WFC (6) p.1, DR (8) p.1, RUFF (9) pp.1–2, ATMI (10) p.2, USA–UTA (11) p.2, FIELD (13) pp.2–3, FRUIT (14) p.5, AAMA (15) pp.2–3, TLC (16) p.4, ISAC 17 (17) p.1, WEMCO (18), p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) p.3, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

name, place of business, and/or company type.

Registered identification numbers are subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest. The Commission proposes to add a provision to the Wool Rules that would subject an RN number to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted to the Commission. Section 300.4 of the Rules already requires that the Commission be apprised of such changes. The proposed amendment is merely an added provision to enable the Commission to update its database.[34] The Commission plans to undertake a program to update the RN database, in stages over a period of time. Commission staff will make every reasonable effort to identify and locate all companies actually using an RN and make them aware of their obligations to update their applications before a specified deadline. Numbers assigned to companies that are no longer in business, or that cannot be located, would then be subject to revocation.

The Commission seeks comment on the following proposed amendment to Wool Rule 4(c). Currently, Wool Rule 4(c) is as follows:

§ 300.4 Registered Identification Numbers.

(a) * * *
(b) * * *
(c) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable. Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest.

The proposed amendment would add a third sentence to read as follows:

Registered identification numbers will be subject to cancellation if the Federal Trade Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or concern to whom a registered identification number has been assigned by application duly executed in the form set out in subsection (e) of this section, reflecting the current name, business address, and legal business status of the person or concern.

H. Use of Abbreviations for Fiber Content Identification

Although supporting the fiber content disclosure requirements, many comments recommend that the Wool Rules be amended to allow abbreviations of generic fiber names in fiber content disclosures.[35] Thirteen comments state that spelling out complete fiber names in three languages for the marketing of covered products in the NAFTA countries is unwieldy and that abbreviations of generic fiber names would permit the required information to be conveyed on a smaller label.[36] One commenter contends that if abbreviations were permitted, they could lead to a single label for NAFTA countries and eventually to an international label.[37]

Many comments urge that the FTC and the appropriate agencies in the NAFTA countries adopt abbreviations for the most common fibers—acrylic, cotton, nylon, polyester, rayon, silk, spandex, and wool—which are said to represent more than 80% of all apparel and textile products sold in the marketplace, and an abbreviation for designating ''other fibers'' that are present in amounts of less than 5% of total fiber weight.[38] The result would be three abbreviations, one in each language—English, Spanish, and French—for the most common generic fibers.[39] Although abbreviations eventually could be developed for other fibers, the comments emphasize the need to develop abbreviations for the more common generic fibers first. Other fibers that the Rules do not permit to be lumped together as ''other fibers'' can be identified by their full fiber names.[40] A few comments recommend three- to four-letter abbreviations for fiber names;[41] one commenter states that any abbreviations used for fiber identification should not arbitrarily be limited to a specific number of letters.[42]

The comments recognize that when fiber names are entirely different in different languages, arriving at common abbreviations may be difficult.[43] But the comments point out that when fiber names are identical or similar, the same abbreviation could be used by more than one country, thereby reducing the use of abbreviations on labels.[44]

Comments also recommend that the use of abbreviations should be optional,[45] and that manufacturers should be allowed to use full labeling and still qualify for NAFTA benefits in all signatory countries.[46] To educate the public about the meaning of abbreviations, the comments recommend that manufacturers or retailers provide hangtags, explanatory charts, or other consumer education labels for a limited period.[47]

The Commission believes that the use of abbreviations for fiber names may benefit companies without harming consumers. The Commission therefore proposes to amend Wool Rules 8 and 9 to allow the use of abbreviations for generic fiber names. Generally, Wool Rule 9(a) does not allow the use of abbreviations for disclosures of required information.[48] To allow the use of abbreviations for common generic fiber names, the Commission proposes to amend Rules 8(a) and 9(a) to read as follows:

[34] It also complements the Commission's Rules of Practice, which state: ''Numbers are subject to revocation for cause or upon a change in business status or discontinuance of business.'' 16 CFR 1.32.

[35] WFC (6) p.1, DR (8) p.1, RUFF (9) p.2: ATMI (10) p.4–5, USA–ITA (11) p.2, FIELD (13) pp.4–5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) pp.3–4, ISAC 17 (17) p.2, WEMCO (18) p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) pp.4–5, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[36] WFC (6) p.1, USA–ITA (11) p.2, FRUIT (14) p.2, AAMA (15) p.2, TLC (16) p.3, ISAC 17 (17) p.2, WEMCO (18) p.1, SARA (19) p.1, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[37] ISAC 17 (17) p.2.

[38] WFC (6) p.1, DR (8) p.1, ATMI (10) p.4, FIELD (13) pp.4–5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA (19) p.2, MILL (22) pp.4–5, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1. Some comments omit acrylic from this list of fibers. RUFF (9) p.2, HORACE (20) p.2, RUSS (25) p.2.

[39] WFC (6) p.1, DR (8) p.1, RUFF (9) p.2, ATMI (10) p.4, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA, (19) p.2, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[40] DR (8) p.1, ATMI (10) p.4, FIELD (13) p.5, FRUIT (14) p.3, MILL (22) p.5.

[41] FIELD (13) p.4, ISAC 17 (17) p.2.

[42] AFMA (7) states, at p. 2, that ''[a]s labeling requirements are simplified, the quality and consistency of information provided to the consumer should be maintained,'' so as not to compromise ''the two decades of education and experiences developed under the current system in the United States.''

[43] AFMA (7) p.3.

[44] WFC (6) p.1, AFMA (7) p.3, DR (8) p.1, RUFF (9) p.2, ATMI (10) p.4, FIELD (13) p.4, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) p.4, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[45] AAMA (15) p.2.

[46] AFMA (7) p.3.

[47] WFC (6) p.1, DR (8) p.1, RUFF (9) p.1, ATMI (10) p.4, FIELD (14) p.5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.4, WEMCO (18) p.1, SARA (19) p.2, MILL (22) p.5, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[48] Nevertheless, Wool Rule 25a(e) does allow abbreviations for country of origin disclosure, but only when the abbreviations ''unmistakenly indicate the name of a country, such as Gt. Britain for Great Britain.''

§ 300.8 Use of Fiber Trademark and Generic Names.

(a) Except where another name is required or permitted under the Act or regulations, the respective generic name of the fiber shall be used when naming fibers in the required information; as for example: wool,'' ''recycled wool,'' ''cotton,'' ''rayon,'' ''silk,'' ''linen,'' ''acetate,'' ''nylon,'' and ''polyester,'' provided, however, that the following abbreviations may be used for cotton, wool, polyester, rayon, nylon, spandex, silk, and acrylic:
cotton—cot
wool—wl
polyester—poly
rayon—ryn
nylon—nyl
spandex—spdx
silk—slk
acrylic—acrl
* * * * *

§ 300.9 Abbreviations, Ditto Marks, Asterisks.

(a) In disclosing required information, words or terms may not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and may not be abbreviated except as permitted in Rule 8 and Rule 25a.
* * * * *

The Commission solicits comments on these proposed amendments, as well as alternative amendment language, other suggestions for English-language abbreviations for the above-listed fibers, and abbreviations for the catch-all classifications, ''other fiber'' and ''other fibers.'' The Commission also seeks submission of empirical data (copy tests, etc.) about consumer understanding of abbreviations and the impact that the use of abbreviations may have on consumers and firms. In addition, the notice asks whether the use of abbreviations on the required fiber content labels should be conditioned upon use of explanatory hangtags, indefinitely or for a limited period of time, and if the latter, for how long.

I. Use of Abbreviations and Symbols in Country of Origin Labeling

Wool Rule 25a requires that the name of the country where the wool product was processed or manufactured be indicated on a label. The comments support the optional use of three-letter abbreviations for country of origin names (such as ''CAN'' for ''Canada,'' ''MEX'' for ''Mexico,'' and ''USA'' for ''United States''),[49] and a symbol, such as a solid flag, to denote the words ''made in'' or ''product of'' in country of origin disclosures.[50] The commenters assert this would facilitate trade under NAFTA by reducing the label size, eliminating the need for three languages, and reducing consumer confusion. The comments contend that consumer education programs could be instituted to educate the consumer as to the meaning of the abbreviations and the symbol.[51] Only one comment opposed the use of abbreviations of country names.[52]

Wool Rule 25a permits abbreviations of country of origin names if they ''unmistakenly indicate the name of a country.'' The Rule already permits using the abbreviation ''USA'' to convey the origin of wool products made in the United States. The Rule does not, however, expressly indicate that the abbreviations ''CAN'' and ''MEX'' are appropriate for ''Canada'' and ''Mexico'' or that symbols (such as a solid flag for the words ''made in'' or ''product of'') may be used on wool products to denote country of origin. Although the Commission believes that it is very likely that the terms ''CAN'' and ''MEX'' would satisfy the Rule's requirement that a country of origin abbreviation ''unmistakenly indicate the name of the country,'' the Commission nonetheless solicits comment on the use of these abbreviations or other specific suggestions of appropriate abbreviations for ''Canada'' and ''Mexico.'' To ensure harmonization between abbreviations that are permitted under the Wool Rules and those used in the other NAFTA countries, the Commission also seeks comment on whether Canadian and Mexican regulations allow abbreviations for country of origin names. The Commission lacks sufficient information regarding the feasibility of using symbols in country of origin labeling and thus seeks comment on this issue. Finally, the Commission seeks comment on the benefits and costs to consumers and firms of adding specific country of origin abbreviations to the Wool Rules and allowing symbols.[53]

J. Use of Terms ''Mohair'' and ''Cashmere''

Wool Act Section 2(b) defines wool as ''the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may also include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) * * *.'' The fiber content disclosure requirement under the Wool Rules specifically provides for the marking of a wool product with the use of the word ''wool'' or the term ''mohair'' or ''cashmere.''[54]

The Commission is aware that animals are being bred for specialty fibers that would not fit into the required word categories for marking a wool product. For example, breeders have crossed female cashmere goats with angora males to produce an animal called a ''cashgora.''[55] This animal fleece is asserted to have ''the luster of mohair combined with the soft handle of cashmere * * *. Tests of the fiber have resulted in recommendations that the fiber is particularly suitable for knitted garments.''[56]

Although the Commission did not receive any specific comments on whether the Wool Rules should be amended to accommodate new specialty fibers, the Commission is soliciting comments on whether Wool Rule 19 should be expanded to include other specialty fibers.

IV. Invitation to Comment and Questions for Comment

A. Invitation

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the Wool Rules. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

[49] WFC (6) p.1, DR (8) p.1, RUFF (9)(p.1, ATMI (10) p.3, FRUIT (14) p.4, AAMA (15) p.1, TLC (16) p.3, ISAC 17 (17) p.3, WEMCO (18) p.1, SARA (19) p.2, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[50] WFC (6) p.1, DR (8) p.1, RUFF (9) p.1, ATMI (10) p.3, FRUIT (14) p.4, AAMA (15) p.1, TLC (16) p.3, ISAC 17 (17), p.3, WEMCO (18) p.1, SARA (19) p.2, MILL (22) p.4, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[51] RUFF (9) p.1.

[52] MILL (22) pp.1–2, 4. MILL states, at p.1, that ''[a]nything less than the complete country name would obscure for consumers the country of origin information intended by the Congress in the labeling acts and the current F.T.C. rules.''

[53] U.S. Customs regulations with regard to country of origin marking also permit ''abbreviations which unmistakably indicate the same of a country'' (19 CFR 134.45(b)). In the past, Customs has ruled that ''CAN'' and ''MEX'' do not meet this standard. Pursuant to 19 U.S.C. 1625, however, any interested party can request reconsideration of this interpretation.

[54] Wool Rule 19(a) states: ''In setting forth the required fiber content of a product containing hair of the Angora goat known as mohair or containing hair or fleece of the Cashmere goat known as cashmere, the term ''mohair'' or ''cashmere,'' respectively, may be used in lieu of the word ''wool,'' provided, the respective percentage of each fiber designated as ''mohair'' or cashmere'' is given * * *.''

[55] See P. Tortora, Understanding Textiles, Fourth Edition at 106–107 (1992).

[56] *Id.* At 107.

B. Questions

Use of Generic Fiber Names for Fibers With a Functional Significance and Present in the Amount of Less than 5% of the Total Fiber Weight of a Wool Product

1. Should the Commission amend Wool Rule 3(b) to allow manufacturers to list the generic fiber name(s) of fiber(s) that have a functional significance and are present in the amount of less than 5% of the weight of the product, without also requiring disclosure of the functional significance of the fiber(s)?

a. What benefits and costs to consumers and businesses would result from such an amendment? Would the amendment have a significant economic impact on a substantial number of small businesses? Can that impact be quantified?

b. Is the proposed amendment language set out in this notice appropriate? If not, what amendment language should be used?

Country of Origin Labeling

2. Do the abbreviations ''CAN'' and ''MEX,'' for ''Canada'' and ''Mexico,'' ''unmistakenly indicate the name'' of each of these NAFTA countries?

a. Are there other abbreviations for ''Canada'' and ''Mexico'' that would ''unmistakenly indicate the name'' of each country?

b. Do Canadian and Mexican regulations allow the use of abbreviations for country of origin names?

c. What would be the benefits and costs to consumers and businesses of allowing these or other abbreviations for ''Canada'' and ''Mexico''?

3. Should the Commission amend the Wool Rules to allow a symbol to be used to mean ''made in'' or ''product of,'' or other similar phrases, in country of origin labeling?

a. What would be the advantages and disadvantages of allowing the use of a symbol?

b. If the Commission decides to allow the use of a symbol, which symbol should be used?

c. What benefits and costs would allowing a symbol have for businesses or for purchasers of the products affected by the Wool Rules?

d. What actions can be taken to ensure that consumers understand what the symbol means?

e. How would the use of a symbol work when manufacturers wish to distinguish between the country of origin of an unfinished wool product and the country where another phase of the manufacturing process takes place, as in ''Made in the Dominican Republic of United States components''?

Label Mechanics and Wool Rule 10(a)'s ''Fiber Content on Reverse Side'' Disclosure Requirement

4. Should the Commission amend Wool Rule 10(a) to eliminate the requirement that the front side of a cloth label, sewn to the product so that both sides of the label are readily accessible to the prospective purchaser, bear the words ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label? Is there a continuing need for such a requirement?

5. Should the Commission amend Wool Rule 10(a) to allow the required fiber content information to appear on the reverse side of any kind of allowable label as long as the information remains ''conspicuous and accessible?''

a. What benefits and costs to consumers and firms would result from each of these alternative amendments? Would these amendments have a significant economic impact on a substantial number of small businesses? Can that impact be quantified?

6. Are there any rules or regulations concerning label attachment in Canada or Mexico that conflict with the Wool Rules? If so, what are they, and how do they conflict?

Identification Numbers of Manufacturers or Other Responsible Parties

7. If it were consistent with the Wool Act to do so, should the Commission amend the Wool Rules to allow the interchangeable use of RN, CA, or Mexican tax numbers?

a. What would be the advantages and disadvantages of a system of shared information? Alternatively, what would be the advantages and disadvantages of a system whereby one NAFTA country recognized and allowed the identification numbers of another NAFTA country, provided that the information would be made easily accessible to those seeking it?

b. Would the implementation of a system of shared information across national borders be feasible?

c. What impact would a system of shared information have on the ability of consumers and businesses to track responsible parties?

d. What benefits and costs to consumers and businesses would result from such an amendment? Would such an amendment have a significant economic impact on a substantial number of small business entities? Explain the nature and amount of such impact.

8. Is the proposed amendment to Wool Rule 4(c)—enabling the Commission to cancel an RN where the information contained on the original application is not properly updated—reasonable and appropriate? Are there other alternatives that would enable the Commission to maintain an accurate data base?

Fiber Identification Labeling

9. Should the Commission amend the Wool Rules to permit the abbreviation of fiber names on fiber content identification labels?

a. What costs and benefits to consumers and businesses would accrue from allowing the use of abbreviations for fiber content identification? Would such an amendment have a significant economic impact on a substantial number of small businesses? Can that impact be quantified?

b. Are there existing abbreviations for fibers that would clearly convey the required fiber content identification information?

c. Is the proposed amendment language set out in this notice appropriate? If not, what amendment language should be used?

10. Do Canadian and Mexican regulations allow the use of abbreviations of fiber names on fiber content identification labels?

11. Do any empirical data (copy tests, etc.) exist concerning consumer understanding of fiber name abbreviations?

12. Should the Commission amend the Wool Rules to provide that the required disclosures be printed on labels that are permanently attached to wool products? Should a permanent label be required only for fiber content identification or for all three required disclosures? Would such an amendment have a significant economic impact on a substantial number of small businesses? Can that impact be quantified?

Specialty Fibers Other Than ''Mohair'' and ''Cashmere''

13. Should the Commission amend Wool Rule 19 to include specialty fibers other than mohair and cashmere?

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses.[57] The purpose of a

[57] The RFA addresses the impact of rules on ''small entities,'' defined as ''small businesses,'' ''small governmental entities,'' and ''small [not-for-

regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. However, Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Wool Act, and the Wool Rules issued thereunder, cover the manufacture, sale, offering for sale, and distribution of wool products, the Commission believes that any amendments to the Wool Rules may affect a substantial number of small businesses. Unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration (SBA) show that there are some 94 broadwoven fabric mills making wool products (SIC Code 2231), most of which qualify as small businesses under applicable SBA size standards.[58] In addition, there are 254 narrow fabric mills (SIC Code 2241), producing wool products as well as fabrics of other fibers, more than 80% of which are small businesses. Furthermore, there are many apparel manufacturers that are small businesses covered by the Wool Rules. For example, there are some 288 manufacturers of men's and boys' suits and coats (SIC Code 2311), more than 75% of which are small businesses. There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely involved in the distribution and sale of products subject to the Wool Rules.

However, the proposed amendments apparently would not have a significant economic impact upon such entities. Comments received during the regulatory review of the Wool Rules indicated that the current costs of complying with the Rules and the Wool Act are minimal. The proposed amendments should clarify existing requirements of the Wool Rules and reduce further the costs of compliance with Wool Act requirements.

The proposal to eliminate the required label disclosure of the functional significance of a named fiber that constitutes less than 5% of total fiber weight would not place any additional costs or burdens upon companies covered by the Wool Rules. Manufacturers that wish to disclose this information would remain free to do so. For those that do not include the information, labeling costs for such products might be reduced very slightly.

The proposal to eliminate the required disclosure, ''Fiber Content on Reverse Side,'' on the front side of a label where the content is found on the reverse side likewise would not place any additional costs or burdens upon companies covered by the Wool Rules. Manufacturers that choose to continue using this phrase would be able to do so. For those that eliminate the phrase, labeling costs for wool products might be reduced slightly.

In addition, the Commission is requesting comment on whether fiber content information should be required to appear on a label that is permanently attached to a wool product. Such a requirement would ensure that the information remains available to consumers, as well as to professional cleaners, throughout the life of the product. The Commission believes that because of advances in labeling technology, and because many manufacturers already make content disclosures on a permanent label, such a new requirement would likely not prove costly or burdensome for small businesses. However, the Commission is specifically seeking comment as to the potential impact on small businesses.

The Commission proposes to amend Section 4 of the Wool Rules—governing the issuance of an RN number—to clarify that such numbers are subject to cancellation if changes in the information provided in the original application for the number are not reported to the Commission. This amendment does not impose any new requirement upon businesses. Furthermore, while Commission cancellation of an identification number would require a business to re-apply, this may be done simply by submitting the identifying information already called for in the Rules. Therefore, amending the Rules as proposed will not impose any significant economic costs on members of the industry.

The Commission also proposes to amend Sections 8 and 9 of the Wool Rules to allow abbreviations for generic fiber names in fiber content disclosures on labels. Similarly, the Commission seeks comment on the optional use of abbreviations and symbols to indicate the country of origin of the product. Section 25a of the Wool Rules already permits country name abbreviations that ''unmistakenly indicate the name of a country'' However, the Commission seeks comment on specific suggestions for appropriate abbreviations for NAFTA countries, as well as the possible use of a symbol, such as a flag, to denote the words ''made in'' or ''product of,'' appearing before the country name. The use of any abbreviations or symbols would be optional. Use of abbreviations or symbols could reduce costs to manufacturers somewhat by enabling them to shorten labels and facilitating the use of a smaller label for products to be shipped among NAFTA countries.

Finally, the Commission seeks comment as to whether Section 19 of the Wool Rules should be amended to recognize new specialty fibers produced by the cross breeding of different varieties of wool-bearing animals. Such a change, while likely important to a few firms, is not expected to have a significant impact on the wool industry.

On the basis of available information, the Commission certifies that amending the Wool Rules as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives within the statutory framework. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

VI. Paperwork Reduction Act

The Wool Rules contain various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, Office of Management and Budget (OMB) Control Number 3084–0047. These requirements relate to the accurate disclosure of material information about wool products, including fiber content and country of origin disclosures. The Rules also require manufacturers and other marketers of covered products to maintain records that support claims made on labels. Many of the disclosure requirements and all of the recordkeeping requirements are specifically mandated by the Wool Act. See 15 U.S.C. 68b, 68d. The Commission has also obtained OMB clearance for petitions concerning whether or not representations of the fiber content of a class of articles are commonly made, or whether or not the

profit] organizations,'' 5 U.S.C. 601. The Wool Rules do not apply to the latter two types of entities.

[58] SBA's revised small business size standards are published at 61 FR 3280 (January 31, 1996).

textile content of certain products is insignificant or inconsequential. A Notice soliciting public comment on extending these clearances through December 31, 1999, was recently published in the Federal Register. 61 FR 43764 (August 26, 1996).

The proposed amendments would not increase the paperwork burden associated with these paperwork requirements and, in fact, would lower the current burden estimate by either eliminating or reducing certain disclosure requirements. Specifically, the Commission proposes to: (1) eliminate the functional significance disclosure requirement of Section 3(b); (2) eliminate the ''Fiber Content on Reverse Side'' disclosure requirement of Section 10(a); and (3) allow abbreviations for generic fiber names. All of these proposed amendments would allow manufacturers greater flexibility in labeling procedures. Manufacturers that wish to disclose this information (relating to the functional significance of certain fibers and the fact that fiber content is found on the reverse side of the label) would remain free to do so. For those that do not include the information, the labeling burden would be reduced.

The Commission's proposed amendment regarding the cancellation of RN numbers does not impose a paperwork burden on holders of Registered Identification Numbers. This is because the Wool Rules at 16 CFR 300.4 already require companies to notify the FTC about changes in business names, addresses, company type, etc. The current proposal merely adds the element of cancellation by the Commission if these requirements are not met. Neither the initial filing procedures nor the requirement to update the information are new and therefore, no ''burden'' is imposed.

More importantly, the underlying certification itself does not meet the definition of ''information'' contained in the PRA. In implementing the Paperwork Reduction Act of 1995, OMB attempted to clarify the exemption for ''certifications'' in both the Notice of Proposed Rulemaking, 60 FR 30438, 30439 (June 8, 1995) and the Final Rule, 61 FR 44978, 44979 (August 9, 1995) (''the exemption applies when the certification is used to identify an individual in a 'routine, non-intrusive, non-burdensome way.' '') This language reflects current guidance in OMB/OIRA's Information Collection Review Handbook (1989), which discusses exempt categories of inquiry (5 CFR 1320.3(h) (1)–(10)) that are not deemed to constitute ''information.'' Certifications, as well as other forms of acknowledgments, comprise one of these categories.[59] Such inquiries are considered to be routine because response to the requests rarely requires examination of records, usually does not require consideration about the correct answer, and usually is provided on a form supplied by the government. See OMB/OIRA Handbook, p. 29. Accordingly, OMB's regulations exempt certifications from the clearance requirement, provided that no information need be reported beyond certain basic identifying information.

VII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or their Advisors

Pursuant to 1.18(c) of the Commission Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 300

Labeling, Trade practices, Wool.

Authority: 15 U.S.C. 68.

[59] Specifically, the first category consists of: ''affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgements.'' 5 CFR 1320(H)(1).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32260 Filed 12–23–96; 8:45 am]

BILLING CODE 6750–01–P

16 CFR Part 301

Rules and Regulations Under the Fur Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (Commission or FTC) has completed its regulatory review of the Rules and Regulations under the Fur Products Labeling Act (Fur Rules). Pursuant to that review, the Commission concludes that the Rules continue to be valuable to both consumers and firms. The regulatory review comments suggested various substantive amendments to the Rules. The Commission has considered these proposals and other proposals that it believes merit further inquiry. The Commission seeks comment on whether it should amend the Fur Rules to: Allow for a system of shared information for manufacturer, importer, or other marketer identification among the North American Free Trade Agreement (NAFTA) countries; amend Fur Rule 26 (§ 301.26) to specify that a Commission registered identification number (RN) will be subject to cancellation if, after a change in the material information contained in the RN application, a new application that reflects current business information is not promptly submitted; and raise from $20 to $85 or more the cost figure for fur trim and other products exempted from the requirements of the Fur Rules.

DATES: Written comments will be accepted until January 22, 1997.

ADDRESSES: Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be marked ''Rules and Regulations under the Fur Act, 16 CFR Part 301—Comment.'' If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd.,

Suite 13209, Los Angeles, CA 90024, (310) 235–4040.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Fur Products Labeling Act (Fur Act), 15 U.S.C. 69, requires marketers of covered fur products to mark each product to show (1) the name(s) of the animal(s) that produced the fur(s); (2) that the fur product contains or is composed of used fur, when such is the fact; (3) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) the name under which the manufacturer or other responsible company does business, or in lieu thereof, the RN issued to the company by the Commission; and (6) the name of the country of origin of any imported furs used in the fur product. The Fur Act also contains advertising and recordkeeping provisions. Pursuant to Section 8(b) of the Fur Act, 15 U.S.C. 69f(b), ''[t]he Commission is authorized and directed to prescribe rules and regulations governing the manner and form of disclosing information required by this Act, and such further rules and regulations as may be necessary and proper for purposes of administration and enforcement of this Act.'' The Commission has issued implementing regulations, the Fur Rules, which are set forth at 16 CFR part 301.

As part of the Commission's on-going regulatory review of all its rules, regulations, and guides, on May 6, 1994, the Commission published a Federal Register notice (FRN), 59 FR 23645, seeking public comment on the Fur Rules. The FRN solicited comments about the overall costs and benefits of the Fur Rules and their regulatory and economic impact. The FRN also sought comment on what changes in the Fur Rules would increase the benefits of the Fur Rules to purchasers and how those changes would affect the costs the Rules impose on firms subject to their requirements. The Commission further stated that Sections 19 and 27 would be amended to comply with ''metrication'' mandates if the Commission decided to retain those rules in their current form after the regulatory review. Finally, the FRN stated that, should Section 43 be retained, certain language therein would be modified to conform with that set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.[1] The deadline for submission of comments was extended twice, on July 7, 1994 and September 12, 1994. The final deadline for comments was October 15, 1994.

II. Regulatory Review Questions and Comments

The Commission received seven comments in response to the FRN.[2] Five comments expressed general support for retaining the collective Textile Rules (16 CFR 303), Wool Rules (16 CFR 300) and Fur Rules.[3] One comment from a trade association of companies covered by the Fur Rules' marking requirements stated: ''we feel that it would be in the best interest of the fur industry to remain under the present rules.'' [4]

The comments submitted in response to the regulatory review of the Fur Rules propose certain amendments. Based on the comments and other available information, the Commission has considered proposals to amend the Rules to: (a) Require additional disclosures and record keeping relating to the number of furs used in a fur product and the manner in which animals producing the furs died; (b) allow for a system of shared information for manufacturer, importer, or other responsible company identification among the NAFTA countries; (c) add a provision to Section 26 specifying that a Commission RN will be subject to cancellation if, after a change in the material information contained in the RN application, a new application that reflects current business information is not promptly submitted; and (d) raise from $20 to $85 or more the cost figure for fur trim and other products exempted from the requirements of the Fur Rules.

Although no comments were received from consumers or consumer groups, the Commission believes that consumers benefit directly from the Fur Rules and consider the mandated disclosures material in making purchase decisions. Companies at all levels of manufacture, distribution, and sales of fur products support and accept these regulations. Thus, the Commission has determined that it will retain the Fur Rules. However, the Commission has decided to seek additional comment on possible amendments to the Rules.

After reviewing specific recommendations, the Commission is considering some of the suggested changes, as well as other possible amendments. The Commission has, however, rejected other changes to the Fur Rules proposed in the comments as infeasible or unnecessary. This Notice of Proposed Rulemaking (NPR) seeks comment concerning several proposed changes to the Fur Rules. All of the recommendations for change are discussed below.

III. Proposals for Amendments to the Fur Rules

This section discusses specific recommendations and proposed changes received in response to the Commission's solicitation of comment in the FRN and additional issues raised by the comments or the Commission. The discussion includes a summary and analysis of the comments and explanation of the changes proposed by the Commission.

A. Disclose the Number of Furs Used in a Fur Product and the Manner in Which Animals Producing the Furs Died

One commenter[5] recommended that the Fur Rules be amended by requiring covered companies to provide additional disclosures and keep additional records relating to the number of animals used in a fur product and the manner in which the animals producing the furs died. The Commission does not propose to amend the Fur Rules in this manner, as such proposed regulations do not relate to the ''manner and form of disclosing information required by [the Fur] Act,'' nor are they ''necessary and proper for

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[1] The regulatory review comments are silent as to the proposed ''metrication'' changes to Sections 19 and 27, and the addition of the language from the Cliffdale Associates, Inc. matter to Section 43, and the Commission does not propose any substantive changes to these Sections. The Commission has decided to retain these Sections in their present form. Therefore, in a separate notice, the Commission announces the final amendments to Sections 19 and 27 to include metric equivalents beside the inch/pound unit measurements in those Sections, as required by Executive Order 12770 of July 25, 1991 (56 FR 35801, July 29, 1991) and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205b). The same notice states that Section 43 will be amended to reflect language consistent with that set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

[2] Dan River Inc. [DR] (1), People for the Ethical Treatment of Animals [PETA] (2), Fieldcrest Cannon, Inc. [FIELD] (3), American Textile Manufacturers Institute [AMTI] (4), Fruit of the Loom [FRUIT] (5), Seattle Fur Exchange [SFE] (6), and Milliken & Company [MILL] (7). The number in parentheses denotes the number assigned by the Office of the Secretary to the comment in the public record of comments received in the regulatory review of the Fur Rules.

[3] DR (1), FIELD (3), ATMI (4), FRUIT (5), and MILL (7). The regulatory reviews of the Textile Rules, the Wool Rules, and the Fur Rules were undertaken simultaneously. In each case, these five Fur Rules comments are identical copies of submissions that were made under both the Textile Rules and the Wool Rules. The comments are primarily responsive to Textile Rules and Wool Rules issues and only minimally relevant to Fur Rules issues. Nevertheless, the five comments express general support for all three of the Commission's implementing Rules.

[4] SFE (6) p.1.

[5] PETA (1) pp.1–5.

purposes of administration and enforcement of [the Fur] Act'' within the meaning of Section 8(b) of the Fur Act.

B. System of Shared Information for Manufacturer or Other Responsible Company Identification Among the NAFTA Countries

Under the Fur Act, the Wool Products Labeling Act,[6] and the Textile Fiber Products Identification Act,[7] the required label on covered products must bear the identification of one or more companies responsible for the manufacture, importation, offering for sale, or other handling of the product, either by the full name under which the company does business or, in lieu thereof, by the RN issued by the Commission.[8] Canada has a similar system of identification numbers known as CA numbers. Mexico does not have a similar system, but the Mexican government issues tax identification numbers to companies.

To eliminate the need for a company to register in more than one country, the comments received recommend that the FTC and appropriate government agencies in the NAFTA countries develop an integrated system by allowing any RN, CA, or Mexican tax identification number to suffice as legal company identification in all three NAFTA countries.[9] The comments state that it would not be necessary to create one identification number system. They recommend that each NAFTA country continue its policy and procedure of registration, with the U.S. continuing the present system of RN numbers. The countries could then exchange information on computer databases so that a covered product can be traced to a manufacturer or other responsible party using either an RN number, a CA number, or a Mexican tax number. Such a system would facilitate use of a single label for fur goods shipped to NAFTA countries.

Congress would have to amend the Fur Act to allow CA numbers and Mexican tax numbers, which are not registered by the Commission, to be used on fur products shipped for distribution in the United States. For present purposes, the Commission seeks comment on the advantages and disadvantages of a system of shared information, the feasibility of implementing such a system across borders, and the impact such a system might have on the ability of the Commission, consumers, and firms to track responsible parties. Alternatively, the Commission might consider whether simply to permit the use of the identification numbers of a NAFTA trading partner, provided that the partner made the identifying information readily available to anyone seeking it. The Commission seeks comment on the advantages and disadvantages of this alternative, which also would require statutory amendment.

C. Require Holders of RN Numbers To Update Their Registration Information When Changes in That Information Occur

The success of a system of shared information among NAFTA countries depends to a great extent on the availability and the quality of the information in the Commission's RN registry and the registration systems of Canada and Mexico. To increase the usefulness of the RN registry, the Commission plans to improve its accuracy and the ease of access to its contents.

Since initially being issued RNs, many companies have changed their legal business name, business address, and/or company type (*e.g.*, from proprietorship to corporation) without notifying the FTC about the change(s), as required by Section 26(b)(2) and as requested on the RN application form currently used by the Commission for RN requests relating to either the Textile, Wool or Fur Rules. Additionally, many RN holders have gone out of existence, and others, while still in existence, no longer have any need for their RNs. As a result, a large percentage of the official FTC records do not reflect an actual user's current name, place of business, and/or company type.

Registered identification numbers are subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Fur Act and Regulations, or when otherwise deemed necessary in the public interest. The Commission proposes to add a provision to the Fur Rules that would subject an RN number to cancellation if, after a change in the material information contained in the RN application, a new application is not promptly submitted to the Commission. Section 301.26(b)(2) of the Rules already requires that changes in name, business address, or legal business status of RN holders be reported promptly to the Commission. The proposed amendment is merely an added provision to enable the Commission to update its database.[10] The Commission plans to undertake a program to update the RN database, in stages over a period of time. Commission staff will make every reasonable effort to identify and locate all companies actually using an RN and make them aware of their obligations to update their applications before a specified deadline. Numbers assigned to companies that are no longer in business, or that cannot be located, would then be subject to revocation.

The Commission seeks comment on the proposal to revise Section 26(b)(2) to read as follows:

§ 301.26 Registered Identification Number.

(a) * * *

(b)(1) * * *

(2) Registered identification numbers will be subject to cancellation if the Federal Trade Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or concern to whom a registered identification number has been assigned by application duly executed in the form set out in subsection (d) of this section, reflecting the current name, business address, and legal business status of the person or concern.

* * * * *

D. Increase the Cost Figure Below Which Fur Items Will Be Exempt From the Requirements of the Fur Rules

Under Section 39 of the Fur Rules, fur trim or other fur items for which the cost to the manufacturer, or the manufacturer's selling price, does not exceed $20 are exempt from some of the requirements of the Fur Act and Rules. This amount was last adjusted for

[6] 15 U.S.C. 68.

[7] 15 U.S.C. 70.

[8] Section 4(2)(E) of the Fur Act, 15 U.S.C. 69b(2)(E), requires disclosure of: ''the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce.''

[9] DR (1) p.1., FIELD (3) pp.2–3, ATMI (4) p.2, FRUIT (5) p.5, MILL (7) p.3. Moreover, numerous comments of this nature are contained in the responses received in the regulatory reviews of the Textile Rules and the Wool Rules. Although the focus of the Fur Act is significantly different from that of the Textile Act and the Wool Act, all three contain provisions relating to establishment of the RN system. Both the Textile Rules and the Wool Rules contain parallel provisions to Fur Rule 26(c), which states that:

Registered identification numbers assigned under this rule may be used on labels required in labeling products subject to the provisions of the Wool Products Labeling Act and the Textile Fiber Products Identification Act, and numbers previously assigned or to be assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

[10] It also complements the Commission's Rules of Practice, which state: ''Numbers are subject to revocation for cause or upon a change in business status or discontinuance of business.'' 16 CFR 1.32.

inflation in 1969. Adjusting it for inflation that has occurred since 1969 would raise the amount to $85. The Commission seeks comment on whether $85 is an appropriate amount for the exemption, or whether it should be a higher figure such as $100.

IV. Invitation to Comment and Questions for Comment

A. Invitation

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendment to the Fur Rules. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

B. Questions

Identification Numbers of Manufacturers or Other Responsible Parties

1. If it were consistent with the Fur Act to do so, should the Commission amend the Fur Rules to allow the interchangeable use of RN, CA, or Mexican tax numbers?

a. What would be the advantages and disadvantages of a system of shared information? Alternatively, what would be the advantages and disadvantages of a system whereby one NAFTA country recognized and allowed the identification numbers of another NAFTA country, provided that the information would be made easily accessible to those seeking it?

b. Would the implementation of a system of shared information across national borders be feasible?

c. What impact would a system of shared information have on the ability of consumers and businesses to track responsible parties?

d. What benefits and costs to consumers and businesses would result from such an amendment? Would such an amendment have a significant economic impact on a substantial number of small business entities? Explain the nature and amount of such impact.

2. Is the proposed amendment to Fur Rule 26(b)—enabling the Commission to cancel an RN where the information contained on the original application is not properly updated—reasonable and appropriate? Are there other alternatives that would enable the Commission to maintain an accurate data base?

Dollar Amount for Exemption for Fur Trim

3. Should the Commission raise the cost figure for exemption from some of the requirements of the Fur Rules from $20 to $85? Should the amount be raised higher to account for some future inflation between 1996 and the time the Fur Rules are again subject to regulatory review? Would $100 be an appropriate amount for this exemption?

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated impact of the proposed amendments on small businesses.[11] The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. However, Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Fur Act, and the Fur Rules issued thereunder, cover the manufacture, sale, offering for sale, advertising, and distribution of fur products, the Commission believes that any amendments to the Fur Rules may affect a substantial number of small businesses. Unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration (SBA) show that there are some 181 establishments manufacturing fur goods (SIC code 2371), all of which qualify as small businesses under applicable SBA size standards.[12] Other small businesses are likely involved in the distribution and sale of products subject to the Fur Rules.

However, the proposed amendments apparently would not have a significant economic impact upon such entities. Comments received during the regulatory review of the Fur Rules indicated that the costs of complying with the Rules and the Fur Act are not substantial. The proposed amendments should clarify existing requirements of the Fur Rules and reduce further the costs of compliance with Fur Act requirements.

The Commission proposes to amend Section 26 of the Fur Rules—governing the issuance of an RN number—to clarify that such numbers are subject to cancellation if changes in the information provided in the original application for the number are not reported to the Commission as required by Section 26(b)(2). This amendment does not impose any new requirement upon businesses. Furthermore, while Commission cancellation of an identification number would require a business to re-apply, this may be done simply by submitting the identifying information already called for in the Rules. Therefore, amending the Rules as proposed will not impose any significant economic costs on members of the industry.

The proposed amendment raising the cost figure for fur trim that is exempted from some of the provisions of the Fur Rules likewise does not impose any new requirement on businesses. In fact, it is an inflationary adjustment that will slightly reduce compliance burdens and costs. The change, while likely important to some firms, is not expected to have a significant impact on the fur industry.

On the basis of available information, the Commission certifies that amending the Fur Rules as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives within the statutory framework. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

VI. Paperwork Reduction Act

The Fur Rules contain various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, Office of Management and Budget (OMB) Control Number 3084–0099. These requirements relate to the accurate disclosure of material information about fur content and products, and requirements for manufacturers and dealers to retain records to support claims made on labels and advertisements. Most of these requirements are specifically mandated by the Fur Act. See *e.g.*, 15 U.S.C. 69b, 69e. The Commission has also obtained

[11] The RFA addresses the impact of rules on ''small entities,'' defined as ''small businesses,'' ''small governmental entities,'' and ''small [not-for-profit] organizations,'' 5 U.S.C. 601. The Fur Rules do not apply to the latter two types of entities.

[12] SBA's revised small business size standards are published at 61 FR 3280 (January 31, 1996).

OMB clearance for petitions for an exemption under the Fur Act, even though it has received no such petitions over the past decade. A Notice soliciting public comments on extending these clearances through December 31, 1999, was recently published in the Federal Register. 61 FR 43764 (August 26, 1996).

The Commission's current proposal regarding cancellation of RN numbers, discussed in detail above, would not impose an additional ''burden'' on current and/or future holders of Registered Identification Numbers. This is because the Fur Rules at 16 CFR 301.26(b)(2) already require companies to notify the FTC about changes in business names, addresses, company type, etc. The current proposal merely adds the element of cancellation by the Commission if these requirements are not met. Neither the initial filing procedures nor the requirement to update the information are new and therefore, no additional ''burden'' is imposed.

More importantly, the underlying certification itself does not meet the definition of ''information'' contained in the PRA. In implementing the Paperwork Reduction Act of 1995, OMB attempted to clarify the exemption for ''certifications'' in Section 1320.3(h)(1)–(10) in both the Notice of Proposed Rulemaking, 60 FR 30438, 30439 (June 8, 1995) and the Final Rule, 61 FR 44978, 44979 (August 9, 1995) (''the exemption applies when the certification is used to identify an individual in a 'routine, non-intrusive, non-burdensome way.' '') This language reflects current guidance in OMB/OIRA's Information Collection Review Handbook (1989), which discusses exempt categories of inquiry (5 CFR 1320.3(h)(1)–(10)) that are not deemed to constitute ''information.'' Certifications, as well as other forms of acknowledgments, comprise one of these categories.[13] Such inquiries are considered to be routine because response to the requests rarely requires examination of records, usually does not require consideration about the correct answer, and usually is provided on a form supplied by the government. See OMB/OIRA Handbook, p. 29. Accordingly, OMB's regulations exempt certifications from the clearance requirement, provided that no information need be reported beyond certain basic identifying information.

[13] Specifically, the first category consists of: ''affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments.'' 5 CFR 1320(h)(1).

VII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or their Advisors

Pursuant to § 1.18(c) of the Commission Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 301

Furs Labeling, Trade practices.

Authority: 15 U.S.C. 69.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32261 Filed 12–23–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209040–88]

RIN 1545–AM41

Qualified Electing Fund Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations permitting certain shareholders to make a special election under section 1295, in lieu of the election currently provided for under that section, with respect to certain preferred shares of a passive foreign investment company (PFIC). A shareholder that makes a special election must account for dividend income on the shares subject to the special election under special income inclusion rules, rather than under the general income inclusion rules of section 1293. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 24, 1997. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 8, 1997, at 10:00 a.m. must be received by April 17, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209040–88), 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–209040–88), 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, Judith Cavell Cohen, (202) 622–3880; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 24, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in proposed regulation § 1.1295–2(c)(3) and proposed regulation § 1.1295–2(e) and (f). This information will notify the Commissioner that certain shareholders have made the special election. In addition, this information will enable the IRS to determine if a shareholder qualifies for the special election and is satisfying the income inclusion requirements of proposed regulation § 1.1293–2. The collection of information is mandatory. The likely respondents are individuals, businesses, and other for-profit organizations.

Estimated total annual reporting/recordkeeping burden: 600 hours. The estimated annual burden per respondent varies from 21 minutes to 8.3 hours, depending on individual circumstances, with an estimated average of 35 minutes.

Estimated number of respondents: 1030.

Estimated annual frequency of responses: On occasion.

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 assigned by the Office of Management and Budget.

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

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 1293 and 1295 of the Internal Revenue Code. Sections 1293 and 1295 were added by the Tax Reform Act of 1986 (the Act) and were amended by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). The sections, as amended, were effective for taxable years of foreign corporations beginning after December 31, 1986. Section 1293 also was amended by the Omnibus Reconciliation Act of 1993 (OBRA). Guidance for making the section 1295 election was provided in proposed regulation § 1.1295–1 and Notice 88–125, 1988–2 C.B. 535. Guidance regarding the annual income inclusion rule for shareholders making a section 1295 election was provided in proposed regulation § 1.1293–1.

Explanation of Provisions

Special Preferred Section 1295 Election

1. Introduction

The passive foreign investment company (PFIC) rules of the Code are designed to eliminate potential tax deferral opportunities associated with equity investments by United States persons in foreign corporations that have substantial levels of passive income or assets. The PFIC rules eliminate tax deferral opportunities by applying the section 1291 interest charge regime to PFIC shareholders that fail to make a section 1295 annual income inclusion election (section 1295 election). In general, the section 1291 interest charge regime applies to the ''extraordinary'' portion of any distribution received by the shareholder, and any gain recognized on a disposition of shares.

The PFIC rules apply to investments in both common and preferred shares of a PFIC. Preferred shares, unlike common shares, generally provide for limited dividend and liquidation or redemption rights, and thus do not participate significantly in corporate growth. Accordingly, preferred shares of a PFIC generally do not afford U.S. investors with the same potential for U.S. tax deferral as common shares of a PFIC.

Preferred shareholders, like common shareholders, may make the section 1295 election to avoid the interest charge regime of section 1291. Shareholders that make the section 1295 election are required under section 1293 to include in income annually, as ordinary income, their pro rata share of the PFIC's ordinary earnings and, as long-term capital gain, their pro rata share of the PFIC's net capital gain for the year. In order to determine their pro rata share of ordinary earnings and net capital gain, shareholders that have made a section 1295 election must obtain certain U.S. tax accounting information from the PFIC regarding the PFIC's earnings. If this information is not available, the shareholders cannot make the section 1295 election. If the requisite information is available, the annual information reporting and collection requirements associated with the section 1295 election may render the election impractical for smaller investors. Because preferred shares often do not afford investors with significant tax-deferral opportunity, commenters have suggested that the current section 1295 election regime should be simplified for certain types of preferred shares.

The proposed regulations adopt a special section 1295 election regime that would require holders of certain preferred shares of a PFIC that elect to be subject to the regime to accrue annually ordinary dividend income with respect to the preferred shares regardless of the holder's pro rata share of ordinary earnings or net capital gain of the PFIC for the year. Because shareholders would accrue income regardless of the earnings and net capital gain of the PFIC, shareholders that elect to be subject to the regime would not have to report and collect any U.S. tax accounting information regarding the PFIC in order to make the special section 1295 election.

The proposed regulations are issued under two sections of the Code. Section 1.1295–2 of the proposed regulations provides rules for making a QEF election under the special proposed section 1295 election regime (special preferred QEF election). Section 1.1293–2 describes the annual income inclusion rules for shareholders that have made the special preferred QEF election.

The proposed regulations would apply only with respect to qualifying preferred shares issued after the date the proposed regulations are finalized.

2. Rules for Making the Special Preferred QEF Election

Under proposed regulation § 1.1295–2(a), the special preferred QEF election may be made in lieu of the section 1295 election described in proposed regulation § 1.1295–1 and Notice 88–125, 1988–2 C.B. 535 (regular section 1295 election), with respect to certain types of preferred shares (qualified

preferred shares) by certain holders satisfying prescribed ownership requirements.

The special preferred QEF election may only be made with respect to qualified preferred shares as defined in proposed regulation § 1.1295–2(b). To ensure that the special preferred QEF election cannot be used for tax avoidance purposes and to reduce complexity, the proposed regulations define qualified preferred shares narrowly to include only a limited class of preferred shares likely to be marketed to U.S. retail investors. Although the definition of qualified preferred shares includes both cumulative and non-cumulative preferred shares, the definition excludes various types of preferred shares, including preferred shares denominated in a foreign currency and preferred shares issued at a significant discount to their liquidation or redemption amounts. The PFIC issuing the preferred shares must represent that it intends to pay dividends currently. Proposed regulation § 1.1295–2(b) provides additional restrictions with respect to preferred shares acquired in secondary market transactions.

Proposed regulation § 1.1295–2(c) describes shareholders who may make the election. Under proposed regulation § 1.1295–2(c)(1), any United States person that acquires qualified preferred shares for cash or in certain nonrecognition transactions and that holds such shares directly may make the election. United States persons that are pass-through entities, including partnerships, S corporations, trusts and estates, may qualify as shareholders.

The special preferred QEF election regime is narrowly targeted to eliminate certain of the information reporting and collection requirements associated with the existing section 1295 election and annual inclusion rules for U.S. retail investors in preferred shares of PFICs. Treasury and the Service believe that the special preferred QEF election regime should only apply with respect to foreign corporations that are not expected to be in a position to provide U.S. tax accounting information to shareholders. Accordingly, proposed regulation § 1.1295–2(c)(2) provides that the special preferred QEF election does not apply to holders of preferred shares in a PFIC that is a controlled foreign corporation. Further, proposed regulation § 1.1295–2(c)(3) provides that the special preferred QEF election does not apply to holders that own 5 percent or more of the vote or value of any class of shares of the PFIC. Holders of five percent or more of the vote or value of any class of shares generally are not the type of retail investor that the proposed regulations are designed to assist. Such holders may only make the section 1295 election provided under current rules.

Proposed regulation § 1.1295–2(c)(3) requires the corporation to provide to electing shareholders a statement, directly or in a disclosure document generally available to all U.S. shareholders, either that it is or that it reasonably believes that it is a PFIC and that it is not a controlled foreign corporation. Shareholders that fail to receive such a statement are not permitted to make a special preferred QEF election.

Proposed regulation § 1.1295–2(d) describes the effect of the special preferred QEF election. Proposed regulation § 1.1295–2(d)(1) provides that shares subject to a special preferred QEF election will be treated as shares of a pedigreed QEF (as defined in proposed regulation § 1.1291–1(b)(2)(ii)) for all taxable years of the foreign corporation that are included wholly or partly in the shareholder's holding period of the shares. Under the proposed regulations, the election will apply to all qualified preferred shares of a foreign corporation owned directly by the shareholder that are acquired in the taxable year with respect to which the election is made. Although a special preferred QEF election will not apply automatically to qualified preferred shares acquired in subsequent taxable years of a shareholder, the proposed regulations permit the shareholder to make separate special preferred QEF elections with respect to qualified preferred shares acquired in later years.

Proposed regulation § 1.1295–2(d)(2) provides that the special preferred QEF election regime applies whether or not the foreign corporation is a PFIC in any year subsequent to the year of the election. Accordingly, shareholders that make the special preferred QEF election must make annual § 1.1293–2 income inclusions, as provided in proposed regulation § 1.1295–2(d)(3), even if the foreign corporation does not qualify as a PFIC for a particular year.

Proposed regulation § 1.1295–2(e) specifies the time and manner of making the special preferred QEF election. In order to make the special preferred QEF election, a shareholder files Form 8621 (Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), for the taxable year of the election, checking the appropriate box in Form 8621, Part I, for making the section 1295 election, and indicating in the margin of Part I that the shareholder is making a special preferred QEF election with respect to certain specified shares. In addition, the shareholder must attach to Form 8621 a brief statement containing the information and representations contained in proposed regulation § 1.1295–2(e)(2)(ii). Under proposed regulation § 1.1295–2(f), in subsequent years, the shareholder must file Form 8621 with respect to the foreign corporation but need not attach any statement to the form. For all taxable years covered by the election, the shareholder must report on Line 6a of Part II of Form 8621 the amount includible under proposed regulation § 1.1293–2 with respect to qualified preferred shares subject to a special preferred QEF election.

Proposed regulation § 1.1293–2(g) states that a sale, exchange or other disposition of shares subject to a special preferred QEF election terminates the election with respect to those shares. Also, the Commissioner may terminate or invalidate an election if a shareholder fails to satisfy the initial or ongoing requirements of the election. For example, the Commissioner may terminate or invalidate a special preferred QEF election if the shareholder owns five percent or more of the vote or value of any class of shares of the PFIC at any time during the period that the shareholder owns qualified preferred shares subject to the election. A shareholder may not itself terminate a special preferred QEF election.

3. Annual Inclusion Rules for Electing Shareholders.

Under proposed regulation § 1.1293–2(a), a shareholder that has made a special preferred QEF election must make annual income inclusions with respect to qualified preferred shares subject to the election. Unlike the annual income inclusions provided under section 1293 and proposed regulation § 1.1293–1, the annual inclusions under the special preferred QEF election regime are determined without regard to the shareholder's pro rata share of the foreign corporation's ordinary earnings or net capital gains.

Proposed regulation § 1.1293–2(b) provides rules for determining the amount that a shareholder must include in income annually under the special preferred QEF election regime. Under the proposed regulations, this annual amount consists of two components. The first component is an annual inclusion amount based on a ratable daily portion of dividend income that accrues on the qualified preferred shares (annual dividend amount). This ratable inclusion rule for the annual dividend amount is analogous to the rule for inclusion of income with respect to

periodic payments on notional principal contracts under § 1.446–3. The second component of the preferred QEF amount arises only in respect of fixed term preferred shares, as described proposed regulation § 1.1295–2(b)(vii), acquired in a secondary market transaction, and is calculated based on the ratable inclusion of the excess, if any, of the redemption price of the shares over the acquisition cost of the shares (preferred discount amount). This ratable inclusion rule for the preferred discount amount is analogous to the rule for the ratable inclusion of market discount on certain debt under section 1276(b)(1). The Service and Treasury solicit comments regarding the income inclusion rules of the proposed regulations, including comments as to whether foreign corporations and their agents could effectively assist holders in complying with the income inclusion rules applicable to preferred discount.

Proposed regulation § 1.1293–2(c) provides certain special rules regarding the annual income inclusion required under proposed regulation § 1.1293–2(a). Under § 1.1293–2(c)(1), annual amounts are included in income by shareholders irrespective of the PFIC's earnings and profits. In this regard, the special preferred QEF election differs from the regular section 1295 election in that shareholders making the special preferred QEF election must accrue the annual amount as ordinary income even if the amount exceeds the shareholder's pro rata share of the foreign corporation's earnings and profits. Proposed regulation § 1.1293–2(c)(3) requires the shareholder to include the annual dividend amount as ordinary income regardless of whether any portion of the PFIC's earnings for the year represents net capital gain. Proposed regulation § 1.1293–2(c)(4) provides rules for the tax-free distribution of previously taxed amounts. Proposed regulation § 1.1293–2(c)(5) provides certain basis adjustment rules similar to the basis adjustment rule of section 1293(d). Finally, proposed regulation § 1.1293–2(c)(6) provides rules intended to limit the effect of a special preferred QEF election to the shareholder making the election. Accordingly, a special preferred QEF election will not affect the foreign corporation's calculation of its earnings and profits, and will have no consequences for shareholders that have not made a special preferred QEF election.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations represent a wholly elective simpler alternative to the section 1295 election described in § 1.1295–1 and Notice 88–125, 1988–2 C.B. 535, and impose a lighter collection of information burden. Further, the requirement that electing shareholders indicate their special election on Form 8621 annually and attach a statement, providing certain information in the first year of the election only, is minimal and will not impose a significant economic impact on electing shareholders. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 8, 1997, at 10:00 a.m. in room 3313, 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 24, 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 April 17, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of 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 author of these regulations is Judith Cavell Cohen of the Office of Associate Chief Counsel (International).

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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.1293–2 also issued under 26 U.S.C. 1297(f).

Section 1.1295–2 also issued under 26 U.S.C. 1297(f). * * *

Par. 2. Section 1.1293–2 is added to read as follows:

§ 1.1293–2 Special Inclusion Rules for Special Preferred QEF Election.

(a) *In general.* A shareholder (including a shareholder that is a pass-through entity, as described in § 1.1295–2(c)(1)) that makes a special preferred QEF election under § 1.1295–2 must, regardless of the shareholder's method of accounting, include in income in respect of each share subject to the election, an annual amount (preferred QEF amount) determined according to the rules of paragraph (b) of this section. A shareholder that makes a special preferred QEF election must include the preferred QEF amount in income under this section for each year in which the taxpayer continues to hold a share that is subject to the election. The rules of this section apply in lieu of the general rules of section 1293 and § 1.1293–1.[1]

(b) *Preferred QEF amount*—(1) *In general.* The preferred QEF amount for any share subject to a special preferred QEF election is the sum of the ratable daily portion of each periodic dividend amount (as described in paragraph (b)(2) of this section) on the share for the taxable year of the shareholder to which that portion relates, plus the preferred discount amount (as defined below), if any, for the taxable year. For purposes of this section, the preferred discount amount for a taxable year is the amount that bears the same ratio to the total amount of preferred discount (as described in § 1.1295–2(b)(2)(i)) on the share as the number of days that the taxpayer held the share in the taxable

[1] This proposed regulation was published on April 1, 1992, at 57 FR 11024.

year bears to the number of days after the date the taxpayer acquired the share and up to (and including) the share's redemption date as established under the principles of § 1.305–5(b). Notwithstanding the preceding sentence, the preferred discount amount for a taxable year is zero if the preferred discount on the share at the time of its acquisition by the shareholder was less than an amount equal to ¼ of 1 percent of the redemption price of the stock, multiplied by the number of complete years from the date of acquisition of the stock to the redemption date of the stock.

(2) *Periodic dividend amount.* A periodic dividend amount is the amount payable with respect to a share, whether on a cumulative or noncumulative basis, for a period (wholly or partly within the shareholder's taxable year) for which dividends on the share are calculated based upon the redemption or liquidation price of the share multiplied by a fixed percentage rate.

(c) *Special rules of application*—(1) *Earnings and profits disregarded.* The amounts to be included in income pursuant to this section are determined without regard to the earnings and profits of the foreign corporation with respect to which the special preferred QEF election applies.

(2) *Year of inclusion.* The shareholder includes the preferred QEF amount in its taxable year without regard to the taxable year of the foreign corporation with respect to which the special preferred QEF election applies.

(3) *Character of inclusions.* The shareholder includes all preferred QEF amounts in income as ordinary earnings.

(4) *Treatment of distributions.* Distributions received by a shareholder on shares subject to a special preferred QEF election that are paid out of earnings and profits of the foreign corporation are not included in gross income of the shareholder to the extent the distributions do not exceed the preferred QEF amounts (other than any portion of preferred QEF amounts consisting of preferred discount amounts) previously includible in income pursuant to this section. These distributions will, however, be treated as dividends for all other purposes of the Code and regulations. Amounts distributed to a shareholder with respect to shares subject to a special preferred QEF election that exceed amounts previously included in income under this section with respect to such shares are treated for all purposes of the Code and regulations as a distribution of property subject to the rules of section 301.

(5) *Basis adjustment rules.* The adjusted basis of a shareholder in shares that are subject to a special preferred QEF election shall be—

(i) Increased by any amount that is included in the gross income of the shareholder under paragraph (a) of this section; and

(ii) Decreased by any dividends (not to exceed the amount included in gross income under paragraph (a) of this section) actually paid to the shareholder in respect of such shares.

(6) *Effect limited to electing shareholder.* This section does not apply to the foreign corporation with respect to which a special preferred QEF election applies. Accordingly, the provisions of this section will not affect the foreign corporation's calculation of its earnings and profits for any purpose of the Code or regulations. In addition, the rules of this section apply only for purposes of determining the tax consequences for holders of shares subject to the election. Thus, the election shall have no effect on the application of the Code or regulations with respect to the tax consequences of the ownership of shares that are not subject to the election, including for purposes of determining whether any distributions from the foreign corporation with respect to such shares should be treated as having been included in the income of any United States person pursuant to section 1293(c) or section 959.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a), (b) and (c) of this section. Although these examples assume a 30-day month, 360-day year, any reasonable counting method may be used to compute the length of accrual periods. For purposes of simplicity, the relevant amounts as stated are rounded to two decimal places. However, the computations do not reflect any such rounding convention. The examples are as follows:

Example 1. *Preferred QEF amount*—(i) *Facts.* (A) On May 1, 1998, A, an individual who files his returns on a calendar year basis, purchased for $10,000 in a single secondary market transaction 100 shares of nonconvertible Class A $100 par value preferred stock (the Class A Stock) of FC, a foreign corporation with a taxable year ending on March 31.

(B) The terms of the Class A Stock provide for a mandatory redemption of the Class A Stock by the issuer at par on June 1, 2012. The Class A Stock is not redeemable pursuant to an issuer call or holder put on any other date. Each share of Class A Stock provides for a semi-annual cumulative distribution payable in dollars on June 1 and December 1 equal to one-half the product of the par value of the Class A Stock and the applicable annual dollar LIBOR in effect on the distribution date immediately prior to the relevant distribution date. The shares of the Class A stock are qualified preferred shares in the hands of A. A purchases no other qualified preferred shares of FC during its 1998 or 1999 taxable years.

(C) A made a special preferred QEF election for A's taxable year ended December 31, 1998, which applies to the Class A Stock acquired by A on May 1, 1998. FC is a PFIC under section 1296 for its taxable year ending March 31, 1999, but FC is not a PFIC for its taxable year ending March 31, 2000. FC paid no current dividends on June 1, 1998, and December 1, 1998, paid the June 1, 1999, dividend currently on June 1, 1999, together with accumulated distributions from June 1, 1998, and December 1, 1998, and paid the December 1, 1999, dividend currently on December 1, 1999. The applicable annual LIBOR is 8 percent on December 1, 1997, 7 percent on June 1, 1998, 9 percent on December 1, 1998, 10 percent on June 1, 1999, and 9 percent on December 1, 1999. FC had sufficient earnings and profits, within the meaning of section 312, for its taxable year ending on March 31, 2000, so that actual distributions to all shareholders of Class A Stock in that year were treated as paid out of earnings and profits of FC.

(ii) *Tax consequences to A for A's taxable year ending December 31, 1998.* As required under paragraph (a) of this section, A must include in gross income for its 1998 taxable year the 1998 preferred QEF amount. The preferred QEF amount, as determined under paragraph (b) of this section, for A's 1998 taxable year is the ratable portion of each periodic dividend amount for that year. For 1998, there are three periodic dividend amounts: The periodic dividend amount for the period from December 1, 1997, to June 1, 1998 (periodic dividend amount 1), the periodic dividend amount for the period from June 1, 1998, to December 1, 1998 (periodic dividend amount 2), and the periodic dividend amount for the period from December 1, 1998, to June 1, 1999 (periodic dividend amount 3). Periodic dividend amount 1 in respect of each share owned by A is $4 (1/2 multiplied by the applicable annual LIBOR of 8 percent set on December 1, 1997, multiplied by the $100 amount payable on redemption). Because A acquired the shares on May 1, 1998, A's ratable portion of periodic dividend amount 1 for 1998 is approximately $.67 (30/180 multiplied by $4) per share. Periodic dividend amount 2 in respect of each share owned by A is $3.50 (1/2 multiplied by the applicable annual LIBOR of 7 percent set on June 1, 1998, multiplied by $100). Because A owned the shares for the entire period associated with periodic dividend amount 2, A's ratable portion of periodic dividend amount 2 for 1998 is the full $3.50 per share. Periodic dividend amount 3 in respect of each share owned by A is $4.50 (1/2 multiplied by the applicable annual LIBOR of 9 percent set on December 1, 1998, multiplied by $100). Because the portion of 1998 associated with periodic dividend amount 3 is only the month of December, 1998, A's ratable portion of periodic dividend amount 3 for 1998 is approximately

$.75 (30/180 multiplied by $4.50). Accordingly, A s preferred QEF amount for 1998 is approximately $4.92 ($.67 + $3.5 + $.75) per share. A must include approximately $492 (approximately $4.92 per share, multiplied by 100 shares) in income as ordinary earnings for its 1998 tax year even though FC paid no actual dividend to shareholders of Class A Stock for the period in 1998 during which A held the Class A Stock.

(iii) *Tax consequences to A for A's taxable year ending December 31, 1999.* As required under paragraph (a) of this section, A includes in gross income for its 1999 taxable year its preferred QEF amount for 1999. The preferred QEF amount, as determined under paragraph (b) of this section, for A's 1999 taxable year is the ratable portion of each periodic dividend amount for that year. For 1999, there are three periodic dividend amounts: The periodic dividend amount for the period from December 1, 1998, to June 1, 1999 (periodic dividend amount 1), the periodic dividend amount for the period from June 1, 1999, to December 1, 1999 (periodic dividend amount 2), and the periodic dividend amount for the period from December 1, 1999, to June 1, 2000 (periodic dividend amount 3). Periodic dividend amount 1 in respect of each share owned by A is $4.50 (1/2 multiplied by the applicable annual LIBOR of 9 percent set on December 1, 1998, multiplied by $100). Because A held each share of Class A Stock for five months in 1999 for the period associated with periodic dividend amount 1, A's ratable portion of periodic dividend amount 1 for 1999 is approximately $3.75 (150/180 multiplied by $4.50). Periodic dividend amount 2 in respect of each share owned by A is $5 (1/2 multiplied by the applicable annual LIBOR of 10 percent set on June 1, 1999, multiplied by $100). Because A owned the share for the entire period associated with periodic dividend amount 2, A's ratable portion of periodic dividend amount 2 for 1999 is the full $5. Periodic dividend amount 3 in respect of each share owned by A is $4.50 (1/2 multiplied by the applicable annual LIBOR of 9 percent set on December 1, 1999, multiplied by $100). Because A held each share of Class A Stock for one month in 1999 for the period associated with periodic dividend amount 3, A's ratable portion of periodic dividend amount 3 for 1999 is approximately $.75 (30/180 multiplied by $4.50). Accordingly, A's preferred QEF amount for 1998 is approximately $9.50 ($3.75 + $5 + $.75). A must include approximately $950 ($9.50 per share, multiplied by 100 shares) in income as ordinary income for its 1999 taxable year even though FC was not a PFIC for FC's taxable year ending in 2000. The current distributions and arrearages actually paid to A with respect to the Class A Stock are not includible in income by A under paragraph (c)(4) of this section because they constitute amounts previously included in income.

Example 2. *Preferred Discount*—(i) *Facts.* The facts are the same as in *Example 1* except that A acquired the 100 shares of Class A Stock for $9000.

(ii) *Tax Consequences to A for A s taxable year ending December 31, 1998.* (A) Because the Class A Stock is fixed term preferred stock (as described in § 1.1295–2(b)(1)(vii)) and A acquired each share of the Class A stock with $10 of preferred discount, as described in § 1.1295–2(b)(2), A's preferred QEF amount to be included by A for the taxable year consists of the sum of the ratable daily portion of each periodic dividend amount, as calculated in paragraph (d)(ii) of *Example 1* of this section, plus the preferred discount amount described in paragraph (b)(1) of this section.

(B) The preferred discount amount with respect to each share is approximately $.47 ($10 multiplied by 240 days/5070 days to maturity). A must include approximately $47 ($.47 per share, multiplied by 100 shares), together with the amount calculated in paragraph (d)(ii) of *Example 1* of this section, in income as ordinary earnings for its 1998 tax year even though FC paid no actual dividend to shareholders of Class A Shares for the period in 1998 during which A held the Class A Stock.

(iii) *Tax consequences to A for A's taxable year ending December 31, 1999.* The portion of the preferred discount on each share includible under paragraph (a) of this section is approximately $.71 ($10 multiplied by 360 days/5070 days to maturity). A must include this amount, together with the amount calculated in paragraph (d)(iii) of *Example 1* of this section, in income as ordinary earnings for its 1999 tax year even though FC was not a PFIC for FC's taxable year ending in 2000. The current distributions and arrearages actually paid to A in 1999 with respect to the Class A Stock are not includible in income by A under paragraph (c)(4) of this section, because they constitute amounts previously included in income.

(e) *Effective date.* The rules under this section apply with respect to qualified preferred stock subject to a special preferred QEF election made after the date that is 30 days after the date of publication of this document as a final regulation.

Par. 3. Section 1.1295–2 is added to read as follows:

§ 1.1295–2 Special Preferred QEF Election.

(a) *In general.* This section provides rules permitting certain shareholders to make a special election under section 1295 (special preferred QEF election) in lieu of the election described in § 1.1295–1 [2] and Notice 88–125, 1988–2 C.B. 535 (see § 601.601(d)(2)(ii)(*b*) of this chapter), with respect to certain preferred shares (qualified preferred shares) of a foreign corporation that certifies either that it is a PFIC (as defined in § 1.1291–1(b)(1)(i)) [3] or that it reasonably believes that it is a PFIC. In order to make a special preferred QEF election, a shareholder must satisfy the stock ownership requirement of paragraph (c)(2) of this section. A special preferred QEF election of a shareholder applies only to those qualified preferred shares acquired and held directly by the shareholder in the taxable year of the shareholder for which the election is made. A shareholder making a special preferred QEF election must account for dividend income on shares subject to the election under the special income inclusion rules described in § 1.1293–2, rather than under the general income inclusion rules of section 1293 and § 1.1293–1. In addition, for purposes of determining the tax consequences of owning shares subject to the special preferred QEF election, an electing shareholder must treat the foreign corporation as a PFIC for the entire period during which the shareholder continues to hold any of such shares. Paragraph (b) of this section defines qualified preferred share. Paragraph (c) of this section provides rules for determining who may make the special preferred QEF election. Paragraph (d) of this section provides rules concerning the effect of the election. Paragraph (e) of this section provides rules for the time and manner of making the election. Paragraph (f) of this section sets forth the annual reporting requirement for the election. Paragraph (g) of this section provides rules concerning the possible termination or invalidation of the election. For the applicability date of this section, see paragraph (h) of this section.

(b) *Qualified preferred share defined*—(1) *In general.* For purposes of this section, a share of a foreign corporation is a qualified preferred share only if—

(i) The share was originally issued for cash or in exchange for qualified preferred shares of the foreign corporation in a transaction to which section 354(a)(1) applied;

(ii) If the share were to constitute a debt obligation, the share would be in registered form within the meaning of § 5f.103–1(c) of this chapter;

(iii) All amounts payable with respect to the share are denominated in U.S. dollars and are not determined by reference to the value of a currency other than the U.S. dollar;

(iv) The share is limited and preferred as to dividends and does not participate in corporate growth to any significant extent within the meaning of section 1504(a)(4)(B);

(v) The share has a fixed redemption or liquidation price;

(vi) The share provides for cumulative or noncumulative dividend rights that are limited to an annual (or shorter period) amount computed by

[2] This proposed regulation was published on April 1, 1992, at 57 FR 11024.

[3] This proposed regulation was published on April 1, 1992, at 57 FR 11024.

multiplying either the redemption or liquidation price of the share by a specified index described in § 1.446–3(c)(2)(i), (iii), or (iv) (specified index), or by a specified index periodically re-established pursuant to an auction reset mechanism, set in advance of the period with respect to which the specified index applies;

(vii) If the share may be redeemed under circumstances described in § 1.305–5(b) such that redemption premium (as described in § 1.305–5(b)) could be treated under section 305(c) as a constructive distribution (fixed term preferred stock), the share was not issued with redemption premium exceeding the de minimis amount described in section 305(c)(1) and § 1.305–5(b)(1);

(viii) If the share may not be redeemed under circumstances described in § 1.305–5(b) such that redemption premium would not be treated under section 305 as a constructive distribution (perpetual preferred stock), the share does not provide shareholders with the right to receive an amount upon liquidation or redemption that exceeds the issue price of the share (as determined under the principles of section 1273(b)) by an amount in excess of 5 percent of such liquidation or redemption amount;

(ix) If redeemable, the share is redeemable only in whole and not in part and is not subject to mandatory redemption within five years of the issue date of the share. Further, the share is not subject to a holder put or issuer call that, based on all the facts and circumstances as of the issue date of the share, is more likely than not to be exercised at a time within five years of the issue date;

(x) If convertible, the share is not convertible into a share other than a share meeting all the conditions set forth in paragraphs (b)(1)(i) through (b)(1)(ix) of this section; and

(xi) The issuer of the share has indicated in an offering document relating to the original issuance of the share or in a written statement available to U.S. holders that the issuer has no current intention or belief that it will not pay dividends on the share on a current basis and that the share meets the conditions set forth in paragraphs (b)(1)(i) through (b)(1)(x) of this section and this paragraph (b)(1)(xi).

(2) *Special rules for shares acquired in secondary market transactions*—(i) *Fixed term preferred stock.* A share of fixed term preferred stock (as described in paragraph (b)(1)(vii) of this section) that satisfies the conditions set forth in paragraph (b)(1) of this section and that is acquired in a transaction other than in connection with the initial issuance of the share (a secondary market transaction), shall constitute a qualified preferred share with respect to a shareholder, but only if the shareholder acquires the share for cash and the share has preferred discount (as defined below) that is less than or equal to an amount equal to 1 percent of the redemption price, multiplied by the number of complete years from the date of acquisition of the share to the redemption date as established under the principles of § 1.305–5(b). Sales of shares to bond houses, brokers, or similar persons or organizations acting in the capacity as underwriters, placement agents, or wholesalers are ignored for purposes of determining whether a share is acquired in connection with the initial issuance of the share. For purposes of this section, the preferred discount for a share is the excess of the redemption price of the share payable on the redemption date over the shareholder's acquisition cost for the share.

(ii) *Perpetual preferred stock.* A share of perpetual preferred stock, within the meaning of paragraph (b)(1)(viii) of this section, that satisfies the conditions set forth in paragraph (b)(1) of this section and that is acquired in a secondary market transaction, shall constitute a qualified preferred share with respect to the shareholder, but only if the shareholder acquires the share for cash and the amount payable upon liquidation of the share exceeds the shareholder's acquisition cost for the share by an amount less than or equal to 10 percent of such liquidation amount.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(2).

Example 1—(i) *Facts.* On May 1, 1998, A, an individual who files her return on a calendar year basis, purchases for $9000 cash in a single secondary market transaction (as defined in paragraph (b)(2)(i) of this section) 100 shares of nonconvertible Class A $100 par value preferred stock (Class A Stock) of FC, a foreign corporation with a taxable year ending March 31. The terms of the Class A Stock satisfy all the conditions described in paragraph (b)(1) of this section and provide for a mandatory redemption of the Class A Stock by the issuer in U.S. dollars at par on June 1, 2012. The Class A Stock is not redeemable pursuant to an issuer call or holder put on any other date.

(ii) *Analysis.* In order for A to make a special preferred QEF election with respect to the Class A Stock acquired by A, the Class A Stock acquired must constitute qualified preferred shares. Although the Class A Stock meets the requirements for qualified preferred shares set forth in paragraph (b)(1) of this section, the stock also must satisfy the requirements described in paragraph (b)(2) because A acquired the stock in a secondary market transaction. Because the terms of the Class A Stock provide that the stock will be redeemed by the issuer on June 1, 2012, the stock constitutes fixed term preferred stock within the meaning of paragraph (b)(1)(vii) of this section. A purchased the Class A Stock for $90 per share, representing a $10 discount ($100 June 1, 2012, per share redemption price less $90 acquisition cost). Because this $10 discount, which constitutes preferred discount within the meaning of paragraph (b)(2)(i) of this section, is less than $14 (1 percent of the redemption price multiplied by 14 (the number of complete years until the mandatory redemption date)), the Class A Stock acquired by A satisfies the conditions of paragraph (b)(2)(i) of this section and therefore constitutes qualified preferred shares.

Example 2—(i) *Facts.* The facts are the same as in Example 1, except that A acquires the 100 shares of Class A Stock for $8000.

(ii) *Analysis.* In this case, A purchased the Class A Stock for $80 per share, representing a $20 discount ($100 June 1, 2012, redemption price less $80 acquisition cost). Because this $20 of preferred discount is greater than $14 (1 percent of the redemption price multiplied by 14 (the number of complete years until the mandatory redemption date)), the Class A Stock fails to satisfy the conditions of paragraph (b)(2)(i) of this section and therefore fails to qualify as qualified preferred shares.

(c) *Who may make the election*—(1) *In general.* A U.S. person that acquires qualified preferred shares for cash or in a nonrecognition transaction described in § 1.1291–6(a)[4] (nonrecognition transaction) and that holds such shares directly may make a special preferred QEF election, provided that, in the case of shares acquired in a nonrecognition transaction, either the qualified preferred shares are treated as stock of a pedigreed QEF, as defined in § 1.1291–1(b)(2)(ii), immediately prior to the nonrecognition transaction, or the gain, if any, realized on the transaction would be recognized under § 1.1291–6(b) with respect to the nonrecognition transaction. A special preferred QEF election will not apply to any shares with respect to which the electing shareholder is an indirect shareholder, within the meaning of § 1.1291–1(b)(8). Solely for purposes of this section, partnerships, S corporations, trusts and estates (pass-through entities) that directly own qualified preferred shares are treated as shareholders that may make a special preferred QEF election. A shareholder may not make a special preferred QEF election if at any time the shareholder made a section 1295 election (other than a special preferred QEF election) with respect to the foreign corporation. A shareholder may not

[4] This proposed regulation was published on April 1, 1992, at 57 FR 11024.

make a special preferred QEF election unless the shareholder satisfies the stock ownership requirements set forth in paragraph (c)(2) of this section, and the shareholder receives from the foreign corporation the statement described in paragraph (c)(3) of this section.

(2) *Ownership requirement.* A holder of qualified preferred shares of a foreign corporation may make a special preferred QEF election only if, at all times during the taxable year of the shareholder, the shareholder does not own, directly, indirectly, or constructively, within the meaning of section 958, five percent or more of the vote or value of any class of stock of the foreign corporation. The five percent vote or value limitation must be satisfied for each taxable year of the shareholder during which the shareholder continues to hold shares subject to the special preferred QEF election.

(3) *Statement from corporation.* A shareholder may make the special preferred QEF election only if the foreign corporation has provided a written statement relating to the taxable year of the corporation that ends with or within the taxable year of the shareholder for which the election is made certifying either that the foreign corporation is, or that it reasonably believes that it is, a PFIC, and that it is not a controlled foreign corporation within the meaning of section 957(a) for such taxable year of the corporation. The statement must be provided directly to the electing shareholder or in a disclosure or other document generally available to all U.S. holders. Electing shareholders must retain a copy of the statement for their records.

(d) *Effect of election*—(1) *In general.* Unless terminated or invalidated pursuant to paragraph (g) of this section, shares subject to a special preferred QEF election will be treated as shares of a pedigreed QEF (as defined in § 1.1291–1(b)(2)(ii)) for all taxable years of the foreign corporation that are included wholly or partly in the shareholder's holding period of the shares. A special preferred QEF election applies to all qualified preferred shares owned directly by the shareholder that are acquired in the taxable year of the election. Separate special preferred QEF elections may be made for qualified preferred shares acquired in other taxable years of the taxpayer. A special preferred QEF election is personal to the shareholder that made the election and does not apply to a transferee of the shares. A shareholder that has made a special preferred QEF election may not make, with respect to the foreign corporation, any other election permitted under sections 1291 through 1297 and the regulations under those sections, including a section 1295 election as described in § 1.1295–1 and Notice 88–125, 1988–2 C.B. 535 (see § 601.601(d)(2)(ii)(*b*) of this chapter), for any period during which the special preferred QEF election remains in effect with respect to any shares of the shareholder.

(2) *Continued PFIC Characterization.* By making the special preferred QEF election, the shareholder agrees to treat the foreign corporation as a PFIC with respect to qualified preferred shares subject to the election at all times during its holding period for such shares, without regard to whether the foreign corporation is a PFIC for any taxable year of the foreign corporation during which the preferred QEF election remains in effect.

(3) *Section 1293 inclusions.* For each taxable year of the shareholder to which an election under this section applies, the shareholder must include in income the preferred QEF amount, as defined in § 1.1293–2, in the manner and under the rules provided in that section.

(e) *Time for and manner of making the special preferred QEF election*—(1) *Time for making the election.* A special preferred QEF election must be made on or before the due date, as extended, for filing the shareholder's return for the taxable year during which the shareholder acquired the qualified preferred shares for which the election is being made. A special preferred QEF election may not be made for those shares at any other time pursuant to any other provision of the Code or regulations.

(2) *Manner of making the election*—(i) *In general.* A shareholder makes the special preferred QEF election under this section for all qualified preferred shares of a foreign corporation acquired during the shareholder's taxable year by checking the appropriate box in Form 8621 (Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund), Part I, for making the section 1295 election, and indicating in the margin of Part I that the shareholder is making a special preferred QEF election with respect to certain specified shares. The shareholder also must report the preferred QEF amount for the taxable year of the election on Line 6a of Part II of Form 8621. In addition, the shareholder must attach to Form 8621 the statement (preferred QEF statement) described in paragraph (e)(2)(ii) of this section, signed by the shareholder under penalties of perjury, stating that the information and representations provided in the preferred QEF statement are true, correct, and complete to the best of the shareholder's knowledge and belief.

(ii) *Preferred QEF statement contents.* The preferred QEF statement must include the following information and representations:

(A) The first taxable year of the shareholder for which the special preferred QEF election is made;

(B) The number of shares subject to the election, their acquisition date(s) and acquisition price(s), and the class designation(s) of the shares;

(C) A representation by the shareholder that it did not at any time during its taxable year own directly, indirectly, or constructively, within the meaning of section 958, five percent or more of the vote or value of any class of stock of the foreign corporation with respect to which the election applies;

(D) A representation by the shareholder that it has obtained the written statement described in paragraph (c)(3) of this section; and

(E) A representation by the shareholder that it has never made a section 1295 election other than a special preferred QEF election with respect to the foreign corporation.

(f) *Annual reporting requirement.* For each taxable year of a shareholder during which the shareholder holds shares of a foreign corporation subject to one or more special preferred QEF elections, the shareholder must file Form 8621 with respect to the foreign corporation regardless of whether the foreign corporation is or is not a PFIC under section 1296 during any portion of the taxable year. The shareholder must indicate in the margin of Part I of Form 8621 the number of special preferred QEF elections of the shareholder that remain in effect with respect to the foreign corporation. In addition, the shareholder must report, on Line 6a of Part II of Form 8621, the aggregate of the preferred QEF amounts for all relevant special preferred QEF elections in effect for the taxable year.

(g) *Termination or invalidation of election*—(1) *In general.* A sale, exchange or other disposition of a share that is subject to a special preferred QEF election will terminate the special preferred QEF election with respect to that share. In addition, the Commissioner may, in the Commissioner's discretion, terminate or invalidate a special preferred QEF election if a shareholder that made the election fails to satisfy the initial or ongoing requirements of the election. Once made, a special preferred QEF election may not be terminated or invalidated by the shareholder.

(2) *Effect of termination or invalidation.* Termination of a special preferred QEF election by the Commissioner will be effective on the first day of the shareholder's first taxable year following the last taxable year of the shareholder for which the requirements of the election are satisfied. For purposes of sections 1291 through 1297 and the regulations thereunder, the holding period of qualified preferred shares subject to an election that has been terminated will be treated as beginning on the effective date of the termination. A shareholder that has made an election that is invalidated by the Commissioner will be treated for purposes of sections 1291 through 1297 and the regulations thereunder as if the shareholder never made the election.

(h) *Effective date.* An election under this section may only be made with respect to qualified preferred shares that are issued after the date that is 30 days after the date of publication of this document as a final regulation.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32247 Filed 12–23–96; 8:45 am]

BILLING CODE 4830–01–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM97–1; Order No. 1146]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice and procedure to clarify what it requires under certain circumstances. Where the Postal Service files a request that proposes to change rates or fees and, at the same time, proposes to change established cost attribution principles, the proposed amendment would require the Postal Service's request to estimate the impact of its proposed changes in rates or fees separately from the impact of its proposed changes in attribution principles. The purpose of the proposed amendment is to require that such a request give other parties and the Commission adequate and timely notice of the impact of the rate proposals that it contains, in order not to delay evaluation of those proposals.

DATES: Comments must be filed by January 31, 1997.

ADDRESSES: Comments and correspondence should be sent to Margaret Crenshaw, Secretary of the Commission, 1333 H Street, NW, Suite 300, Washington, D.C., 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor (202) 789–6820.

SUPPLEMENTARY INFORMATION: The basic purpose of Rule 54 of the Commission's Rules of Practice [39 CFR 3001.54] is to require the Postal Service to include with its request for changes in rates the threshold level of cost, volume, and revenue information necessary to support its direct case, so that its request can be evaluated within the tight deadline that the Act imposes. Most Rule 54 requirements also apply to Postal Service requests for classification changes, if such changes affect rates. See 39 CFR 3001.64. Evaluating the consistency of proposed changes in rates with the pricing standards of 39 USC 3622, requires accurate estimates of their impact. For this reason, Rule 54(a) requires the Postal Service to include with a request for changes in rates enough information to ''fully inform'' the Commission and the parties of the ''significance and impact'' of the proposed changes.

A Postal Service request for changes in rates cannot ''fully inform'' the Commission and the parties of its ''significance and impact'' if it does not show the effect that its proposed rates would have on the relative institutional cost burdens that the affected subclasses of mail would bear. The customary measure of relative institutional cost burdens is ''cost coverage,'' i.e., the ratio of subclass revenue to subclass attributable cost. To satisfy Rule 54(a), therefore, the Postal Service's request must demonstrate the impact that its proposed rates would have on cost coverages. Docket No. MC96–3 is the most recent Postal Service request that involves proposals to significantly increase Postal Service revenues and rates. The Postal Service's Rule 54 cost presentation in that docket, however, did not satisfy this objective of Rule 54(a). It estimated only the combined effect on subclass attributable costs and cost coverages of its proposed changes in rates and its proposed changes in attribution principles. It left the task of distinguishing between these effects to other parties and the Commission.

It is not properly the Commission's or the parties' burden to disentangle the effects of the Postal Service's proposed changes in rates from the effects of its proposed changes in attribution principles, in order to evaluate the Postal Service's proposals. As the proponent of change, the Postal Service has the burden of going forward. See 5 USC 556(d), 39 USC 3622, 39 CFR 3001.53 and 3001.54. If the Postal Service's request confounds the effects of its proposals to change rates and its proposals to change cost attribution principles, its request does not provide timely and effective notice of the significance of either.

An important criterion for evaluating the significance and impact of proposed changes in rates is the effect that they would have on cost coverages. Because the attribution principles applied determine the amount of costs that are attributed to subclasses, they, too, affect cost coverages. When a Postal Service request combines proposals to change rates with proposals to change established cost attribution principles, mailers and competitors are not able to determine from the Postal Service's request how its proposed changes in attribution principles would affect their interests until they calculate for themselves what cost coverages would be at the Postal Service's proposed rates, under established attribution principles. For many potential participants in our hearings, performing this elaborate set of calculations is a formidable and time consuming task. It can defeat, or seriously delay, their ability to determine how the Postal Service's proposals would affect them, and whether they should intervene to support or oppose them. This is not consistent with the objective of Rule 54(a), which is to provide parties and the Commission with enough information from the outset of the proceeding to evaluate the significance and impact of the Postal Service's proposals.

To ensure timely and effective notice of the impact of Postal Service requests that propose to simultaneously change rates and attribution principles, the Commission proposes to amend Rule 54(a). The proposed amendment would require the Postal Service to include with such a request an alternate attributable cost presentation that would calculate attributable costs and cost coverages at Postal Service proposed rates according to established attribution principles. A cost presentation that holds attribution principles constant is necessary to isolate the effect of the Postal Service's proposed changes in rates on cost coverages. The appropriate set of attribution principles to use as a baseline is the set that was used to establish current rates. That set defines the status quo, is most consistent with historic attributable cost and cost coverage estimates, and has the weight of precedent.

As used in the proposed amendment to Rule 54(a), the phrase ''attribution

principles'' is intended to refer to theories of cost causation (e.g., volume variability, exclusivity), models of cost causation (e.g., econometric models of volume variability), the identity and role of cost drivers (e.g., shape, coverage), and the identity and role of distribution keys (e.g., pieces, pound/miles). It is not intended to encompass the detailed mechanics of implementing these principles if proposed adjustments in implementation do not conflict with existing use of established attribution principles, as defined above. Nor are attribution principles intended to encompass apparent errors in arithmetic, spreadsheet mechanics, or documentation that do not raise issues as to the theory or logic by which costs are attributed to subclasses.

To estimate attributable costs and cost coverages using established attribution principles, i.e., those applied by the Commission in the most recent general rate proceeding in which its recommended rates were implemented, the Postal Service would not have to replicate in exact detail every calculation that the Commission used to estimate the attributable cost relationships that underlie current rates. Adjustments are often necessary to account for new circumstances such as operational changes or intervening rate and classification changes. A ''best efforts'' attempt to follow the same basic attribution principles is all that would be required to satisfy the objective of Rule 54(a).

Estimating the impact of its proposed rates on costs according to the attribution principles that the Commission applies should impose only a modest burden on the Postal Service. It has a large technical staff with the specialized background required to develop a comprehensive estimate of Postal Service attributable costs, and has previously demonstrated its ability to accurately attribute costs according to established principles .

As previously noted, this task can be formidable and time consuming for other participants. Developing a comprehensive estimate of subclass attributable costs at the Postal Service's proposed rates can be time consuming for the Commission as well. Although its staff has the specialized technical background required, it faces some of the same obstacles that the parties face in developing a comprehensive estimate of Postal Service attributable costs. For example, in recent proceedings essential databases have not been provided by the Postal Service in a form that could be read and manipulated by conventional data processing techniques until after a lengthy dialogue between Commission and Postal Service technical staff had taken place. For these reasons, a Postal Service request that does not distinguish the impact of its proposed rate changes on cost coverages from the impact of its proposed changes in attribution principles on cost coverages, and shifts this burden to other parties or the Commission, can jeopardize the opportunity of other parties and the Commission to evaluate the Postal Service's proposals within the tight statutory deadline imposed by 39 USC § 3624(c)(1).

In Docket No. MC96–3, the Commission ordered the Postal Service to separately show the effect of its proposed rate changes and the effect of its proposed changes in attribution principles on cost coverages by calculating costs according to the principles upon which current rates are based. See PRC Order Nos. 1120 and 1126. The Postal Service refused. It justified its refusal, in part, by asserting that showing only the combined effect fully complied with the filing requirements of Rule 54. It argued that the only relevant requirement in Rule 54 is found in paragraphs (f)(1) and (f)(2), which require it to present total actual and estimated accrued costs for various years. It asserted that no obligation could be inferred from Rule 54 to estimate costs or cost coverages by any specific method. See Docket No. MC96–3, Motion of the United States Postal Service for Reconsideration of Order No. 1120, and Partial Response (June 28, 1996) at 9–10; Opposition of United States Postal Service to Office of the Consumer Advocate Motion Under 39 USC 3624(c)(2) for Day-to-Day Extensions (August 22, 1996) at 6–7. It argued as though complying with paragraphs (f)(1) and (f)(2) of Rule 54 satisfies its obligation to support its request with cost information, regardless of the proposed changes that its request contains.

This fails to recognize that Rule 54(a) requires information that is sufficient to meet specific, listed objectives. One listed objective is to have the Postal Service's request give notice of the impact of proposed changes in rates. The kind of information that will meet this objective will depend on the nature of the rate changes that are proposed and the context in which they are proposed. Where the Postal Service proposes changes in rates with significant revenue effects, and at the same time proposes changes to established attribution principles that affect estimates of subclass attributable costs, the impact of its rate proposals on cost coverages cannot be separately identified and evaluated. To allow the impact of its rate proposals to be separately identified and evaluated, and thereby meet the objective of Rule 54(a), the Postal Service must include with its request an alternative estimate of attributable costs and cost coverages at its proposed rates, under established attribution principles.

Because the Postal Service has construed Rule 54 to relieve it of such an obligation, it is necessary to clarify the Rule. The proposed amendment would apply if the Postal Service's request simultaneously proposes changes in rates and changes in the attribution principles upon which current rates are based. In that circumstance, it would require the Postal Service to include with its request an alternative estimate of attributable costs and cost coverages at its proposed rates that is consistent with the attribution principles upon which current rates are based.

In determining the form that such an amendment should take, the Commission considered rules of other regulatory agencies that have the same purpose as the amendment proposed here. Federal Energy Regulatory Commission (FERC) rule § 154.301 [18 CFR 154.301] is an analog of the Postal Rate Commission's Rule 54. It provides

> A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's case-in-chief in the event that the change is suspended and the matter is set for hearing. *If the change in rates or charges presented are not in full accord with any prior Commission decision directly involving the filing company, the company must include in its working papers alternate material reflecting the effect of such prior decision.* (Emphasis added.)

If applied in the context of postal ratemaking, such a rule would require an alternate attributable cost presentation showing the effect of departing from basic cost attribution principles applied by the Commission in prior proceedings. But this requirement is framed so broadly that it is capable of being construed to require an alternate cost presentation where one is not warranted.

It is possible, for example, that a rule framed this broadly could be construed to require alternate presentations to show the effect of Postal Service corrections of apparent arithmetic, documentation, or presentation errors that do not involve questions of the theory or logic by which costs are attributed to subclasses. Illustrations of

these would be the alleged errors in the implementation procedures applied by the Commission in Docket No. R94–1 that the Postal Service cited during the post-hearing phase of that docket. See Comments of USPS in Response to Order No. 1039 (January 9, 1995) at 5, fn. 2, and Reply Comments of USPS in Response to Order No. 1041 (February 27, 1995) at 6. These alleged errors are discussed at paragraphs 263–74 of the Commission's Opinion and Further Recommended Decision in Docket No. R94–1. It is also possible that a rule framed this broadly could be construed to require alternate workpapers to show the effect of Postal Service corrections to apparent errors in the Commission's spreadsheet mechanics. An illustration of this would be the error cited at page 12 of the Governors Decision returning the Commission's recommended decision in R94–1 for reconsideration and discussed at paragraphs 264–65 of the Commission's Opinion and Further Recommended Decision.

Requiring the Postal Service to file alternative workpapers showing the effect of correcting such apparent errors on subclass attributable costs and cost coverages would be unwarranted. This is especially true where, as with the illustrations discussed above, their impact on subclass attributable costs is inconsequential. See the Commission's Opinion and Further Recommended Decision in Docket No. R94–1 at paragraph 260.

A number of public service commissions at the state and local level also have procedural rules with the same objective as the Commission's proposed amendment to Rule 54. An example is § 200.2 of the Municipal Regulations for the Public Service Commission of the District of Columbia [15 DCMR § 200.2 (1991)]. That rule provides:

> Whenever, in a rate change application, a party proposes to change the ratemaking principles adopted in its most recent rate case, the party shall also file with its § 200.1 filing [an application for changed rates] a statement describing each proposed change in the *ratemaking principles* adopted by the Commission in the applicant's last general rate proceeding, *showing the effect of each such change upon the applicant's request if no such changes were made.* (Emphasis added.)

This alternate filing requirement is worded more narrowly than the Federal Energy Regulatory Commission rule referenced above. If applied in the context of postal ratemaking, it would imply a narrower duty than the FERC rule would imply. Rather than require an alternate attributable cost presentation whenever a Postal Service request for changes in rates is not ''in full accord'' with prior Commission recommended decisions, it would require an alternate presentation whenever a Postal Service request proposed a change in the attribution ''principles'' adopted in the most recent Commission recommended decision. It is therefore less likely than the FERC rule to be construed as extending to minor adjustments in the mechanics of implementing those principles that do not warrant alternate cost presentations, such as those needed to conform to new facts, or corrections of inconsequential mathematical or documentation errors.

Applied to postal ratemaking, a rule of this scope would allow the Postal Service to modify a particular procedure that the Commission uses when it implements established attribution principles. It would not require an alternate cost presentation as long as the modification is consistent with those principles. For example, it would not require the Postal Service to ignore changes that might have occurred since the Commission's most recent recommended decision in such things as how mail is handled, how employees are classified, or how subclasses of mail are defined. It would allow the Postal Service to adapt Commission procedures to accommodate such changes without being required to file an alternate cost presentation. Ordinarily, the need to exercise some judgment in adapting the Commission's implementation procedures would not activate the rule, unless the judgment exercised were in some way inconsistent with established attribution principles.

Applied in the postal ratemaking context, the D.C. Public Service Commission rule would also be narrower than the FERC rule with respect to the reference point from which proposed changes in attribution principles would be measured. Rather than make the attribution principles adopted in any prior Commission recommended decision the reference point, the D.C. Public Service Commission rule would make attribution principles applied in the most recent general rate case the reference point. This would avoid any potential ambiguity as to what attribution principles are ''established.''

The D.C. Public Service Commission rule appears to be a more suitable model for the Commission's proposed amendment than the FERC rule, because it would be less amenable to an overly broad construction, and would employ a more focused reference point from which departures from established attribution principles would be measured. The Commission's proposed amendment to Rule 54(a) is similar to that rule.

Complying with this amended rule would not preclude the Postal Service from proposing changes to established attribution principles. The alternate attributable cost and cost coverage presentation that amended Rule 54(a) would require would apply only when a Postal Service request for changes in rates proposes simultaneous changes to established attribution principles. In providing the alternate presentation, the Postal Service is not required to affirm the theoretical soundness or the practical wisdom of the established attribution principles. It is merely required to affirm that it has provided the parties and the Commission with its best estimate of what the consequences of its proposed changes in rates would be if they were measured by established attribution principles.

Under the amended rule, the reference point for determining proposed changes in established attribution principles would be the attribution principles followed by the Commission in the most recent general rate proceeding in which its recommended rates were implemented. The proposed amendment recognizes that these principles were arrived at following litigation during that or prior Commission proceedings and have survived any appellate review that might have been conducted under 39 U.S.C. § 3628. Such principles are entitled to the weight of precedent, and the Commission may apply those principles in subsequent proceedings without additional litigation. It is not the purpose of the proposed amendment to require the Postal Service to provide a record basis for applying attribution principles previously litigated and approved. The purpose of the proposed amendment is to provide the Commission and other parties with timely notice of the impact of the Postal Service's proposed changes in rates.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the PRC hereby certifies that this notice of proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—[AMENDED]

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662.

§ 3001.54 [Amended]

2. Section 3001.54(a)(1) is revised to read as follows:

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If a request for changes in rates or fees proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were implemented, the Postal Service shall include with its request for changes in rates or fees a statement describing each change that it proposes in those cost attribution principles, and shall show what the effect on its request would be if its request did not propose such changes. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

* * * * *

Issued by the Commission on December 17, 1996.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–32492 Filed 12–23–96; 8:45 am]

BILLING CODE 7710–FN–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–5669–8]

RIN 2060–AE57, AE66 and AH09

National Ambient Air Quality Standards for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing public hearings on the proposed revisions to the national ambient air quality standards (NAAQS) for ozone and particulate matter as well as the proposed reference method (Appendix L, 40 CFR part 50) and the proposed requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$, and ambient air quality surveillance for particulate matter that were published on December 13, 1996 (61 FR 65715, 65637, and 65779, respectively). These public hearings are the opportunity for the oral presentation of data, views, or arguments required by section 307(d)(5) of the Clean Air Act.

DATES: Public hearings on the proposed ozone and particulate matter NAAQS decisions will be held on January 14 and 15, 1997 at the locations identified below. The record of each hearing will be held open for 30 days to allow for submission of any rebuttal or supplementary information. The January 14, 1997 hearings will begin at 10:30 a.m. (local time) and end at 8:00 p.m. (local time).

The January 15, 1997 hearings will begin at 9:00 a.m. (local time) and end at 3:00 p.m. (local time). The public hearing on the proposed reference method (Appendix L) and the proposed requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$ and air quality surveillance for particulate matter will be held on January 14, 1997 beginning at 9:00 a.m. (local time) and ending at 5:00 p.m (local time). As previously announced, the public comment period for the proposed decisions will close on February 18, 1997. This comment period applies to all public comments, written or oral, including any made via the telephone hotline and electronic mailboxes established for this purpose.

ADDRESSES: Submit written comments (duplicate copies preferred) to Office of Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Comments on the proposed revisions to the ozone NAAQS should be submitted to the above address, Attention: Docket No. A–95–58. Comments on the proposed revisions to the particulate matter NAAQS (including Appendix L) should be submitted to the above address, Attention: Docket No. A–95–54. Comments on the proposed requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$ and ambient air quality surveillance for particulate matter should be submitted to the above address, Attention: Docket No. A–96–51.

Public hearings on the proposed revision to the ozone and particulate matter NAAQS will be held at the following locations:

(1) Westin Copley Place, 10 Huntington Avenue, Boston, MA 02116, 617–262–9600

(2) Midland Hotel, 172 West Adams at LaSalle, Chicago, IL 60603, 312–332–1200

(3) Red Lion Hotel, 255 South West Temple Street, Salt Lake City, UT 84101, 801–328–2000

The public hearing on the proposed reference method (Appendix L, 40 CFR part 50), and the proposed requirements for designation of reference and equivalent methods for monitoring $PM_{2.5}$ and ambient air quality surveillance for particulate matter (40 CFR parts 53 and 58) will be held at: Omni Durham Hotel, 201 Foster Street, Durham, NC 27701, 919–683–6664.

Rebuttal or supplementary information or other written statements for the record of any public hearings should be submitted (duplicate copies preferred) to the appropriate docket at the address specified above for the submission of written comments.

FOR FURTHER INFORMATION CONTACT: Ozone NAAQS—Dr. David McKee, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5288. Particulate Matter NAAQS—Ms. Patricia Koman at the above address, telephone: (919) 541–5170. $PM_{2.5}$ Reference Method, Reference and Equivalent Methods, and Ambient Air Surveillance for Particulate Matter—Mr. Neil Frank, MD–14, Emissions, Monitoring, and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5560.

SUPPLEMENTARY INFORMATION:

Court Order on Particulate Matter NAAQS

The court order entered in *American Lung Association* v. *Browner,* CIV–93–643–TUC–ACM (D. Ariz., October 6, 1994), has been modified to change the date specified for the close of the public comment period on the proposed decision on particulate matter NAAQS from January 29, 1997 to February 18, 1997. The date for final decision on the

particulate matter NAAQS, June 28, 1997, remains unchanged.

Public Hearings

Individuals planning to make oral presentations at the hearing(s) should notify Ms. Linda Metcalf, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–2865, at least 7 days prior to the date of the hearing(s). Oral presentations will be limited to five minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearings. Written statements (duplicate copies preferred) should be submitted to the appropriate docket at the address specified above.

A verbatim transcript of the hearings as well as written statements received will be available for inspection and copying during normal working hours at the Office of Air and Radiation Docket and Information Center at the address specified above.

Availability of Related Information

Any supplemental air quality, exposure and risk analyses for ozone and/or particulate matter prepared by EPA will be entered into the appropriate docket and will also be available to the public through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS) in the Clean Air Act Amendments area, under Title I, Policy/Guidance Documents. To access the bulletin board, a modem and communications software are necessary. To dial up, set your communications software to 8 data bits, no parity and one stop bit. Dial (919) 541–5742 and follow the on-screen instructions to register for access. After registering, proceed to choice ''<T> Gateway to TTN Technical Areas'', then choose ''<E> CAAA BBS''. From the main menu, choose ''<1> Title I: Attain/Maint of NAAQS'', then ''<P> Policy Guidance Documents.'' To access these documents through the World Wide Web, click on ''TTN BBSWeb'', then proceed to the Gateway to TTN Technical areas, as above. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 18, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–32663 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 384

[Docket No. R–166]

RIN 2133–AB26

Criteria for Granting Waivers of Requirement for Exclusive U.S.-Flag Vessel Carriage of Certain Export Cargoes

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of comment period on advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is extending for 45 days the comment period on an advance notice of proposed rulemaking (ANPRM) concerning whether MARAD should amend its existing criteria and methodologies for granting waivers of the requirement for U.S.-flag vessel carriage of certain cargo covered by Public Resolution 17, 33rd Congress (PR 17).

DATES: Comments must be received on or before February 10, 1997.

ADDRESSES: To be considered comments must be sent to the Secretary, Maritime Administration, Room 7210, 400 7th St., S.W., Washington, DC 20590. Comments will become part of this docket. Anyone who wishes to arrange access to comments filed must telephone the secretary, MARAD, at (202) 366–5746 during normal business hours. Commenters wishing MARAD to acknowledge receipt of comments must enclose a stamped self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, Washington, DC 20590. Telephone (202) 366–0364.

SUPPLEMENTARY INFORMATION: On October 28, 1996, MARAD published an ANPRM soliciting public comment on whether it should amend its existing criteria and methodologies for granting a waiver of the requirement for U.S.-flag vessel carriage of certain cargo covered by PR 17, 46 App. U.S.C. 1241–1, and if so, what the new waiver procedure should be with respect to EXIMBANK-financed cargo. Based on comments already submitted and a request for extension of time to comment, MARAD has decided to extend the comment period for 45 days. MARAD also asks the public to comment on the following options and proposals, which are in addition to those described in the ANRPM.

(1) Should MARAD promulgate a rule that states the objectives and the procedures that will guide the waiver process so that carriers, shippers, and freight forwarders will know, as project bids are formulated, the specific criteria that will affect most waiver applications? To supplement this, should MARAD also participate, on an ongoing regular basis, in EXIMBANK/shippers' briefings to assist shippers in transportation planning for projects?

(2) Should MARAD publish or otherwise make available regular notices of extant EXIMBANK projects that may require ocean transportation?

(3) When a shipper is awarded a project which is or may become subject to the cargo preference laws of the United States via intended EXIMBANK financing or other events, should MARAD contact in writing and/or through meetings the shipper, the shipper's representative, and the U.S.-flag carriers in order to determine the expected cargoes and shipping dates and requirements for the life of the project? Should shipper personnel include representatives from the traffic/logistics and finance departments so that each becomes aware of the EXIMBANK and MARAD requirements?

(4) If a waiver is desired, should the shipper be required to notify MARAD and the U.S.-flag carriers at least 45 days before each actual cargo movement from a port in the United States and provide a complete packing list and proposed transportation schedule? Should the notice also be published in a widely disseminated publication, e.g., in the Transportation News Ticker (TNT), to notify the trade as is common in other U.S. Government transportation movements, with full and uniform information on requirements and terms? If there is a waiver amendment request and the parameters of the shipment substantially change, should a new notice and re-bids be required? Should there be a predetermined threshold of change (e.g., 5 percent)?

(5) When the shipper seeks a waiver, should the shipper be required to furnish documentation in support of the stated reasons for the waiver request?

(6) Should carriers be required to provide a written response to a shipper's RFQ/RFP with a time

limitation? If yes, what time period? Should shippers be required to attach these written responses to the waiver request?

(7) Should MARAD be required to canvas all U.S.-flag operators on each waiver request, and establish a reasonable procedure for response by carriers? Should each carrier designate a specific office or individual as a point of contact for shippers regarding cargo movements resulting from EXIMBANK projects?

(8) Should MARAD alter its procedure for considering a waiver for shippers to move oversize parcels on foreign-flag vessels that cannot be carried on U.S.-flag carriers? Should MARAD prohibit shippers from ''bundling'' other parcels of cargo with the oversize parcel? If not, under what circumstances, if any, should shippers be allowed to ''bundle'' their cargoes, so long as this is not done merely to avoid using U.S.-flag carriers?

(9) Should MARAD allow a ''To Be Named'' (TBN) vessel on the initial waiver request form to facilitate early (45 days or more) notice providing, however, that no waiver is granted without a specific vessel being named?

(10) In addition to the current publicly-published sailing schedules, should U.S.-flag vessel operators be required to provide MARAD, on a regular basis, the particulars of their U.S.-flag vessels or equipment, indicating maximum dimensions, weights and types of cargo they can handle? Should U.S.-flag carriers be required to furnish MARAD, on a regular basis, a forward projection of their U.S.-flag fleet anticipated service areas? If yes, how far projected?

(11) Would the implementation of any changes that would substantially relax waiver requirements discourage operators from bringing vessels under or keeping vessels under the U.S. flag by shrinking the U.S.-flag cargo base? Would such relaxation also deter the possibility of the bringing in of new breakbulk or roll-on/roll-off tonnage under the U.S.-flag?

(12) What system could best ensure that the actual shipment (as reflected in the bill of lading) conforms to the terms, conditions, and specifications of the waiver granted?

By order of the Maritime Administrator.

Edmund T. Sommer, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 96–32656 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–255; RM–8960]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Rule Communications and Mount Rushmore Broadcasting, Inc., proposing the allotment of Channel 254A at Laramie, Wyoming, as the community's sixth local commercial FM transmission service. The proposed allotment would eliminate the mutual exclusivity of the two pending applications for Channel 244A at Laramie. If the channel is allotted, petitioners also request that Mount Rushmore Broadcasting, Inc., be allowed to amend its application to specify operation on the new channel, with cut-off protection. Channel 254A can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 254A at Laramie are North Latitude 41–18–42 and West Longitude 105–35–06.

DATES: Comments must be filed on or before February 10, 1997, and reply comments on or before February 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.LP., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006 (Counsel for Rule Communications); and Thomas J. Hutton, Esq., Dow, Lohnes & Albertson, P.L.L.C., 1200 New Hampshire Ave., N.W., Suite 800, Washington, D.C. 20006 (Counsel for Mount Rushmore Broadcasting, Inc.)

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–255, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32555 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–253, RM–8962]

Radio Broadcasting Services; Bainbridge, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Chattahoochee Broadcast Associates seeking the allotment of Channel 270A to Bainbridge, GA, as the community's second local FM service. Channel 270A can be allotted to Bainbridge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 30–54–30 NL; 84–34–30 WL. We note that the allotment is short-spaced to the present operations of Stations WXSR, Channel 268C2, Quincy, FL, and WJPH, Channel 270C3, Monticello, FL. However, pursuant to the *Report and Order* in MM Docket 95–82, Station WXSR's license has been modified to specify Channel 268C1, at a new transmitter site at coordinates 30–10–22 NL and 84–26–52 WL, and Station WJPH's license has been modified to specify operation on Channel 289C3. *See*, 61 FR 42189,

August 14, 1996. Therefore, final action in this proceeding or in the licensing of a new station on Channel 270A at Bainbridge, if allotted, may be withheld until Stations WXSR and WJPH are licensed on the new channels.

DATES: Comments must be filed on or before February 10, 1997, and reply comments on or before February 25, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roy Simpson, General Partner, Chattahoochee Broadcast Associates, 4143 East River Road, Camillia, GA 31730 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–253, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32556 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961108316–6316–01; I.D. 101796C]

RIN 0648–A147

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 14; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to the proposed rule that would implement Amendment 14 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule (I.D. 101796C) was published on November 25, 1996 (61 FR 59852).

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The proposed rule that is the subject of these corrections would prohibit the use or possession of fish traps in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) beginning February 8, 2007; prohibit the use or possession of fish traps west of 85°30' W. long; modify the procedure for retrieval of fish traps when a brakedown prevents a vessel with a trap endorsement from retrieving its traps; modify the restrictions on transfer of fish trap endorsements and reef fish permits; prohibit the harvest or possession of Nassau grouper in or from the EEZ of the Gulf; and clarify the authority of the Regional Administrator, Southeast Region, NMFS, to reopen a prematurely closed fishery. In addition, NMFS proposed to extend the current prohibition on the possession of dynamite on board a permitted vessel to those vessels permitted in the South Atlantic golden crab fishery.

Need for Correction

As published, the preamble to the proposed rule contains an incorrect address and an incorrect reference to ''trap permit'' in a discussion about ''reef fish permits.''

Correction of Publication

Accordingly, the publication on November 25, 1996, of the proposed rule (I.D. 101796C), which was the subject of FR DOC 96–29500, is corrected as follows:

On page 59853, in the first column, paragraph two, lines five through seven are corrected to read: ''the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 10001, Tampa, FL 33619, PHONE:''

On page 59854, in the first column, under the heading ''Modification of the Restrictions on Transfer of Reef Fish Permits,'' paragraph 2, line 10 is corrected to read: ''and who receives a permit by''.

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

Dated: December 18, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–32605 Filed 12–23–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 248
Tuesday, December 24, 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

Farm Service Agency

Notice and Request for Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for and revision to a currently approved information collection in support of the peanut poundage quota program as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATE: Comments on this notice must be received on or before February 24, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David Kincannon, Marketing Specialist, Tobacco and Peanuts Division, USDA, FSA, STOP 014, P.O. Box 2415, Washington, DC 20013–2415, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Title: Peanuts, 7 CFR Part 729.

OMB Number: 0560–0006.

Expiration Date: September 30, 1998.

Type of Request: Request for revision of a currently approved information collection.

Abstract: The 1996 Act provides for out-of-county transfer of peanut poundage quota but limits, for certain counties, the amount that may be transferred in any year. The owner or operator must request a transfer of quota by registering on form FSA–377. If the total amount of quota requested to be transferred exceeds the limit for the county, a lottery may be held to select which of those owner/operators listed on form FSA–377 may be approved.

Estimated of Burden: Public reporting burden for this collection of information is estimated to average .1 hours per response.

Respondents: Individual producers.

Estimated Number of Respondents: 1000.

Estimated Total Annual Burden of Respondents: 100 hours.

Comments are requested regarding, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; or (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to David Kincannon, USDA, Farm Service Agency, Tobacco and Peanuts Division, STOP 0514, P.O. Box 2415, Washington, DC 20013–2415.

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

Signed at Washington, DC, on December 16, 1996.

Bruce R. Weber,

Administrator, Farm Service Agency.

[FR Doc. 96–32622 Filed 12–23–96; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Southwest Region, CA

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to public legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 1, 1997. The list of newspapers will remain in effect until January 1998 when another notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705–2553.

SUPPLEMENTARY INFORMATION: On November 4, 1993, 36 CFR Parts 215 and 217 were published requiring publication of legal notice of decisions subject to appeal. Sections 215.5 and 217.5 require notice published in the Federal Register advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Pacific Southwest Regional Forester decisions:

Sacramento Bee, Sacramento, California

Angeles National Forest

Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California
Arroyo-Seco District Ranger decisions:
Pasadena Star News, Pasadena, California
Newspaper providing additional notice of Arroyo-Seco decisions:
Daily News, Los Angeles, California
Mount Baldly District Ranger decisions:
Inland Valley Bulletin, Los Angeles, California
Newspaper providing additional notice of Mount Baldy decisions:
San Gabriel Valley Tribune, eastern San Gabriel Valley, California
Saugus District Ranger decisions:
Daily News, Los Angeles, California
Newspaper providing additional notice of Saugus decisions:
Antelope Valley Press, Palmdale, California
Tujunga District Ranger decisions:
Daily News, Los Angeles, California
Newspaper providing additional notice of Tujunga decisions:
Antelope Valley Press, Palmdale, California
Foothill Leader, Glendale, California
Valyermo District Ranger decisions:
Antelope Valley Press, Palmdale, California
Newspaper providing additional notice of Valyermo decisions:
Mountaineer Progress, Wrightwood, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union-Tribune, San Diego, California
Descanso District Ranger decisions:
San Diego Union-Tribune, San Diego, California
Palomar District Ranger decisions:
San Diego Union-Tribune, San Diego, California
Newspaper providing additional notice of Palomar decisions:
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana, California
Newspaper providing additional notice of Trabuco decisions:
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Siskiyou Daily News, Yreka, California
Oak Knoll District Ranger decisions:
Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, El Dorado County, California

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, Lassen County, California
Almanor District Ranger decisions:
Chester Progressive, Plumas County, California
Eagle Lake District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Hat Creek District Ranger decisions:
Intermountain News, Burney, Shasta County, California
Newspaper providing additional notice of Hat Creek decisions:
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Monterey Herald, Monterey, California
Mountain Pinos District Ranger decisions:
The Bakersfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Chico Tree Improvement Center Director decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Newspaper providing additional notice of Doublehead decisions:
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckwourth District Ranger decisions:
Portola Reporter, Portola, California
Feather River District Ranger decisions:
Oroville Mercury Register, Oroville,

California
Mt. Hough District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:
Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacinto District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannell Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder, Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River Ranger District decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Fresno Bee, Fresno, California
Kings River District Ranger decisions:
Fresno Bee, Fresno, California
Pineridge District Ranger decisions:
Fresno Bee, Fresno, California
Mariposa District Ranger decisions:
Fresno Bee, Fresno, California
Minarets District Ranger decisions:
Fresno Bee, Fresno, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Gasquet District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
The Kourier, Willow Creek, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:
The Kourier, Willow Creek, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat. Sonora, California, Calaveras District Ranger decisions:
The Union Democrat, Sonora, California, Groveland District Ranger decisions:
The Union Democrat, Sonora, California, Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California, Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
Grass Valley Union, Grass Valley, California, Downieville District Ranger decisions:
Mountain Messenger, Downieville, California, Foresthill District Ranger decisions:
Auburn Journal, Auburn, California, Nevada City District Ranger decisions:
Grass Valley Union, Grass Valley, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Sierraville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Newspaper providing additional notice of Truckee decisions:
Tahoe World, Tahoe City, Placer County, California

Dated: December 18, 1996.

Gilbert J. Espinosa,

Deputy Regional Forester.

[FR Doc. 96–32642 Filed 12–23–96; 8:45 am]

BILLING CODE 3410–11–M

Southwest Oregon Provincial Interagency Executive Committee (PIEC); Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on January 14, 1996 at the Edgewater Inn, 275 E. Johnson Street, Coos Bay, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Subcommittee proposed grazing standards review; (3) Update on Rogue and Umpqua River Basin assessments; (4) Report by the committee assessing the PAC review results; (5) Subcommittees for ACS/Restoration, Monitoring, and Timber Sales will continue work to define their priorities; and (5) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: December 16, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–32563 Filed 12–23–96; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 65520, Friday, December 13, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 9, 1997, 1:30 p.m.

ARRB, 600 E Street, NW, Washington, DC

CHANGES IN THE MEETING: This open meeting has been canceled and will be rescheduled on a future date.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–32749 Filed 12–20–96; 11:08 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Applications for the Malcolm Baldrige National Quality Award, Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before February 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Lanse Felker, Office of Quality Program, Building 101, Room A537, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975- 2715, (301) 948–3716 fax, lansing.felker@NIST.GOV e-mail.

SUPPLEMENTARY INFORMATION:

I. Abstract

Applicants for the Malcolm Baldrige National Quality Award must submit an eligibility application, and if declared eligible, an application package. NIST will use the eligibility application to determine if the application is eligible to apply and will use the application package to assess and provide feedback on the applicant's quality and performance practices.

II. Method of Collection

Applications must comply in writing according to the *Application Form and Instructions* booklet.

III. Data

OMB Number: 00693–0006.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: Eligible U.S. organizations that choose to apply for the Malcolm Baldrige National Quality Award.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 100 hours.

Estimated Total Annual Burden Hours: 10,000 hours.

Estimated Total Annual Cost: $1,000,000 (10,000 hours × $100 per hour).

IV. Request for Comments

Comments are invited on: (a) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 17, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32620 Filed 12–23–96: 8:45 am]

BILLING CODE 3510–13–P

National Oceanic and Atmospheric Administration

Mackerel Logbook Reporting Requirements; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149, (305) 361–4263.

SUPPLEMENTARY INFORMATION:

I. Abstract

This mandatory reporting requirement is being implemented under authority of 50 CFR 622.5(a)(1)(I). Because of the need for better data on catch, effort and fishing location, as identified in the stock assessments for king and Spanish mackerel, the Science and Research Director will use the authority granted in this Part of the 622 regulations to initiate comprehensive logbook reporting for these fisheries in the Southeast Region.

II. Method of Collection

All vessels with a king or Spanish mackerel permit will be required to submit a completed logbook with the designated catch, effort and location information for every trip where these species were landed. The data must be recorded and submitted on a logbook provided by the Southeast Fisheries Science Center. Logbooks must be submitted no later than 7 days after the end of the fishing trip. If a vessel did not fish for or catch king or Spanish mackerel during a calendar month, a reporting stating that no fishing occurred during the month must be submitted.

III. Data

OMB Number: 0648–0016.

Form Number: NOAA 88–186.

Type of Review: Regular Submission.

Affected Public: Individual or households, business or other for-profit (commercial fishermen).

Estimated Number of Respondents: 2,870.

Estimated Time Per Response: 2 to 10 minute.

Estimated Total Annual Burden Hours: 5,717 hours.

Estimated Total Annual Cost to Public: No cost to the public other than the time required to complete the logbook. The forms are provided, along

with self-addressed, postage-paid envelopes.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 17, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32621 Filed 12–23–96; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 121196C]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on January 13–16, 1997.

ADDRESSES: These meetings will be held at the Holiday Inn Emerald Beach, 1102 South Shoreline Boulevard, Corpus Christi, Texas; telephone: 512–883–5731.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 15

8:30 a.m.—Convene.

8:45 a.m. - 12:00 noon—Receive public testimony on Texas Cooperative Shrimp Closure and Total Allowable Catch (TAC) for Red Snapper and Vermilion Snapper.

1:30 p.m. - 2:30 p.m.—Reconvene to continue public testimony on TACs for Red Snapper and Vermilion Snapper.

2:30 p.m. - 4:30 p.m.—Receive a report of the Shrimp Management Committee.

4:30 p.m. - 5:30 p.m.—Receive a report of the Personnel Committee (CLOSED SESSION).

January 16

8:30 a.m. - 11:00 a.m.—Receive a report of the Reef Fish Management Committee.

11:00 a.m. - 11:30 a.m.—Receive a report of the Habitat Protection Committee.

11:30 a.m. - 11:45 a.m.—Receive a report on the South Atlantic Fishery Management Council Liaison.

11:45 a.m. - 12:00 noon—Receive Enforcement Reports.

12:00 noon - 12:20 p.m.—Receive Director's Reports.

12:20 p.m. - 12:30 p.m.—Other Business to be discussed.

Committees

January 13

12:00 noon - 4:30 p.m.—Convene the Shrimp Management Committee. The committee will hear scientific reports on the cooperative shrimp closure with Texas and determine the areal extent of the closure for the 1997–98 fishing season. They will review similar closures of adjoining Mexican waters and discuss cooperation for initiating these annual closures. The committee will hear reports on Scientific and Statistical Committee (SSC) review of Draft Shrimp Amendment 9 and review of statisticians recommendations for computing estimates of bycatch of red snapper using a general linear model.

4:30 p.m. - 5:30 p.m.—Convene the Personnel Committee (CLOSED SESSION).

January 14

8:00 a.m. - 3:30 p.m.—Convene the Reef Fish Management Committee. The committees will hear stock assessment reports for red snapper, vermilion snapper, and amberjack. They will review the recommendations of a scientific stock assessment panel and socioeconomic panel on acceptable biological catch (ABC) and on TAC for these stocks as well as the recommendations of the SSC and Red Snapper Advisory Panel (AP). The committee will develop their recommendations to the Council on TAC, bag limits, and commercial quotas for red snapper and vermilion snapper, and management actions for the other stocks. The committee will review recommendations of the SSC, Socioeconomic Panel and AP on management alternatives for a license limitation system for the commercial red snapper fishery which will be included in Draft Reef Fish Amendment 15.

3:00 p.m. - 5:30 p.m.—Convene the Habitat Protection Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 6, 1997.

Dated: December 16, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–32604 Filed 12–23–96; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Grant Recipient Survey for the Telecommunications and Information Infrastructure Assistance Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce—Room 5327, 1401 Constitution Avenue NW Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gay Shrum, NTIA—Room 4892, 1401 Constitution Avenue NW, Washington, DC 20230. (202–482–1056)

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Telecommunications and Information Infrastructure Assistance Program (TIIAP) is to promote the widespread and efficient use of advanced telecommunications services in the public and non-profit sectors to serve America's communities. It does this by providing matching funds to public and non-profit sector organizations to use information infrastructure to provide community-wide information, health, life-long learning, public safety and other public services.

The program has the following objectives:

- To increase awareness in public and non-profit sectors of the National Information Infrastructure and its benefits.
- To stimulate public and non-profit sector organizations to examine potential benefits of, and plan for, investments in the information infrastructure.
- To provide a wide variety of model information infrastructure projects for public and non-profit sector organizations to follow.
- To educate the public and non-profit sectors about best practices in implementing a wide variety of information infrastructure projects.
- To help reduce disparities in access to, and use of, information infrastructure.

The National Telecommunications and Information Administration (NTIA), in administering TIIAP, awards a varying number of awards each year, but there are an average of 225 active grantees involved in some, or all, of the reporting requirements each year. In order to ensure that grant recipients are effectively promoting the efficient and widespread use of advanced telecommunications services to serve American communities and to comply with the Government Performance and Results Act, NTIA will collect and analyze quantitative and qualitative data relating to the impacts of the projects TIIAP funds.

NTIA is interested in the effects that the funded projects are having at the local level and, over the long term, at the national level. It is NTIA's intention to understand the nature and degree of those effects on the organizations implementing the projects, other organizations that are involved with the projects, the individuals who are served by the projects, and the community as a whole. NTIA is especially interested in understanding the difference that the Federal grant has had in the creation, scale, and scope of the project.

II. Method of Collection

The information collection instruments to be used for this study will include:

- Administration of telephone survey to 210 grant recipients

III. Data

OMB Number: NA—to be assigned.

Form Number: NA.

Type of Review: Regular Submission.

Affected Public: State and Local Government and Non-Profit Institutions.

BURDEN HOURS CALCULATIONS/ REPORTING

Requirement	Hours/ grantee	No. grantees	Burden hours
Administration of telephone survey	1	210	210
Total ..	.....	.....	210

Estimated Total Annual Cost: Cost to respondents is consistent with their normal administrative overhead. No material or equipment will need to be purchased to provide information.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the program, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection; they also become a matter of public record.

Dated: December 16, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32619 Filed 12–23–96; 8:45 am]

BILLING CODE: 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

December 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for special shift, swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62399, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 23, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month Level [1]
341	4,485,495 dozen of which not more than 2,598,631 dozen shall be in Category 341–Y [2].
347/348	582,321 dozen.
641	1,056,366 dozen.
647/648	546,449 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32617 Filed 12–23–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

December 18, 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 Jamaica 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 limits and guaranteed access levels for the period January 1, 1997 through December 31, 1997.

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 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989, and 61 FR 49439, published on September 20, 1996.

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.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to 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, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	621,149 dozen pairs.
338/339/638/639	1,224,743 dozen.
340/640	572,721 dozen of which not more than 484,611 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	719,163 dozen.
345/845	177,456 dozen.
347/348/647/648	1,321,957 dozen.
352/652	1,975,252 dozen.
445/446	52,304 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

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.

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.

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), 54 FR 50425 (December 6, 1989) and 61 FR 49439 (September 20, 1996), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1997 and extends through December 31, 1997:

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.

Category	Guaranteed Access Level
345/845	50,000 dozen.
347/348/647/ 648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 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 19, 1987 shall be denied entry unless the Government of Jamaica 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.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–32618 Filed 12–23–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 24, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), (Department of Defense Domestic Dependent Elementary and Secondary Schools), ATTN: Mr. Norman Heitzman, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 696–4373.

Title, Associated Forms, and OMB Number: Department of Defense FY 1997: Assistance to Local Educational Agencies (LEAs), 074–0388.

Need and Uses: This information collection requirement is necessary to disperse funds to LEAs in accordance with the National Defense Authorization Act for Fiscal Year 1997. The application requires the LEA to: (a) Certify that they have applied for financial assistance from all sources, including the State/Commonwealth; (b) have filed a complete and timely application for Section 3 impact assistance to the Secretary of Education; and (c) include a copy of their independent audit.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 71 hours.

Number of Respondents: 127.

Responses Per Respondent: One.

Average Burden Per Response: 33.66 minutes.

Frequency: Annually.

Summary of Information Collection

Section 386 of Public Law 102–484, as amended, provides $35 million to the Department of Defense (DoD) for financial assistance to LEAs. In order to establish eligibility and calculate payments, DoD relies on data furnished by the Department of Education. Additional eligibility information is provided through an application completed by the LEA. The LEA is required to: (a) certify that they have applied for financial assistance from all sources, including the State/Commonwealth; (b) have filed a complete and timely application for Section 3 impact assistance to the Secretary of Education; and (c) include a copy of their independent audit.

Public Law 104–201, National Defense Authorization Act for Fiscal Year 1997, requires that ''not later than June 30, 1997, the Secretary of Defense shall—

(a) notify each local educational agency that is eligible for educational agencies assistance for fiscal year 1997 of that agency's eligibility for such assistance and the amount of such assistance for which the agency is eligible; and (b) notify each local educational agency that it is eligible for an educational agencies payment for fiscal year 1997 and the amount of the payment for which that agency is eligible.''

Dated: December 18, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–32567 Filed 12–23–96; 8:45 am]

BILLING CODE 5000–04–M

[Transmittal No. 97–06]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 97–06, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: December 18, 1996.

L.M. Bynum,

Alternate OSO Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

0 9 DEC 1996

In reply refer to:
I-04284/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-06, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $624 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Transmittal No. 97-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$473 million
Other	$151 million
TOTAL	$624 million

(iii) Description of Articles or Services Offered:
Two hundred seventy-one Multiple Launch Rocket System (MLRS) rocket pods (six rockets per pod), 29 MLRS launchers and fire control panels, 168 reduced range practice rocket pods, 29 MLRS carriers (modified Bradley Fighting Vehicles), nine MLRS fire control proficiency trainers, 111 Army Tactical Missiles and launch assemblies (ATACMS), 200 SINCGARS radios, 14 M577A2 command post carriers, 54 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), four M88 recovery vehicles, 300 night vision goggles AN/PVS-7B, miscellaneous wheeled vehicles, missile systems software, U.S. Government and contractor engineering and logistics services, U.S. Government Quality Assurance Team(s)(QATs), spare and repair parts, personnel training and training equipment, publications and technical data, Cooperative Logistics Supply Support Arrangement (CLSSA), special test sets and support equipment, maintenance support of repairable material and other related elements of program support.

(iv) Military Department: Army (JBA, YRD, BOL, KVR, KWC and OFN)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 DEC 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - Surface-to-Surface Missile Systems

The Government of Korea has requested the purchase of 271 Multiple Launch Rocket System (MLRS) rocket pods (six rockets per pod), 29 MLRS launchers and fire control panels, 168 reduced range practice rocket pods, 29 MLRS carriers (modified Bradley Fighting Vehicles), nine MLRS fire control proficiency trainers, 111 Army Tactical Missiles and launch assemblies (ATACMS), 200 SINCGARS radios, 14 M577A2 command post carriers, 54 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), four M88 recovery vehicles, 300 night vision goggles AN/PVS-7B, miscellaneous wheeled vehicles, missile systems software, U.S. Government and contractor engineering and logistics services, U.S. Government Quality Assurance Team(s)(QATs), spare and repair parts, personnel training and training equipment, publications and technical data, Cooperative Logistics Supply Support Arrangement (CLSSA), special test sets and support equipment, maintenance support of repairable material and other related elements of program support. The estimated cost is $624 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

This is the first sale of these surface-to-surface missile systems to Korea, and it will enable the Korean Army to develop a defensive area fire capability to counter hostile long range artillery and rocket systems as well as enhance its interoperability with U.S. forces. Korea will have no difficulty absorbing these surface-to-surface missiles into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Vought Systems (LMVS), Dallas Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Korea for periods ranging from 30 to 45 days to assist in the delivery and deployment of the MLRS and ATACMS missile systems. One contractor technical representative will be assigned in-country for a minimum period of up to one year following initial deployment of the missile systems.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the MLRS is Confidential. The highest level of information which could be revealed through reverse engineering of the end item is Confidential. The highest level of information which could be revealed through testing of the end item is Secret. Confidential information that could be revealed by reverse engineering pertains to vulnerabilities and weaknesses of the system. Likewise, Secret information could be revealed on vulnerabilities and weaknesses through testing of the system. MLRS technical data and information includes Confidential and Secret reports and data, as well as performance and capability data, classified Confidential/Secret. The hardware for MLRS is Unclassified. Software is classified Secret for the Fire Direction Data Manager, the Fire Direction System and the Improved Fire Control System. Software for the Communications Distribution Unit is classified Confidential.

2. The hardware for the Army Tactical Missile System (ATACMS) is Unclassified while the software is classified Confidential. The highest level of classified information required to be released for training, operation, and maintenance of ATACMS is Confidential. The highest level of classified information which would be revealed through reverse engineering or testing of the ATACMS system is Secret.

3. Specific areas of ATACMS which are not classified but could be considered sensitive technology include the application of low-radar-cross-section material to enhance system survivability, the armored and camouflaged ATACMS container which provides additional protection and reduces vulnerability, the Improved Stabilized Reference Package/Position Determining System (ISRP/PDS), the Payload Interface Module, the Improved Electronics Unit in the launcher and the missile's guidance, payload, propulsion, and control sections.

4. If a technologically advanced potential adversary gained access to this information, countermeasures could be developed which would reduce the effectiveness of the missile system.

5. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 96–32565 Filed 12–23–96; 8:45 am]
BILLING CODE 5000–04–C

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on January 13, 1997, at Science Applications International Corporation, San Diego, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Department of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on the nuclear weapons stockpile and Department of Defense nuclear readiness.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: December 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–32566 Filed 12–23–96; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Notice of Procedure for Obtaining Information on the Military Traffic Management Command Personal Property Pilot Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: All required notices applicable to the Military Traffic Management Command's (MTMC) Personal Property Reengineering Pilot Acquisition will be published in the Commerce Business Daily. In addition, to maximize dissemination of information about the Pilot Acquisition, information will be also posted on the MTMC Worldwide Web home page.

FOR FURTHER INFORMATION CONTACT: Cullen Hutchinson, Reengineering Personal Property Team, Voice telephone: (703) 681–6427; fax: (703) 681–6883.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–Q/RPP, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

SUPPLEMENTARY INFORMATION: Notices pertaining to the MTMC Personal Property Shipment and Storage Program have traditionally been placed in the Federal Register. The reason for this is that the current program is exempt from the Federal Acquisition Regulation (FAR). However, since the MTMC Personal Property Reengineering Pilot Acquisition will be conducted under the FAR, all required notices applicable to this solicitation will be published in the Commerce Business Daily. The Commerce Business Daily remains the official source for information and announcements on FAR-based acquisitions. No further notices about the Pilot Acquisition will be published in the Federal Register.

In addition to the notices in the Commerce Business Daily, interested parties may access the MTMC Worldwide Web home page at ''http://mtmc.army.mil'' to obtain current information on the Pilot Program.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–32625 Filed 12–23–96; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Notice of Restricted Eligibility Support of Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice of restricted eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities and Other Minority Institutions in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a technical merit review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit of the application, application of relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Columbia, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236–0940, Telephone: (412) 892–6219, FAX: (412) 892–6216. The solicitation (created in Word Perfect 5.2 for Windows) will be released on DOE's PETC World Wide Web Server Internet System (http://www.petc.doe.gov/business) on or about January 3, 1997. If applicants do not have internet capability or experience difficulty accessing the solicitation files, a 3.5'' double-sided/high density diskette copy of the solicitation will be available, upon receipt of a written request submitted via facsimile (fax) at (412) 892–6216. No

telephone requests will be honored for request of disks.

SUPPLEMENTARY INFORMATION:

Title of Solicitation

''Support of Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions''

Objectives

Through Program Solicitation No. DE–PS22–97PC97201, the Department of Energy seeks applications from Historically Black Colleges and Universities (HBCUs) and Other Minority Institutions (OMIs) and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMIs in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMIs; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from a previously under-utilized resource.

Eligibility

Eligibility for participation in this Program Solicitation is restricted to Historically Black Colleges and Universities (HBCUs) and Other Minority Institutions (OMIs) recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's United States Department of Education U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the program solicitation. Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award. For information regarding the qualification criteria and process of becoming recognized by the Education Department's Office for Civil Rights as a ''Minority Institution'', institutions should contact the Education Department directly at the following address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington, DC 20202, Telephone (202) 205–9567.

Note: The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Mr. Columbia at DOE by telefacsimile on (412) 892–6216.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award.

Applications submitted in response to the solicitation must meet the following two criteria: The Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; and at least one student registered at the university is to be compensated for work performed in the conduct of research proposed in the application. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

Areas of Interest

In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuels studies, the Department is interested in innovative research and development of advance concepts pertinent to fossil fuel conversion and utilization limited to the following seven (7) technical topics:

Topic 1—Advanced Environmental Control Technology for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Coal Liquefaction Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Environmental and Recovery Technologies for Oil
Topic 6—Natural Gas Supply
Topic 7—Faculty/Student Exploratory Grants

Note: This is the only topic (Topic seven (7)) under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

Awards

DOE anticipates issuing financial assistance (grants) for each project. DOE reserves the right to support or not support any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

	Maximum award
Topics 1–6:	
To 12 months grant duration	$80,000.00
13–24 months grant duration	140,000.00
25–36 months grant duration	200,000.00
Topic 7:	
To 12 months grant duration	10,000.00

Approximately $780,000.00 is planned for this solicitation. The total should provide support for approximately four to six R&D application selections (Topics 1–6), and approximately two to four faculty/student exploratory application selections (Topic 7).

Solicitation Release Date

The Program Solicitation is expected to be ready for release on or about January 3, 1997. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation. To be eligible, applications must be submitted to the designated DOE office by the closing date specified in the Program Solicitation (anticipated to be on or about February 26, 1997).

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 96–32647 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental

Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, January 2, 1997, 6 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303)420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

(1) The Board will hear a presentation on the results of a community needs assessment performed last summer by the University of Colorado School of Nursing and the Jefferson County Department of Health and Environment.

(2) Board members will learn about Rocky Flats' budget process in preparation for their involvement in reviewing budget documents and providing advice on the Fiscal Year 1999 site budget.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on December 19, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–32643 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, January 15, 1997: 6:50 pm–9:30 pm (Mountain Standard Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:50 p.m. Public Comment Period
7:00 p.m. Approval of Agenda
7:05 p.m. Approval of 11/20/96 Minutes
7:10 p.m. Chair's Report—DOE/SNL 10–Year Plan Report
7:15 p.m. Issues Committee Report
7:25 p.m. Future Land Use Management Areas 3–6
7:45 p.m. DOE—Present and Long-range Planning for the Board
8:00 p.m. Break
8:10 p.m. Update on Corrective Action Management Unit Design
8:35 p.m. Budget Discussion/Approval
8:55 p.m. DOE FY 1997 Environmental Management Budget
9:15 p.m. Agenda Items for Next Meeting
9:20 p.m. Public Comment
9:25 p.m. Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, January 15, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, or by calling (505)845–4094.

Issued at Washington, DC on December 19, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–32645 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, January 11, 1997 (public comment session: 8:30 a.m.—12:30 p.m., 12:00 p.m.—12:15 p.m.)

ADDRESSES: The Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda:
8:30 a.m.—Call to Order
8:30–8:45—Chair's Remarks and New Business
8:45–9:00—Committee Reports
9:00–10:00—Update on Silos
10:00–10:15—Break
10:15–11:00—Site Recycling Protocol
11:00–12:00—Site Schedule and Budget Update
12:00–12:15—Opportunity for Public Input
12:15–12:30—Wrap-Up
12:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, January 11, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on December 19, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–32646 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Sciences Advisory Committee.

DATES: Tuesday, January 21, 1997, 12 noon to 6 p.m., Wednesday, January 22, 1997, 8:30 a.m. to 6 p.m., Thursday, January 23, 1997, 8:30 a.m. to 12 noon.

ADDRESSES: General Atomics, Inc., 3550 General Atomics Drive, Bldg. 7, Rm. 217, San Diego, California 92186.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, III, Executive Assistant, Office of Fusion Energy Sciences, U.S. Department of Energy, Germantown, MD 20874, Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Fusion Energy Sciences Advisory Committee has been charged to provide its view of the adequacy of the International Thermonuclear Engineering Reactor (ITER) Detailed Design Report as part of the basis for a United States Government decision to enter negotiations on the terms and conditions for an agreement for the construction, operation, exploitation, and decommissioning of ITER. The Committee has been asked to provide its view to the Department of Energy by May 1, 1997.

This will be the full FESAC's first meeting to deal with this charge.

Tentative Agenda

Tuesday–Thursday, January 21–23, 1997

—Presentations on ITER Design
—Public Comments
—Discussion of Next Steps

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact John Galambos at 423–576–5436 (fax) or galambosjd@ornl.gov (e-mail). Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 19, 1996.

Rachel M. Samuel,

Acting Deputy Advisory, Committee Management Officer.

[FR Doc. 96–32644 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–148–000]

Enron Mountain Gathering, Inc.; Notice of Petition for Declaratory Order

December 18, 1996.

Take notice that on December 11, 1996, Enron Mountain Gathering, Inc. (EMGI), 1400 Smith Street, Houston, Texas 77002, filed a petition under Rule 207 of the Commission's Rules of Practice and Procedure, for an order declaring that upon the completion of the acquisition by EMGI of certain pipeline facilities, compression facilities and delivery points from Northern Natural Gas Company (Northern), such facilities acquired by EMGI and the services provided through such facilities will not be subject to the Commission's jurisdiction under Section 1(b) of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to an Asset Purchase Agreement dated August 30, 1996, Northern will convey to EMGI certain noncontiguous facilities, including appurtenances, which include three (3) transmission lateral compressor stations located in Routt and Mesa Counties, Colorado, approximately 36 miles of pipeline with diameters of 4 and 6 inches and delivery point facilities located along these pipelines, located in Routt, Moffat and Mesa Counties, Colorado and Carbon County, Wyoming.[1]

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR

[1] On October 16, 1996, Northern filed an application in Docket No. CP97–40–000 for an order permitting and approving the abandonment of the subject facilities and services.

157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32591 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–21–001]

Florida Gas Transmission Company; Notice of Compliance Filing of Pro Forma Tariff Sheets

December 18, 1996.

Take notice that on December 16, 1996, Florida Gas Transmission Company (FGT) tendered for filing the pro forma tariff sheets listed on Attachment A hereto. The pro forma tariff sheets listed on Attachment B hereto were originally filed by FGT on October 1, 1996 and are being withdrawn herein.

FGT states that the instant filing is in compliance with the Commission's ''Order on Compliance'' issued November 15, 1996 on FGT's filing made October 1, 1996 to comply with Order No. 587 issued July 17, 1996 in Docket No. RM96–1–000. In addition, FGT requests waiver to defer implementation of the gas day standards until April 6, 1997, concurrent with the springtime change to Daylight Savings Time.

FGT states that this requested waiver is consistent with the Commission's recent order in El Paso Natural Gas Company, 77 FERC 61,176 (November 15, 1996). FGT also states that, in compliance with Order No. 587, it will file the final tariff sheets implementing the GISB standards to become effective on April 1, 1997 (and on April 6, 1997 (Sheet No. 100) if such waiver is granted).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson,

Acting Secretary.

Attachment A

Substitute Pro Forma Tariff Sheets filed herewith to become effective April 1, 1997:

Substitute Third Revised Sheet No. 102B
Substitute Fourth Revised Sheet No. 117
Substitute Third Revised Sheet No. 117A
Substitute First Revised Sheet No. 118
Substitute Third Revised Sheet No. 121
Substitute Third Revised Sheet No. 135
Substitute First Revised Sheet No. 168A
Substitute Fifth Revised Sheet No. 169

Substitute Pro Forma Tariff Sheet filed herewith to become effective April 6, 1997:

Substitute First Revised Sheet No. 100

Attachment B

Pro Forma Tariff Sheets filed October 1, 1996 which are withdrawn herein:

Second Revised Sheet No. 48
Second Revised Sheet No. 50
First Revised Sheet No. 50A
Third Revised Sheet No. 101
Fifth Revised Sheet No. 119
Seventh Revised Sheet No. 120
Fifth Revised Sheet No. 143
Fourth Revised Sheet No. 144

[FR Doc. 96–32597 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

K N Interstate Gas Transmission Co.; Notice of Compliance Filing

[Docket No. RP96–296–006]

December 18, 1996.

Take notice that on December 16, 1996 K N Interstate Gas Transmission Co. (KNI) tendered for filing certain revised tariff sheets in compliance with Commission's Letter Order dated December 6, 1996 in the above referenced proceeding. In particular, KNI submitted for filing the following tariff sheet with a requested effective date of August 1, 1996.

Third Revised Volume No. 1–A

Third Substitute Original Sheet No. 4–D

and

KNI also submitted for filing the following tariff sheets with a requested effective date of October 1, 1996:

Third Revised Volume No. 1–A

Second Substitute First Revised Sheet No. 4–D
Second Substitute Second Revised Sheet No. 4–D

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32593 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–54–000]

Louisiana-Nevada Transit Company; Notice of Tariff Filing

December 18, 1996.

Take notice that on December 16, 1996, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its Second Revised FERC Gas Tariff, Volume No. 1, the tariff sheet listed below, to be effective October 1, 1996.

Second Revised Sheet No. 56

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1996 ACA unit surcharge approved by the Commission is $.0020 per Mcf. LNT has converted this Mcf rate to a dekatherm (Dth) rate of $.0020 per Dth.

Pursuant to Section 154.207 of the Commission's Regulations, LNT requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1996.

LNT states that a copy of its filing has been served upon its customers and interested state commissions.

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, NE, Washington, DC 20426, in accordance with Section 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protestants 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 and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32602 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Project No. 10805–002, Wisconsin]

Midwest Hydraulic Company; Teleconference Meeting Notice

December 18, 1996.

A. Teleconference Meeting for the Hatfield Project will be held on January 13, 1997, at 10:00 a.m. (EST) to discuss whether certain licensing recommendations are outside the scope of Section 10(j) of the Federal Power Act.

The recommendations under consideration consist of:

- Dam safety regulations, project retirement funds, and the acquisition of property at the canal backwaters for recreation.
- Notification of whitewater boating clubs.
- A 200-foot, no-cut buffer zone on riparian company-owned lands.
- A target impoundment elevation of 882.5 ± 0.25 feet National Geodetic Vertical Datum (NGVD) and a power canal surface elevation of 979.9 NGVD.
- A follow-up macrophyte survey and a report to the Commission to document any changes which may result from the restricted impoundment water surface elevation of 882.5 feet ± 0.25 feet.

B. The following parties will participate in the teleconference: FERC staff, Wisconsin Department of Natural Resources, National Park Service.

C. Any interested party who wants to participate in this teleconference, please call Ms. Mary Golato (202) 219–2804 no later than January 6, 1997.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–32590 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–1–002]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

December 18, 1996.

Take notice that on December 16, 1996, National Fuel Gas Supply Corporation (National Fuel) tendered for filing the pro forma tariff sheets listed on Appendix A to the filing, to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1997.

National Fuel states that this filing is being made in compliance with the Order on Compliance Filing issued by the Commission on November 15, 1996. The order directed National Fuel to make certain revisions to its pro forma tariff sheets to conform to the standards adopted by GISB and incorporated by the Commission in Order No. 587.

National Fuel states that it is serving copies of the filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary. National Fuel states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32594 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–191–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1996.

Take notice that on December 13, 1996, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 13, 1997.

National Fuel states that the purpose of this filing is to conform National Fuel's tariff to the requirements set forth in Subpart C of Part 154 of the Commission's Regulations and Order No. 582, issued September 28, 1995 in Docket No. RM95–3–000. Specifically, National Fuel is: (a) Submitting a title page; (b) revising the table of contents to include a brief description of each service; (c) updating the preliminary statement to reflect the fact that National Fuel is no longer principally engaged in the business of producing natural gas; (d) adding new GT&C Section 27, describing the order in which National Fuel discounts its rates; (e) adding new GT&C Section 28, addressing National Fuel's policy on financing or construction of facilities; (f) adding new GT&C Section 29, listing reports required by Commission orders or settlements in proceedings initiated under part 154 or 284 of the commission's Regulations; and (g) eliminating the index of customers from the tariff, as National Fuel is in compliance with the reporting requirements of Section 284.223.

National Fuel states that it is serving copies of the filing with its firm customers and interested state commissions. National Fuel also states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32600 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–22–001]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1996.

Take notice that on December 16, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the pro forma tariff sheets listed on Appendix A hereto to become effective April 1, 1997.

Northern Border states that this filing is made in compliance with Order No.

587, issued in Docket No. RM96–1–000 on July 17, 1996; the ''Notice Clarifying Procedures for Filing Pro Forma Tariff Sheets'', issued September 12, 1996; and the Commission's Order on Compliance Filing issued November 15, 1996 in Docket No. RP97–22–000. These pro forma tariff sheets reflect the requirements of Order No. 587 that interstate pipelines follow standardized procedures for critical business practices—nominations, flowing gas (allocations, balancing, and measurement), invoicing, and capacity release.

Northern Border states that copies of this filing are being served on all affected 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 on or before January 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32598 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–17–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 18, 1996.

Take notice that on December 16, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets proposed to be effective April 1, 1997:

Pro Forma Fifth Revised Volume No. 1

Substitute Pro Forma Sheet No. 204
Substitute Pro Forma Sheet No. 212
Substitute Pro Forma Sheet No. 215
Substitute Pro Forma Sheet No. 216
Substitute Pro Forma Sheet No. 257
Substitute Pro Forma Sheet No. 259
Substitute Pro Forma Sheet No. 260
Substitute Pro Forma Sheet No. 260A
Substitute Pro Forma Sheet No. 265
Substitute Pro Forma Sheet No. 270
Substitute Pro Forma Sheet No. 287
Substitute Pro Forma Sheet No. 287A
Substitute Pro Forma Sheet No. 288

Reason for Filing

On October 1, 1996 Northern filed pro forma tariff sheets to comply with Order No. 587 in Docket No. RM96–1–000 (Final Rule). On November 15, 1996 the Commission issued its Order on Compliance Filing (Commission's Order) directing Northern to file revised pro forma tariff sheets. The reason for this filing is to comply with the Commission's order.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32595 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

Panhandle Eastern Line Company; Notice of Section 4 Filing

[Docket No. RP97–189–000]

December 18, 1996.

Take notice that on December 13, 1996, Panhandle Eastern Pipeline Company (Panhandle) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which Panhandle provides on gathering facilities in Woods County, Oklahoma. The Commission has authorized the abandonment of these facilities,[1] and Panhandle states that upon termination of the gathering services these facilities will be transferred to Equity Gas Systems, Inc. Panhandle requests that the termination of service be effective February 1, 1997.

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. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before December 26, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32599 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[1] See 77 FERC ¶61,149 (1996)

[Docket No. RP97–192–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1996.

Take notice that on December 13, 1996, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets set forth on Appendix A to the filing, to become effective January 1, 1997.

Sea Robin states that the purpose of this filing is to comply with Commission Order Nos. 582 and 582–A prescribing certain procedural rules governing the form and composition of interstate natural gas pipeline tariffs including, inter alia, that the rates set forth in all natural gas companies' tariffs be stated on a thermal basis. Sea Robin proposes to state all of its rates on a Dekatherm (Dth) basis effective January 1, 1997, since the Commission has approved Dth to be the standard unit for nominations, allocations and invoicing. Accordingly, Sea Robin has changed all references in its Tariff from MMBtu to Dth in addition to stating its reservation charges and calculations for firm service on a Dth basis. These tariff changes do not impact firm shippers' contract quantities (in Mcf) and do not substantively alter the charges shippers pay for transportation service on Sea Robin's system.

In addition, Sea Robin also proposes other clarifications to its Tariff required by Order Nos. 582 and 582–A, such as correction of its title page and revised references to the Commission's Regulations under Part 154 which were changed by the Orders. Sea Robin requests the Commission to grant it all waivers necessary to place these provisions into effect January 1, 1997.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32601 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–18–001]

Transwestern Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

December 18, 1996.

Take notice that on December 16, 1996, Transwestern Pipeline Company (Transwestern) tendered for filing the following pro forma tariff sheets:

Effective April 1, 1997

Substitute Pro Forma Sheet No. 49
Substitute Pro Forma Sheet No. 80
Substitute Pro Forma Sheet No. 80A
Substitute Pro Forma Sheet NO. 81E

Transwestern states that the purpose of this filing is to comply with the Commission's ''Order on Compliance'' issued November 15, 1996. This Order was issued in response to Transwestern's October 1, 1996 filing to comply with Order No. 587.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32596 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IS96–17–000]

Williams Pipe Line Company; Notice Canceling Technical Conference

December 18, 1996.

On August 2, 1996, the Secretary's office issued an notice in the captioned docket deferring a technical conference on William Pipe Line Company's (Williams) proposed tariffs and tariff supplements. This was done because on July 25, 1996, Williams filed a notice pursuant to 18 CFR 341.13(b) withdrawing the proposed tariffs and tariff supplements at issue in this proceeding. Since there are no comments on that filing, the technical conference is canceled and the proceeding discontinued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32592 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–257–000, et al.]

Entergy Arkansas, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 17, 1996.

Take notice that the following filings have been made with the Commission:

1. Entergy Arkansas, Inc.

[Docket No. ER97–257–000]

Take notice that on November 27, 1996, Entergy Arkansas, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER97–676–000]

Take notice that on November 27, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc., an operating company subsidiary of Entergy Corporation, tendered for filing an Agreement between Entergy Mississippi, Inc. and South Mississippi Electric Power Association (SMEPA). Entergy Services states that the Agreement sets out an additional delivery point between Entergy Mississippi, Inc. and SMEPA.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company
Public Service Company of Oklahoma
Southwestern Electric Power Company
West Texas Utilities Company

[Docket No. ER97–677–000]

Take notice that on December 3, 1996, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) (collectively, the ''Companies'') tendered for filing Service Agreements establishing DuPont Power Marketing Inc., El Paso Energy Marketing Company, TransCanada Power Corporation, VTEC Energy and Williams Energy Services Company as customers under the terms of each Company's CSRT–1 Tariff. PSO and SWEPCO each also filed Service Agreements with Municipal Light, Water & Sewer, and WTU filed a Service Agreement with the City of Weatherford, Texas.

The Companies request an effective date of November 3, 1996 for each of the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the seven customers, the Arkansas Public Service Commission and the Public Utility Commission of Texas.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER97–678–000]

Take notice that on December 3, 1996, New England Power Company filed an amended Service Agreement for Primary Service for Resale to its Massachusetts affiliate, Massachusetts Electric Company, under NEP's FERC Tariff, Original Volume No. 1, a service agreement with Massachusetts Electric Company for network integration transmission service under NEP's FERC Electric Tariff, Original Volume No. 9, and related documents.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER97–679–000]

Take notice that on December 2, 1996, Louisville Gas and Electric Company tendered for filing a request to transfer its existing TS Transmission Service Agreements to its Open Access Transmission Tariff.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER97–680–000]

Take notice that on December 3, 1996, New England Power Company filed an amended Service Agreement for Primary Service for Resale to its Rhode Island affiliate, The Narragansett Electric Company, under NEP's FERC Tariff, Original Volume No. 1, a service agreement with The Narragansett Electric Company for network integration transmission service under NEP's FERC Electric Tariff, Original Volume No. 9, and related documents.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER97–681–000]

Take notice that on December 4, 1996, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission between Sonat Power Marketing L.P. and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to Sonat Power Marketing, L.P. as agreed to by the parties under the rates, terms and conditions.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER97–682–000]

Take notice that on December 4, 1996, the Dayton Power and Light Company (Dayton) submitted service agreements establishing Dayton Power and Light Company, Energy Services Department; AIG Trading Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Dayton Power and Light Company, Energy Services Department, AIG Trading Corporation, and the Public Utilities Commission of Ohio.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Northwest Natural Gas Company

[Docket No. ER97–683–000]

Take notice that on December 4, 1996, Northwest Natural Gas Company tendered for filing an Application for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER97–684–000]

Take notice that on December 5, 1996, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service Agreement with Aquila Power Corporation.

PGE requests the Commission grant a waiver of the notice requirements to allow the Service Agreement to become effective November 25, 1996.

A copy of this filing was caused to be served upon Aquila Power Corporation as noted in the filing letter.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER97–685–000]

Take notice that on December 5, 1996, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service Agreement with UtiliCorp United Inc.

PGE requests the Commission grant a waiver of the notice requirements to allow the Service Agreement to become effective November 25, 1996.

A copy of this filing was caused to be served upon UtiliCorp United Inc. as noted in the filing letter.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER97–686–000]

Take notice that on December 5, 1996, Portland General Electric Company (PGE) tendered for filing a Revision No. 3 to Exhibit D of the General Transfer Agreement for Integration of Resources between the Bonneville Power Administration and PGE, Contract No. DE-MS79–89BP92273, (Portland General Electric Rate Schedule FERC No. 185).

PGE requests the Commission grant a waiver of the notice requirements to allow the revisions to become effective September 30, 1996.

Copies of the filing have been served on the Bonneville Power Administration.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company Cambridge Electric Power Company

[Docket No. ER97–687–000]

Take notice that on December 5, 1996, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the ''Companies'', tendered for filing executed Service Agreements between the Companies and Southern Energy Marketing, Inc. (Southern Energy).

These Service Agreements specify that Southern Energy has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariff designated as Commonwealth's Power Sales Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and Southern Energy to enter into separately schedule transactions under which the Companies will sell to Southern Energy capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified to each Service Agreement.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER97–688–000]

Take notice that on December 5, 1996, the Dayton Power and Light Company (Dayton) submitted service agreements establishing PECO Energy Company, Duke Power Company, American Electric Power Service Corporation, Vitol Gas & Electric LLC, Loch Power Services Inc., InterCoast Power Marketing, AES Power Inc., and Williams Energy Services Co., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the

service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon PECO Energy Company, Duke Power Company, American Electric Power Service Corporation, Vitol Gas & Electric LLC, Koch Power Services Inc., InterCoast Power Marketing, AES Power Inc., and Williams Energy Services Co. and the Public Utilities Commission of Ohio.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER97–689–000]

Take notice that on December 6, 1996, Wisconsin Power and Light Company (WP&L) tendered for filing a Form of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing Federal Energy Sales, Inc. as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of November 7, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–690–000]

Take notice that on December 6, 1996, PECO Energy Company (PECO) filed a Service Agreement dated December 2, 1996 with PECO Energy Company-Power Team (POWER TEAM) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds Power Team as a customer under the Tariff.

PECO requests an effective date of July 9, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to POWER TEAM and to the Pennsylvania Public Utility Commission.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. New York State Electric & Gas Corporation

[Docket No. ER97–691–000]

Take notice that on December 6, 1996, New York State Electric & Gas Corporation (NYSEG), filed a Service Agreement between NYSEG and Aquila Power Corporation, (Customer). The Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty day notice requirements and an effective date of November 13, 1996 for the Aquila Power Corporation Service Agreement, NYSEG has served copies of this filing on The New York State Public Service Commission and on the Customer.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Indiana Gas and Electric Company

[Docket No. ER97–692–000]

Take notice that Southern Indiana Gas and Electric Company (SIGECO) on December 6, 1996, tendered for filing fourteen (14) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Stand Energy Corporation
2. Power Company of America
3. Dupont Power Marketing, Inc.
4. Equitable Power Services Company
5. Illinova Power Marketing, Inc.
6. Morgan Stanley Capital Group, Inc.
7. Southern Energy Marketing, Inc.
8. Tennessee Power Company
9. CNG Power Services Corporation
10. Federal Energy Sales, Inc.
11. AES Power, Inc.
12. Rainbow Energy Marketing Corporation
13. Trans Canada Power Corp.
14. Coral Power, L.L.C.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company

[Docket No. ER97–694–000]

Take notice that on December 6, 1996, Northern States Power Company (Minnesota) (NSP) tendered for filing the Non-Firm Point-to-Point Transmission Service Agreement between NSP and Luverne Municipal Utilities.

NSP requests that the Commission accept the agreement effective November 6, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Northern States Power Company

[Docket No. ER97–695–000]

Take notice that on December 6, 1996, Northern States Power Company (Minnesota) (NSP) tendered for filing the Non-Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Power and Light.

NSP requests that the Commission accept the agreement effective January 1, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: December 31, 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. 96–32637 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–22–000, et al.]

NRGenerating Holdings (No.9) B.V., et al.; Electric Rate and Corporate Regulation Filings

December 18, 1996.

Take notice that the following filings have been made with the Commission:

1. NRGenerating Holdings (No. 9) B.V.

[Docket No. EG97–22–000]

On December 12, 1996, NRGenerating Holdings (No. 9) B.V. (''Applicant''), with its principal office at J.J. Viottastraat 46, 1071 JT, Postbus 75458, 1070 AL, Amsterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that upon consummation of a pending cash tender offer it will be engaged indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA) and exclusively in the business of owning all or part of one or more eligible facilities as defined in Section 32 of PUHCA and selling electric energy at wholesale as the Commission has interpreted Section 32(b) of PUHCA. In no event will any electric energy be sold to consumers in the United States.

Comment date: January 7, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Ohio Edison Company

[Docket Nos. EC97–5–000 and ER97–413–000]

Take notice that on December 2, 1996, Ohio Edison Company tendered for filing an amendment in the above-referenced dockets.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Texas-Ohio Power Marketing, Inc., CNB/Olympic Gas Services, National Fuel Resources, Inc., Enpower Inc., Gateway Energy Marketing, North American Power Brokers, Inc., Eagle Gas Marketing Company

[Docket Nos. ER94–1676–009; ER95–964–006; ER95–1374–004; ER95–1752–002; ER96–795–003; ER96–1156–002; ER96–1503–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 5, 1996, Texas-Ohio Power Marketing, Inc. filed certain information as required by the Commission's October 31, 1994, order in Docket No. ER94–1676–000.

On November 13, 1996, CNB/Olympic Gas Services filed certain information as required by the Commission's July 10, 1995, order in Docket No. ER95–964–000.

On November 12, 1996, National Fuel Resources, Inc. filed certain information as required by the Commission's September 7, 1995, order in Docket No. ER95–1374–000.

On December 11, 1996, Enpower Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1752–000.

On December 13, 1996, Gateway Energy Marketing filed certain information as required by the Commission's March 7, 1996, order in Docket No. ER96–795–000.

On November 25, 1996, North American Power Brokers, Inc. filed certain information as required by the Commission's April 24, 1996, order in Docket No. ER96–1156–000.

On December 9, 1996, Eagle Gas Marketing Company filed certain information as required by the Commission's May 8, 1996, order in Docket No. ER96–1503–000.

4. Allegheny Power Service Corporation

[Docket No. ER96–2463–001]

Take notice that on November 4, 1996, Allegheny Power Service Corporation tendered for filing on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed an Amendment No. 1 to Docket No. ER96–2463.000. The filing was made to meet the Commission's requirement that Allegheny Power unbundle the generation and transmission services sold under its filed Standard Generation Service Rate Schedule.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all affected parties.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER96–2741–002]

Take notice that on November 15, 1996, Arizona Public Service Company (APS) tendered for filing a Wholesale Power Agreement No. 1 between APS and Idaho Power Company which was revised to reflect unbundling of generation, transmission and ancillary services as ordered by the Commission on October 18, 1996.

A copy of this filing has been served on Idaho Power Company, the Idaho Public Service Commission and the Arizona Corporation Commission.

Comment date: December 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power Company

[Docket No. ER97–7–001]

Take notice that on December 9, 1996, Washington Water Power Company tendered for filing its compliance filing in response to the Commission's Letter Order of November 29, 1996 in the above-referenced docket.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Kincaid Generation L.L.C.

[Docket No. ER97–30–000]

Take notice that on December 11, 1996, Kincaid Generation, L.L.C. filed an amendment to its application that tendered for filing its FERC Electric Rate Schedule No. 1 and requested certain waivers of the Commission's Regulations.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company

[Docket No. ER97–649–000]

Take notice that on November 27, 1996, Northern States Power Company (NSP) tendered for filing a Network Operating Agreement and related Agreements between NSP and Cooperative Power Association

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER97–693–000]

Take notice that on December 6, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 12 and all its supplements thereto.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER97–696–000]

Take notice that on December 6, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing the second and third Service Agreements under its Open Access Transmission Tariff.

PG&E proposes that these Service Agreements, as may be subject to refund or otherwise, become effective on November 8, 1996 and December 1, 1996, respectively. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission and San Francisco Bay Area Rapid Transit District.

Comment date: January 2, 1997 in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., et al.

[Docket No. ER97–697–000]

Take notice that on December 5, 1996, Allegheny Power Service Corp.,

Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., and Virginia Electric & Power Company, tendered for filing an agreement entitled the GAPP Experiment Participation Agreement under which they propose to reallocate transmission revenues under flow based pricing principles. The filing entities state that existing rates for transmission service are not affected by this filing but only the allocation of revenues under those rates among participating systems.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER97–698–000]

Take notice that on December 6, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Non-Firm Transmission Service Agreement with The Power Company of America (The Power Company) dated November 20, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of November 20, 1996 for the Agreement with The Power Company, and accordingly seeks a waiver of the commission's notice requirement. MidAmerican has served a copy of the filing on The Power Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER97–699–000]

Take notice that on December 6, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Service Agreement with Corn Belt Power Cooperative (Corn Belt) dated November 20, 1996, entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requests an effective date of November 20, 1996 for the Agreement with Corn Belt, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Corn Belt, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Indiana Gas and Electric Company

[Docket No. ER97–700–000]

Take notice that on December 6, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing fifteen (15) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Stand Energy Corporation
2. Power Company of America, The
3. Dupont Power Marketing, Inc.
4. Equitable Power Services Company
5. Illinova Power Marketing, Inc.
6. Morgan Stanley Capital Group, Inc.
7. Southern Energy Marketing, Inc.
8. Tennessee Power Company
9. CNG Power Services Corporation
10. Federal Energy Sales, Inc.
11. AES Power, Inc.
12. Rainbow Energy Marketing Corporation
13. TransCanada Power Corp.
14. Noram Energy Services, Inc.
15. Williams Energy Company

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Great Bay Power Corporation

[Docket No. ER97–701–000]

Take notice that on December 6, 1996, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Niagara Mohawk Power Corporation and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective November 15, 1996.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Great Bay Power Corporation

[Docket No. ER97–702–000]

Take notice that on December 6, 1996, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between Plum Street Energy Marketing and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective December 1, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Ensource

[Docket No. ER97–703–000]

Take notice that on December 6, 1996, Ensource (Ensource) tendered for filing a notice of cancellation of Ensource's FERC Electric Rate Schedule No. 1 to be effective immediately.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Power Company

[Docket No. ER97–704–000]

Take notice that on December 6, 1996, Duke Power Company (Duke) tendered for filing a Non-Firm Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Virginia Electric and Power Company (VEPCO). Duke states that the TSA sets out the transmission arrangements under which Duke will provide VEPCO non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the TSA be made effective as of November 8, 1996.

Comment date: January 3, 1997 in accordance with Standard Paragraph E at the end of this notice.

19. ProMark Energy, Inc.

[Docket No. ER97–705–000]

Take notice that on December 9, 1996, ProMark Energy, Inc. (ProMark) tendered for filing an application for waivers and blanket approvals under regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. ProMark is a wholly-owned subsidiary of Consolidated Edison Company of New York.

ProMark intends to engage in electric capacity and energy transactions as a marketer and broker. In these transactions, ProMark intends to charge market rates as mutually agreed to by ProMark and the purchaser. All other terms of the transactions would also be determined by negotiation between the parties. All sales and purchases will be arms-length transactions.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER97–706–000]

Take notice that on December 9, 1996, Wisconsin Public Service Corporation

(WPSC) tendered for filing an amendment to its February 22, 1993, Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service requests waiver of the Commission's Regulations to permit the amendment to become effective on January 1, 1997.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison of New York. Inc.

[Docket No. ER97–707–000]

Take notice that on December 9, 1996, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an application for order approving rate schedule and granting certain authority.

Con Edison intends to engage in electric capacity and energy transactions as a marketer and broker. In these transactions, Con Edison intends to charge market rates as mutually agreed to by Con Edison and the purchaser. All other terms of the transactions would also be determined by negotiation between the parties. All sales and purchases will be arms-length transactions.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cook Inlet Energy Supply Limited Partnership

[Docket No. ER97–708–000]

Take notice that Cook Inlet Energy Supply Limited Partnership (Cook Inlet), on December 9, 1996, tendered for filing proposed changes in its FERC Electric Service Tariff Rate Schedule no. 1. The changes consist of restrictions on the sale of power and non-power goods and services between Cook Inlet and Portland General Electric Company (PGE), based on a proposed merger that would result in these companies being affiliates.

Copies of the filing were served upon Cook Inlet's jurisdictional customers and the Oregon Public Utility Commission.

Comment date: January 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation

[Docket No. ER97–709–000]

Take notice that on December 9, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and NorAm Energy Services, Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER97–710–000]

Take notice that on December 9, 1996, Illinois Power Company (Illinois Power), tendered for filing a Power Sales Tariff, Service Agreement under which Wabash Valley Power Association, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 27, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Public Service Corporation

[Docket No. ER97–711–000]

Take notice that on December 6, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and LG&E Power Marketing Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Public Service Corporation

[Docket No. ER97–712–000]

Take notice that on December 6, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Consolidated Water Power Co. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Wisconsin Public Service Corporation

[Docket No. ER97–713–000]

Take notice that on December 6, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Public Service Corporation

[Docket No. ER97–714–000]

Take notice that on December 6, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Electric Power Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Public Service Corporation

[Docket No. ER97–715–000]

Take notice that on December 6, 1996, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and MidCon Power Services Corp. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. OA97–83–000]

Take notice Cinergy Services, Inc. (Cinergy) on December 9, 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 Williams Energy Services 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 Williams Energy Services Company, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Cinergy Services, Inc.

[Docket No. OA97–84–000]

Take notice Cinergy Services, Inc. (Cinergy) on December 9, 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 Illinova 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 Illinova Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Cinergy Services, Inc.

[Docket No. OA97–85–000]

Take notice Cinergy Services, Inc. (Cinergy) on December 9, 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 L.P.

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 L.P., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. OA97–86–000]

Take notice Cinergy Services, Inc. (Cinergy) on December 9, 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 Phibro 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 Phibro Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. OA97–87–000]

Take notice Cinergy Services, Inc. (Cinergy) on December 9, 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 PacifiCorp 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 PacifiCorp Power Marketing, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Commonwealth Edison Company

[Docket No. OA97–88–000]

Take notice that on December 10, 1996, in compliance with Order No. 888, Commonwealth Edison Company (ComEd) filed an unbundled Power Sales and Reassignment of Transmission Rights Tariff (PSRT–1) to supersede in its entirety the PSRT–1 Tariff currently on file with the Commission.

ComEd requests that the unbundled PSRT–1 become effective July 9, 1996 for those customers under the Tariff whose service agreements were executed after July 9, 1996, and that the unbundled PSRT–1 become effective December 31, 1996 for those customers who service agreements were executed on or before July 9, 1996. Copies of this filing were served on the Illinois Commerce Commission nd on all ComEd's customers which have executed a PSRT–1 service agreement.

Comment date: January 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–32639 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10805–002, WI]

Midwest Hydraulic Company; Notice of Extension of Time for Comment Period of Draft Environmental Assessment for the Hatfield Project

December 18, 1996.

The deadline for commenting on the Draft Environmental Assessment for the Hatfield Project No. 10805 has been extended until January 3, 1997.[1]

Lois D. Cashell,

Secretary.

[FR Doc. 32589 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1759–000, et al.]

Hydroelectric Applications [Wisconsin Electric Power Company, 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 filing: Notice of Intent to File Applications for New Licenses.

b. Project No.: 1759.

c. Date filed: October 24, 1996.

d. Submitted By: Wisconsin Electric Power Company, current licensee.

e. Name of Project: Michigamme.

f. Location: On the Michigamme and Menominee Rivers, in the Townships of Breitung, Crystal Falls, Mansfield, Mastodon and Sagola, Dickinson and

[1] Notice of Availability of Draft Environmental Assessment issued 10/29/96 (61 FR 56678, 11/4/96).

Iron Counties, Michigan, and in the Town of Florence, Florence County, Wisconsin.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of current license: November 1, 1974.

i. Expiration date of current license: December 31, 2001.

j. The project consists of three developments: (1) The Way Development, comprising: (a) the Way Dam, having a 50-foot-high, 256-foot-long concrete arch section, a 25-foot-high, 1,725-foot-long earth embankment section, a 27-foot-high, 1,215-foot-long earth embankment section, a 12-foot-high, 1,338-foot-long earth embankment section, a 14-foot-high, 555-foot-long earth embankment section, an 11-foot-high, 121.8-foot-long fuse plug section, a 27-foot- high, 1,205-foot-long earth embankment section, and a 26-foot-high, 87.5-foot-long concrete gravity spillway section with three 13.5-foot-high, 27.5-foot-long Tainter gates; (b) the Michigamme Reservoir, having a 119,950 acre-foot storage capacity and a 6,400-acre surface area at normal full summer pool elevation 1,374.0 feet M.S.L.; (c) the Way Plant, a powerhouse containing one 1,800-kW generating unit; (d) a 4,160/69,000-volt, 2,000-kVA substation; and (e) appurtenant facilities;

(2) The Peavy Falls Development, comprising: (a) a dam having a 73-foot-high, 200-foot-long, five-bay multiple arch concrete section, an 89-foot-long concrete gravity spillway section with three 13.5-foot-high, 27.5-foot-long Tainter gates, a 20-foot-high, 80-foot-long concrete gravity section, a 42-foot-long concrete intake section having two gated bays, and a 40-foot-high, 194-foot-long concrete gravity section; a reservoir having a 34,250 acre-foot storage capacity and a 2,900-acre surface area at normal full pool elevation 1,285.0 feet M.S.L.; (c) a 17-foot-diameter, 749-foot-long concrete-lined tunnel; (d) a 46-foot-diameter concrete surge tank; (e) two 106-foot-long penstocks; (f) a powerhouse containing two 6,000-kW generating units for a total installed generating capacity of 12,000-kW; (g) a 6,900/66,000-volt, 15-kVA substation; and (h) appurtenant facilities.

(3) The Twin Falls Development, comprising: (a) a dam having a 14-foot-high, 175-foot-long earth embankment section, a 21-foot-high, 60-foot-long concrete forebay wall section, a 117-foot-long concrete forebay wall section, a 32-foot-high, 50-foot-long concrete gravity section, a 43-foot-high, 174-foot-long concrete gravity spillway section with four 15-foot-high, 29-foot-long Tainter gates and a sluice gate, a 30-foot-high, 234-foot-long concrete gravity section, two earth embankment sections about 420 feet long, a 101-foot-long concrete spillway section with three 15-foot-high, 27- foot-long Tainter gates, and a 300-foot-long earth embankment section; (b) a reservoir having a 960-acre surface area at normal full pool elevation 1,114.0 feet M.S.L.; (c) a 200-foot-long canal; (d) nine 5-foot-diameter penstocks; (e) a powerhouse containing three 1,248-kW generating units and two 1,200-kW generating units for a total installed generating capacity of 6,144-kW; and (f) appurtenant facilities.

The project has a total installed capacity of 19,944-kW.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Wisconsin Electric Power Company, Annex Building Room A–265, 333 West Everett, Milwaukee, Wisconsin 53201, (414) 221–2500.

l. FERC contact: Charles T. Raabe (202) 219–2811

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.

2a. Type of filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2072.

c. Date filed: October 24, 1996.

d. Submitted By: Wisconsin Electric Power Company, current licensee.

e. Name of Project: Lower Paint.

f. Location: On the Paint River, in Mastodon and Crystal Falls Townships, Iron County, Michigan.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: January 1, 1952.

i. Expiration date of original license: December 31, 2001.

j. The project consists of: (1) the Lower Paint Dam having a 6-foot-high, 128-foot-long earth embankment section, a 101-foot-long reinforced concrete spillway section with three 15-foot-high, 27-foot-long tainter gates, a 25-foot-high, 150-foot-long concrete gravity spillway section, and a 17-foot-high, 316-foot-long earth embankment section; (2) a reservoir having a 340-acre surface area at normal full pool elevation 1,285.5 feet; (3) a 7,350-foot-long, 89-foot-wide, 1,700-cfs-capacity diversion canal having a 140-foot-long concrete separation wall, a 1600-foot-long earth embankment, and a 450-foot-long earth embankment; (4) an integral powerhouse containing one 100-kW generating unit; (5) a 480/7,200-volt, 150-kVA substation; and (6) appurtenant facilities;

k. Pursuant to 18 CFR 16.7, information on the project is available at: Wisconsin Electric Power Company, Annex Building Room A–265, 333 West Everett, Milwaukee, Wisconsin 53201, (414) 221–2500.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.

3a. Type of Application: Amendment of Exemption.

b. Project No: 3065–007.

c. Date Filed: 02/29/96.

d. Applicant: Electro Ecology, Inc.

e. Name of Project: Wappingers Falls Project.

f. Location: On Wappingers Creek, in Dutchess County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Harry A. Terbush, 16 Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4194.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: January 27, 1997.

k. Description of Amendment: The exemptee proposes to install a new 25-kW minimum flow turbine/generator unit at a new 20-inch-diameter minimum flow pipe. The new pipe would be used for maintaining the project's minimum flow requirement instead of an existing 16-inch-diameter pipe.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. Type of Application: Surrender of License.

b. Project No: 7890–014.

c. Licensee: Matthew J. Bonaccorsi (deceased).

d. Name of Project: Wendell Dam Project.

e. Location: Sugar River, Sullivan County, NH.

f. Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a) - 825(r).

g. Licensee Contact: Cynthia Bennett Bonaccorsi, 138 Elm Street, Newport, NH 03773, (603) 863–4238.

h. FERC Contact: Dean C. Wight, (202) 219–2675.

i. Comment Date: January 21, 1997.

j. Description of Proposed Action: The licensee's estate proposes to surrender

the licensee because it has determined that completion of the project is not economically feasible.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. Type of Filing: Request for Extension of Time to Commence Project Construction.

b. Applicant : Daniel Nelson Evans, Jr.

c. Project No.: The proposed Henrietta Mills Hydroelectric Project, FERC No. 10812–008, is to be located on the Second Broad River, in Rutherford County, North Carolina.

d. Date Filed: October 21, 1996.

e. Pursuant to: Public Law 104–256.

f. Applicant Contact: Mr. Daniel Nelson Evans, Jr., 212 Range Road, Kings Mountain, NC 28086, (707) 739–9710.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: JANUARY 21, 1997.

i. Description of the Request: Daniel Nelson Evans, Jr. requests that the existing deadline for the commencement of construction of FERC Project No. 10812 be extended to October 29, 2000. The deadline for completion of construction will be similarly extended.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. Type of filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2073.

c. Date filed: October 24, 1996.

d. Submitted By: Wisconsin Electric Power Company, current licensee.

e. Name of Project: Michigamme Falls.

f. Location: On the Michigamme River, in Mastodon Township, Iron County, Michigan.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: November 1, 1951.

i. Expiration date of original license: October 31, 2001.

j. The project consists of: (1) a 1,390-foot-long dam comprising: (a) a 51-foot-high, 345-foot-long earth embankment section having a reinforced concrete core wall; (b) a 53-foot-high, 119-foot-long concrete gravity section; (c) a 91-foot-long intake section containing six gated bays; (d) a 70-foot-long concrete gravity section; (e) a 55-foot-high, 101-foot-long concrete spillway section having three 15-foot-high, 27-foot-long steel tainter gates; and (f) a 703-foot-long earth embankment section having a reinforced concrete core wall; (2) a reservoir having a 470-acre surface area and a 9,100-acre-foot storage capacity at normal pool elevation 1,190 feet m.s.l.; (3) a 33-foot-wide, 91-foot-long powerhouse containing two 4,800-kW generating units for a total installed generating capacity of 9,600-kW; (4) a 4,160/69,000-volt, 10,000-kVA substation; and (5) appurtenant facilities;

k. Pursuant to 18 CFR 16.7, information on the project is available at: Wisconsin Electric Power Company, Annex Building Room A–265, 333 West Everett, Milwaukee, Wisconsin 53201, (414) 221–2500.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 1999.

7a. Type of filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2074.

c. Date filed: October 24, 1996.

d. Submitted By: Wisconsin Electric Power Company, current licensee.

e. Name of Project: Hemlock Falls.

f. Location: On the Michigamme River, in Crystal Falls and Mansfield Townships, Iron County, Michigan.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: November 1, 1951.

i. Expiration date of original license: October 31, 2001.

j. The project consists of: (1) a 360-foot-long dam comprising: (a) a 17.5-foot-long concrete gravity left abutment section; (b) a 40.5-foot-high, 101.5-foot-long spillway section having three 16-foot-high, 27-foot-long tainter gates; (c) a 15-foot-high, 15-foot-long gravity section; (d) a 23-foot high, 98-foot-long gravity section; (e) a 17.5-foot-high, 120-foot-long concrete spillway section; and (f) a 17.5-foot-long right abutment section; (2) a 3.3-mile-long reservoir having a 75-acre surface area and a 9,100-acre-foot storage capacity at normal pool elevation 1,336 feet m.s.l.; (3) a 47-foot-wide, 88-foot-long integral powerhouse containing a 2,800-kW generating unit; (4) a 4,160/69,000-volt, 3,000-kVA substation; and (5) appurtenant facilities;

k. Pursuant to 18 CFR 16.7, information on the project is available at: Wisconsin Electric Power Company, Annex Building Room A–265, 333 West Everett, Milwaukee, Wisconsin 53201, (414) 221–2500.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 1999.

8a. Type of filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2064.

c. Date filed: November 12, 1996.

d. Submitted By: North Central Power Company, Inc. current licensee.

e. Name of Project: Winter.

f. Location: On the East Fork Chippewa River, Sawyer County, Wisconsin.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: December 1, 1951.

i. Expiration date of original license: November 30, 2001.

j. The project consists of: (1) A steel sheet piling, rock, and concrete diversion dam; (2) a 0.4-mile-long canal; (3) a forebay structure; (4) penstocks; (5) a powerhouse containing a 269-kW generating unit and a 356-kW generating unit for a total installed capacity of 625-kW; (6) a 700-foot-long tailrace; (7) a substation; and (8) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: North Central Power Co., Inc., 104 South Pine Street, Grantsburg, Wisconsin 54840, (715) 463–5371.

l. FERC contact: Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 1999.

9a. Type of Application: Amendment of License.

b. Project No.: 2114–049.

c. Dated filed: October 8, 1996.

d. Applicant: Public Utility District No. 2 of Grant County.

e. Name of Project: Priest Rapids.

f. Location: The project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Stephen R. Brown, Hydro Engineering Supervisor, Public Utility District No. 2 of Grant

County, P.O. Box 878, Ephrata, WA 98823, Phone: (509) 754–3541.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913.

j. Comment Date: February 3, 1997.

k. Description of Amendment: The licensee, Public Utility District No. 2 of Grant County, requests the Commission's approval to replace the turbines at Wanapum Dam. The proposed replacement will increase the turbine output from 87.6 MW to 105.9 MW. The total hydraulic capacity will increase from 178,000 cfs to 185,700 cfs (4.3%). The licensee states the replacement is needed because of ongoing structural and hydraulic problems with the existing turbines.

l. This notice also consists of the following standard paragraphs; B, C1, and D2.

10a. Type of Filing: Request for Extension of Time to Commence and Complete Project Construction.

b. Applicant : Summit Energy Storage, Inc.

c. Project No.: The proposed Summit Pumped Storage Hydroelectric Project, FERC No. 9423–023, is to be located near Norton and Wadsworth, Summit and Medina Counties, Ohio.

d. Date Filed: November 25, 1996.

e. Pursuant to: Public Law 104–243.

f. Applicant Contact:

Ms. C. Cunningham, Summit Energy Storage, Inc., One Greenwich Plaza, Greenwich, CT 06830, (203) 425–8850

Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, D.C. 20006, (202) 783–4141

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: February 3, 1997.

i. Description of the Request: The licensee requests that the existing deadline for the commencement of construction of FERC Project No. 9423 be extended to April 11, 1999. The deadline for completion of construction will be extended to April 11, 2005.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

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.

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.

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.

Dated: December 17, 1996, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32638 Filed 12–23–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Cases Filed

Office of Hearings and Appeals Week of October 28 Through November 1, 1996

During the Week of October 28 through November 1, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Date: December 12, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 28 through November 1, 1996]

Date	Name and location of applicant	Case No.	Type of submission
10/28/96	Research Information Services, Inc. Washington, DC.	VFA–0235	Appeal of an Information Request Denial. If granted: The September 25, 1995 Freedom of Information Request Denial issued by the Office of Arms Control and Nonproliferation would be rescinded, and Research Information Services, Inc. would receive access to certain DOE information.
10/30/96	Lee M. Graham, Monrovia, Califonria	VFA–0236	Appeal of an Information Request Denial. If granted: The October 18, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Lee M. Graham would receive access to certain DOE information.
10/31/96	Gary L. Graham, Springfield, Missouri	VFA–0237	Appeal of an Information. If granted: the October 4, 1996 Freedom of Information Request Denial issued by Western Area Power Administration would be rescinded, and Gary L. Graham would receive access to certain DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of October 28 through November 1, 1996]

Date	Name and location of applicant	Case No.	Type of submission
10/31/96	Personnel Security Hearing	VSO–0121	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
10/31/96	Thomas Stampahar, Henderson, Nevada	VFA–0239	Appeal of an Information Henderson, Nevada Request Denial If granted: The October 3, 1996 Freedom of Information Request Denial issued by Nevada Operations Office would be rescinded, and Thomas Stampahar would receive access to certain DOE information.
11/1/96	Charles Barry DeLoach, Savannah River, Georgia.	VWA–0014	Request for Hearing under Department of Energy Contractor Employee Protection Program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Charles Barry DeLoach that reprisals were taken against him by management officials of the Westinghouse Savannah River Company as a consequence of his having disclosed safety/health concerns related to leaking drums in the oil storage area of the site; concerns about the quality of the site drinking water; potential radiation and noise exposures; faulty welds or faulty pipes that could result in contamination; and the absence from his personal medical records of information regarding a potential asbestos exposure.
11/1/96	Glen Miller, Seattle, Washington	VFA–0238	Appeal of an Information Request Denial If granted: The October 7, 1996 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen Milner would receive access to certain DOE information.

[FR Doc. 96–32649 Filed 12–23–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Filed During the Week of November 4 Through November 8, 1996

During the Week of November 4 through November 8, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: December 12, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 4 through November 8, 1996]

Date	Name and location of applicant	Case No.	Type of submission
11/4/96	Douglas A. Holman, Sevierville, Tennessee.	VFA–0240	Appeal of an Information Request Denial. If granted: The October 17, 1996 Freedom of Information Request Denial issued by the Oak Ridge Office would be rescinded, and Douglas A. Holman would receive access to certain Department of Energy information.
11/4/96	Personnel Security Hearing.	VSO–0122	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
11/4/96	Personnel Security Hearing.	VSO–0123	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
11/6/96	Bechtel National, Inc., San Francisco, California.	DFA–0241	Appeal of an Information Request Denial. If granted: The October 1, 1996 Freedom of Information Request Denial issued by Richland Operations Office would be rescinded, and Bechtel National, Inc. would receive access to certain DOE information.
11/6/96	Fine Truck Line, Inc., Fort Smith, Arkansas.	RR272–264	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The September 11, 1996 Decision and Order, Case No. RF272–86241, issued to Fine Truck Line, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of November 4 through November 8, 1996]

Date	Name and location of applicant	Case No.	Type of submission
11/7/96	Am-Pro Protective Agency, Inc., Columbia, South Carolina.	VWA–0015	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Barry Stutts that reprisals were taken against him by management officials of Am-Pro Protective Agency, Inc. as a consequence of his having disclosed safety concerns to his superiors.
11/7/96	Steuben County Farm Bureau, Angola, Indiana.	RR272–265	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The October 21, 1996 Decision and Order, Case No. RF272–97912, issued to Steuben County Farm Bureau would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

[FR Doc. 96–32651 Filed 12–23–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of November 18 Through November 22, 1996

During the week of November 18 through November 22, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Date: December 12, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 8

Week of November 18 through November 22, 1996

Appeals

Energy Market & Policy Analysis, Inc., 11/18/96, VFA–0222

Energy Market & Policy Analysis, Inc. filed an Appeal from a determination issued to it on October 9, 1996, by the Principal Deputy Assistant Secretary for Energy Efficiency & Renewable Energy of the Department of Energy (DOE). In that determination, the Principal Deputy Assistant Secretary partially granted a request for information filed by Energy Market and Policy Analysis, Inc. on June 29, 1996. In considering the Appeal, the DOE confirmed that additional records responsive to the Energy Market & Policy Analysis, Inc. request exist. Accordingly, the DOE granted the Energy Market & Policy Analysis, Inc. Appeal, subject to a fee agreement between the DOE and the requester.

Glen M. Jameson, 11/20/96, VFA–0233

Glen M. Jameson filed an Appeal from a determination dated April 22, 1996 (but not received by him until October 1996), by the Freedom of Information Act/Privacy Act Officer of the Rocky Flats Office (FOIA Officer) of the Department of Energy (DOE). In that determination, the FOIA Officer stated that the DOE does not possess records responsive to Mr. Jameson's request. In considering the Appeal, the DOE confirmed that the FOIA Officer searched all of the areas that might reasonably contain responsive information, including those areas suggested by Mr. Jameson. Since the FOIA Officer verified that no responsive documents exist, the DOE denied Mr. Jameson's Appeal.

Implementation of Special Refund Procedures

Houston-Pasadena Apache Oil Co., 11/19/96, VEF–0022

The DOE issued a Decision and Order announcing procedures to distribute $30,000, plus accrued interest, remitted to the DOE pursuant to a Stipulation for Compromise Settlement concerning the Houston-Pasadena Apache Oil Company (Apache). The Office of Hearings and Appeals has determined that the funds from Apache, plus accrued interest, will be distributed to a group of former Apache customers which was identified in a DOE enforcement proceeding as overcharged Apache motor gasoline purchasers. Any funds remaining after refund claims filed by these parties are decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. §§ 4501–07.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Chelsea Schools et al	RF272–81170	11/19/96
Farmers Coop Grain et al	RG272–19	11/21/96

Dismissals

The following submissions were dismissed.

Name	Case No.
Airgas, Inc	RD272–72350
Airgas, Inc	RF272–72350
Allied Asphalt Paving Co	RG272–998
Frazee Cooperative Farm Serv	RG272–586
Lawter International, Inc	RR272–99
Lincoln Mutual #2, Inc	RG272–772
Sterilpack Industries	RF272–74191
US Solar Roof	VFA–0230

[FR Doc. 96–32649 Filed 12–23–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of November 4 Through November 8, 1996

During the week of November 4 through November 8, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 12, 1996

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

F.A.C.T.S., 11/7/96, VFA–0227

F.A.C.T.S. (For A Clean Tonawanda Site), a public interest group, filed an Appeal from a determination issued by the Oak Ridge Operations Office (Oak Ridge) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act. The DOE consulted with Oak Ridge on this matter and that Office agreed to undertake a new search in conjunction with other ongoing FOIA searches being done for F.A.C.T.S. The DOE also determined that F.A.C.T.S. could not expand the scope of its request on appeal by requesting additional documents. Accordingly, the Appeal was denied in part, granted in part, and remanded to Oak Ridge for a further search.

Thomas P. Koenings, 11/6/96, VFA–0215

Thomas P. Koenigs filed an Appeal from a determination issued to him by the Savannah River Operations Office (Savannah River) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Mr. Koenigs had sought information on DOE Account 89X6090 which holds unclaimed funds due creditors of certain DOE contractors. He also sought information concerning certain other Savannah River accounts. His request, made in 1994, sought this information from January 1986 to present. In response to the request Savannah River released lists showing the names of persons or companies owed money, check numbers, and the amounts of the payment due. Many of the lists also had, *inter alia,* a social security number, an employee number, or a payee/paycheck number. Savannah River released all of the information except the names of individuals and corresponding social security, employee or payee/paycheck number. This information was withheld under Exemption 6 of the FOIA which permits the agency to withhold information release of which would cause a clearly unwarranted invasion of personal privacy. Savannah River also informed Mr. Koenigs that any addresses for the persons on the released lists would only be found in contractor personnel records which are not subject to the FOIA. Finally, Savannah River only released information from January 1986 to approximately the date of the request in 1994.

In considering the Appeal, the DOE determined that there is a considerable privacy interest in linking the names of individuals with financial information about that individual such as money owed to that person. The DOE also found a considerable privacy interest for the social security numbers. However, the DOE found the employee numbers involved a lower privacy interest than the social security numbers. The payee/payroll number has a privacy interest below these two. The other parts of the Exemption 6 analysis, identifying the public interest and balancing the public and private interests could not be performed in consideration of the appeal because of insufficient information on the nature and use of the accounts involved. In addition, the DOE found that further analysis is required to support Savannah River's assertion that addresses would only be found in contractor personnel records. Finally, the DOE held that when the requester seeks current information and the agency's response is substantially delayed, a responding office should continue its search beyond the date of the request to a date reasonably close to the time the search starts and/or a determination is issued. Accordingly, the appeal was granted in part, denied in part, and remanded to the Savannah River Operations Office for further consideration.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Community Oil Co. of Day Cnty et al	RF272–95237	11/6/96
Crude Oil Supple Ref Dist	RB272–00093	11/6/96
Peetz Farmers Co-op Co. et al	RG272–00944	11/7/96
Pepin Distributing Co. et al	RG272–00820	11/7/96
Talladega County	RF272–69071	11/6/96
Township of Granklin et al	RG272–611	11/4/96

Transco Exploration Co. et al	RK272–03456	11/4/96
United Water New Jersey, F/K/A Hackens; Guy Heavener Inc.; W.T. Myles Transportation Co.	RF272–97814; RF272–97850; RF272–97830	11/6/96

Dismissals

The following submissions were dismissed.

Name	Case No.
Camp Bauman Buses, Inc.	RF272–95256
Custer Farmer's Cooperative Exchange	RF272–95280
Marine Drilling Companies, Inc.	RF272–95276
Mid-State Paving/T L James & Co.	RF272–95265
Nuway Cooperative	RG272–492
Olsen Drilling Company	RF272–95296
S&M Realty Company	RF272–78560

[FR Doc. 96–32650 Filed 12–23–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5666–9]

Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice concerning CBI access.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees, for access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Street, Acting Director, Senior Environmental Employment Program (8723), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20560, telephone (202) 260–4331.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (P.L. 98–313), which provides that the Administrator may ''make grants or enter into cooperative agreements'' for the purpose of ''providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.'' Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas. In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to ''contractors'' under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential. EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative

Agreement No. and Organization

CQ 822768–01 National Senior Citizens Education & Research Ctr
CQ 822769–01 National Senior Citizens Education & Research Ctr
CQ 822770–01 National Senior Citizens Education & Research Ctr
CQ 822791–01 AARP Foundation
CQ 822805–01 National Cau. & Ctr on Black Aged, Inc.
CQ 822810–01 AARP Foundation
CQ 822828–01 National Senior Citizens Education & Research Ctr
CQ 822844–01 AARP Foundation
CQ 822911–01 AARP Foundation
CQ 822912–01 AARP Foundation
CQ 822985–01 AARP Foundation
CQ 823043–01 AARP Foundation
CQ 823144–01 AARP Foundation
CQ 823596–01 AARP Foundation
CQ 823655–01 AARP Foundation
CQ 823893–01 AARP Foundation
CQ 823905–01 AARP Foundation
CQ 823934–01 AARP Foundation
CQ 823952–01 AARP Foundation
CQ 823973–01 AARP Foundation
CQ 824021–01 AARP Foundation
CQ 824298–01 National Senior Citizens Education & Research Ctr
CQ 824299–01 National Senior Citizens Education & Research Ctr
CQ 824362–01 National Council on the Aged, Inc.
CQ 824363–01 National Council on the Aged, Inc.
CQ 824364–01 National Council on the Aged, Inc.
CQ 824399–01 National Senior Citizens Education & Research Ctr
CQ 824417–01 AARP Foundation
CQ 824455–01 AARP Foundation
CQ 824713–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824714–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824715–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824716–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824717–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824718–01 National Cau. & Ctr on Black Aged, Inc.
CQ 824721–01 National Senior Citizens Education & Research Ctr
CQ 824722–01 National Senior Citizens Education & Research Ctr
CQ 824763–01 AARP Foundation
CQ 825016–01 AARP Foundation
CQ 825083–01 National Cau. & Ctr on Black Aged, Inc.
CQ 825084–01 National Cau. & Ctr on Black Aged, Inc.
CQ 825085–01 National Cau. & Ctr on Black Aged, Inc.
CQ 825086–01 National Cau. & Ctr on Black Aged, Inc.
CQ 825087–01 National Cau. & Ctr on Black Aged, Inc.

CQ 825185–01 AARP Foundation
CQ 825189–01 AARP Foundation
CQ 825236–01 Association National Pro Personas Mayores
CQ 825400–01 AARP Foundation
CQ 825401–01 AARP Foundation
QS 823047–01 National Assoc. for Hispanic Elderly
QS 823447–01 National Cau. & Ctr on Black Aged, Inc.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.301(h) (2) (iii). This notice is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: December 10, 1996.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 96–32662 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5669–9]

Peer Review of an Agency Arsenic Research Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Board of Scientific Counselors, Notification of Public Advisory Committee open meeting.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Ad Hoc Committee on Arsenic Research of the Board of Scientific Counselors (BOSC) will meet on January 22–23, 1997, at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston VA 22091. The hotel phone number is (703) 620–9000. The meeting will begin at 9:00 a.m., and end no later than 5:00 p.m. on January 22nd and begin at 8:30 a.m. on January 23rd and end no later than 4:00 p.m. (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-serve basis. Important Notice: Documents that are the subject of BOSC reviews are available from the originating EPA office. Information concerning the availability of the Arsenic Research Plan document is included below.

PURPOSE OF THE MEETING: The Ad Hoc Committee will review and provide advice to EPA on its document entitled ''Research Plan for Arsenic in Drinking Water.'' This research plan is mandated by the Safe Drinking Water Act Amendments of 1996, which call for the development of this plan by February 2, 1997. The research plan is intended to address the need to enhance the scientific basis for understanding health risks and exposures associated with ingested arsenic and to address uncertainties and improve current risk assessment and regulatory decisions in the United States. It stresses the implications of recent research findings and key sources of uncertainty and variability that affect arsenic assessment.

AVAILABILITY OF REVIEW MATERIALS: Interested parties may obtain a copy of the document by contacting Ms. Cheryl Butler (Phone: (202) 260–7891; Fax: (202) 260–6932). Technical questions on this document should be addressed to Dr. Bruce Peirano (Phone: (513) 569–7540); Fax: (513) 569–7016). The documents will be available upon request on or about January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Dr. Edward S. Bender, Designated Federal Official, Ad Hoc Committee on Arsenic Research, Office of Science Policy (8103), U.S. EPA, 401 M Street, S.W., Washington, DC 20460; Telephone/voice mail at (202) 260–2562; Fax at (202) 260–0744; or via the Internet at BENDER.ED@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Pat Jones at (202) 260–0338, by Fax at (202) 260–9761, or via the Internet at JONES.PATP@EPAMAIL.EPA.GOV.

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Bender in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, January 15, 1997, in order to be included on the Agenda. Public comments will be limited to five minutes per organization. The requester should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and provide at least 25 copies of the presentation or an outline of the issues to be addressed. Written comments (at least 25 copies) received in the Committee Staff Office sufficiently prior to a meeting date, will be mailed to the Committee prior to this meeting; otherwise they will be provided to the Committee at the meeting. Written comments may be provided to this Committee up until the time of the meeting.

Dated: December 18, 1996.

Henry L. Longest, II

Acting Assistant Administrator for Research and Development.

[FR Doc. 96–32664 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–42075A; FRL–5382–2]

Oregon Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Amendment to Oregon Certification Plan.

SUMMARY: On December 6, 1995, EPA published a Notice of Intent to amend the Oregon plan for the certification of applicators of restricted use pesticides. This amendment permits the certification of applicators of 1080 Livestock Protection Collars (LPC). Notice is hereby given of EPA approval of this amendment to the Oregon Certification Plan.

FOR FURTHER INFORMATION CONTACT: Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101. Telephone: (206) 553-1980, e-mail: welch.allan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The final decision permitting registration of 1080 LPC was signed by Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response, on October 31, 1983 (FIFRA Docket 502). This final decision requires applicators of 1080 LPC to receive specific training and to comply with recordkeeping and reporting requirements beyond that of applicators of other restricted use pesticides. For these reasons EPA has required a distinct certification process for applicators of 1080 LPC collars. To meet

this requirement Oregon amended their existing certification plan. This amendment establishes a 1080 LPC subcategory under their existing regulatory pest control category.

Oregon will only be certifying employees of the U.S. Department of Agriculture, Animal Damage Control (ADC), as 1080 LPC applicators. Certification granted ADC employees will permit them to utilize 1080 LPC in performance of their official duties. ADC estimates that approximately 34 employees of ADC will seek certification under the 1080 LPC subcategory. The only registrant of 1080 LPC in Oregon is the ADC. Therefore, the ADC will be the source of 1080 LPC collars.

The Oregon 1080 Livestock Protection Collar Plan is more restrictive than the federal requirements in the following areas: use is limited to ADC agents, and monitoring and tracking of collars must be done twice per week rather than once per week.

The amendment to the Oregon certification plan contains a draft Memorandum of Agreement between the Oregon Department of Agriculture (ODA) and the ADC addressing their respective roles and responsibilities. The ODA will oversee the activities of the ADC in its roles both as registrant and as employer/supervisor of 1080 LPC applicators. In addition to its responsibilities as registrant, the ADC will provide training and supervision to its 1080 LPC applicators. Certification and recertification will be based upon a written examination administered by the ODA. Recertification will be required every 5 years.

II. Discussion of Comments

Approximately 190 commenters responded with a few commenters submitting multiple comments. Of the comments received approximately 50 favored approval of the amendment establishing a 1080 Livestock Protection Collar Certification Plan. The remaining approximately 140 commenters opposed approval of the amendment. The comments on both sides of the approval question focused on the need for the 1080 LPC, its effectiveness, the effectiveness and availability of alternative means of control, and its safety to man, animals and the environment.

The notice of intent to approve the amendment to Oregon Certification Plan asked for comments on the proposed amendments to the Oregon Certification Plan. None of the comments in opposition specifically addressed the provisions of the Oregon plan. The opposing comments addressed registration of the 1080 LPC with the most common comment being that the 1080 LPC should not be registered because of its toxicity. The comments directed at the registration of the 1080 LPC are outside the scope of the Notice of Intent to Approve the Oregon 1080 LPC Plan; these comments could not be addressed. Information on the registration of 1080 however, is addressed in the Reregistration Eligibility Decision (RED) that was published in 1995 on sodium fluoroacetate (Compound 1080). The document number is (EPA 738-R95-025). The sodium fluoroacetate RED contains the Agency's evaluation of the data base of this chemical, its conclusions of the potential human health and environmental risks of the current product's use, and its decisions and conditions under which this use and products will be eligible for reregistration. The RED has been included in the docket accompanied by the October 31, 1983 final decision, concerning registration applications to use sodium fluoroacetate to control predators. Both documents along with comments received on the Notice of Intent to Approve the Oregon 1080 LPC Plan can be reviewed at any time during normal business hours at the addresses noted at the end of this notice. The RED can also be obtained through the National Technical Information Service (NTIS). Orders may be placed to NTIS by telephone at the following number: (703) 487-4650, or by mail to the following address: National Technical Information Service, ATTN: Order Desk, 52854 Port Royal Road, Springfield, Virginia 22161.

Most of those commenting in favor of the proposal also confined their comments to the general question of 1080 LPC use. However, some of those commenting in favor of the proposed amendment addressed the administrative controls contained in the proposed 1080 LPC amendment. These comments generally addressed the fact that only ADC officials would be certified to use 1080 LPC and the control of access to 1080 LPC provided by this provision.

No comments were received that addressed or demonstrated how the Oregon proposed 1080 LPC amendment failed to meet the requirement for approval contained in FIFRA, the regulations at 40 CFR part 171, the labeling, and the Administrator's final decision. EPA continues to monitor the registration and use of the 1080 LPC to assure restrictions are adequate for minimizing risks to human health and the environment. EPA and the ODA plan to closely monitor the use of 1080 LPC's by the ADC to ensure compliance with the Plan and label requirements. Reports of misuse or problems connected with the use of 1080 LPC should be directed to the EPA or the ODA. Address and phone numbers can be found below.

The amendment to the Oregon Certification Plan for the certification of 1080 LPC applicators is approved.

Copies of the Oregon approved plan amendment and comments are available for review at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Region 10, Pesticides Unit, 1200 Sixth Avenue, Eighth Floor, Seattle, Washington 98101. Telephone (206) 553-1980.

2. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Room 1121, Arlington, VA 22202. Telephone (703) 305-7370.

3. Oregon Department of Agriculture, Plant Division, 635 Capitol Street N.E., Salem, Oregon 97310. Telephone (503) 986-4635.

Dated: December 3, 1996.

Charles Clarke,

Regional Administrator, Region 10.

[FR Doc. 96–32526 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–684; FRL 5578–2]

DowElanco; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice is a summary of pesticide petitions proposing the establishment of a regulation for residues of spinosad in or on apples, brassica leafy vegetables, and fruiting vegetables (except cucurbits).

DATES: Comments, identified by the docket number [PF–684], must be received on or before, January 23, 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 Street S.W., Washington, DC 20460. In person, bring comments to: Room 1132, Crystal Mall #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 in 5.1 file format or ASCII file formate. All comments and data 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 Room 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: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petition (PP) 7F4797 from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46254, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide spinosad in or on the raw agricultural commodities apples at 0.2 parts per million (ppm), apple pomace (wet) at 0.5 ppm, head and stem brassica vegetables at 2.0 ppm, leafy brassica vegetables at 15 ppm, and fruiting vegetables (except cucurbits) at 0.4 ppm. Because of the amount of spinosad residue found in wet apple pomace and the amount of apple pomace potentially included in cattle and dairy cow rations, the following meat and milk tolerances for residues of spinosad are also being proposed: meat at 0.05 ppm, kidney and liver at 0.2 ppm, fat at 1.0 ppm, milk at 0.02 ppm, and milk fat at 0.5 ppm. Spinosad is a fermentation derived tetracyclic macrolide product produced by the actinomycete, Saccharopolyspora spinosa and consists of two structurally related compounds, namely spinosyn A and spinosyn D which provide the insect control activity for this new product. The two spinosyns only differ from each other in the substitution of a hydrogen by a methyl group and have structures consisting of a basic amine group, two sugars, and a larger complex hydrophobic ring. This new active ingredient that has been accepted by the EPA as a reduced risk product is being proposed for registration for insect control on apples, brassica leafy vegetables, and fruiting vegetables (except cucurbits). The proposed analytical method is based on high performance liquid chromatography (HPLC) with ultraviolet (UV) detection.

Pursuant to the section 408(d) (2) (A) (i) of the FFDCA, as amended, DowElanco has submitted the following summary of information, data and arguments in support of their pesticide petitions. This summary was prepared by DowElanco and EPA has not fully evaluated the merits of these petitions. 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. Petition Summary

A. Residue Chemistry

The metabolism of spinosad in plants (apples, cabbage, cotton, tomato, and turnip) and animals (goats and poultry) is adequately understood for the purposes of these tolerances. A rotational crop study showed no carry-over of measurable spinosad related residues in representative test crops. Magnitude of residue studies were conducted for apples, brassica leafy vegetables, and fruiting vegetables (except cucurbits). Residues of spinosad did not concentrate in tomato process fractions; however, there was a concentration of spinosad residues in wet apple pomace, an animal feed process fraction. There is a practical method (HPLC with UV detection) for detecting (0.004 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for this tolerance. The method has had a successful method tryout in the EPA's laboratories.

B. Toxicological Profile

1. *Acute toxicity*. Spinosad has low acute toxicity. The rat oral LD_{50} is 3,738 mg/kg for males and >5,000 mg/kg for females, whereas the mouse oral LD_{50} is >5,000 mg/kg. The rabbit dermal LD_{50} is >5,000 mg/kg and the rat inhalation LC_{50} is >5.18 mg/l air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicity*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage (highest dose tested). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The no observed effect levels (NOELs) for maternal and fetal effects in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (highest dose tested). Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rabbits were 10 and 50 mg/kg/day, respectively. The NOEL found for maternal and pup effects in a rat reproduction study was 10 mg/kg/day. Neonatal effects at 100 mg/kg/day (highest dose tested in the rat reproduction study) were attributed to maternal toxicity.

4. *Subchronic toxicity*. Spinosad was evaluated in 13-week dietary studies and showed NOELs of 4.9 mg/kg/day in dogs, 6 mg/kg/day in mice, and 8.6 mg/kg/day in rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with spinosad in the dog and the rat, a reference dose (RfD) of 0.025 mg/kg/day is proposed for spinosad. The RfD has incorporated a 100-fold safety factor to the NOELs found in these two chronic tests. The NOELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOELs shown in the rat chronic study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats.

6. *Carcinogenicity*. Using the Guidelines for Carcinogen Risk Assessment published in the Federal Register of September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. The NOELs shown in the rat chronic/oncogenicity study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

7. *Neurotoxicity*. Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

8. *Endocrine effects*. There is no evidence to suggest that spinosad has an effect on any endocrine system.

9. *Animal metabolism*. There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. In addition, the routes and rates of excretion were not affected by repeated administration.

10. *Metabolite toxicity*. The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, DowElanco concludes there is no need to address metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure from use of spinosad on apples, brassica leafy vegetables, fruiting vegetables (except cucurbits), meat, and milk, as well as cottonseed (included in a previous submission under pesticide petition (PP) 6F4735), a conservative estimate of aggregate exposure is determined by basing the theoretical maximum residue contribution (TMRC) on the proposed tolerance levels for spinosad and assuming that 100 percent of the cotton, apples, brassica leafy vegetables, and fruiting vegetables (except cucurbits) grown in the U.S. were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related food stuffs consumed by various population subgroups. There are no other established U.S. tolerances for spinosad and no other registered uses for spinosad on food or feed crops in the United States. The use of a tolerance level and 100 percent of crop treated clearly results in an over-estimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment. Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil DowElanco concludes, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established Maximum Concentration Level for residues of spinosad in drinking water.

2. *Non-dietary exposure*. There are no other uses currently registered for spinosad. The proposed use on apples, brassica leafy vegetables, and fruiting vegetables (except cucurbits), as well as a pending use on cotton involve application of spinosad to crops grown in an agriculture environment. Thus, the potential for non-occupational exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the GABA receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus DowElanco believes it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determinations

1. *U.S. population in general*. Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to spinosad use on apples, brassica leafy vegetables, cotton, and fruiting vegetables (except cucurbits) will utilize 9.1 percent of the RfD for the U.S. population. A more realistic estimate of dietary exposure and risk relative to a chronic toxicity endpoint is obtained if average (anticipated) residue values from field trials are used. Inserting the average residue values in place of tolerance residue levels produces a more realistic, but still conservative risk assessment. Based on average or anticipated residues in a dietary risk analysis, the use of spinosad on apples, brassica leafy vegetables, cotton, and fruiting vegetables (except cucurbits) will utilize 2.1 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 perecnt 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. Thus, DowElanco concludes that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on apples, brassica leafy vegetables, cotton, and fruiting vegetables (except cucurbits).

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOELs in the chronic feeding studies which were used to calculate the RfD (0.025 mg/kg/day) are already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than 10 fold.

Concerning the reproduction study in rats, the pup effects shown at the highest dose tested were attributed to maternal toxicity. Therefore, DowElanco

concludes that an additional uncertainty factor is not needed and that the RfD at 0.025 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent RfD utilized by the aggregate exposure to residues of spinosad on apples, brassica leafy vegetables, cotton, and fruiting vegetables (except cucurbits) is 20.6 percent for children 1 to 6 years old, the most sensitive population subgroup. If average or anticipated residues are used in the dietary risk analysis, the use of spinosad on these crops will utilize 5.1 percent of the RfD for children 1 to 6 years old. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, DowElanco concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on apples, brassica leafy vegetables, cotton, and fruiting vegetables (except cucurbits).

F. International Tolerances

There are no codex maximum residue levels established for residues of spinosad on apples, brassica leafy vegetables, cotton, fruiting vegetables (except cucurbits) or any other food or feed crop.

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–684]. 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 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–684], 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: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency Room 1132 , Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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 for 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 Agency, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–32528 Filed 12–23–96; 8:45 am]
BILLING CODE 6560–50–F

[PF–679; FRL–5576–6]

Monsanto; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice is a summary of the pesticide petitions which proposes to establish time-limited tolerances for residues of the herbicide glyphosate [*N*-phosphonomethyl)glycine] in or on the raw agricultural commodities (RACs) field corn grain at 1.0 parts per million (ppm), field corn forage at 1.0 ppm, field corn fodder at 100 ppm, aspirated grain fractions at 200 ppm, grain sorghum at 15 ppm, grain sorghum fodder at 40 ppm, and oats at 20 ppm. The residues from treatment of field corn include residues from field corn varieties which have been genetically modified to be tolerant of glyphosate. Because additional time is needed for the petitioner to submit additional details on residue and processing data, the Agency is proposing to grant these tolerances with a 3–year expiration date. Monsanto Company requested these tolerances in petitions submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). A summary of the petition prepared by Monsanto is being included in this notice.

DATES: Comments, identified by the docket control numbers [PF–679] must be received on or before January 23, 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 Word Perfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the Docket number [PF–679]. 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 a comment 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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 23, 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: Pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. section 346 a(d), EPA has received several pesticide petitions (PP 8F3672, PP 8F3673, PP 6E4645 and PP

5F4555) from Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005. These petitions propose amending 40 CFR part 180.364 by establishing a regulation to permit residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine], resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the raw agricultural commodities (RACs) field corn grain at 1.0 parts per million (ppm), field corn forage at 1.0 ppm, field corn fodder at 100 ppm, aspirated grain fractions at 200 ppm, grain sorghum at 15 ppm, grain sorghum fodder at 40 ppm, and oats at 20 ppm. PP 5F4555 specifically relates to field corn which has been genetically modified to be tolerant to glyphosate.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Monsanto included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Monsanto; EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Monsanto Petition Summary

1. *Glyphosate uses*. Glyphosate is a postemergent, systemic herbicide with no residual soil activity. It is generally non-selective and provides broad spectrum control of many annual weeds, perennial weeds, woody brush and trees. Glyphosate is registered for a variety of agricultural uses, including preplant, preharvest, in-crop, fallow, reduced tillage, forestry and aquatic applications, as well as non-crop applications. When applied at lower rates, glyphosate also acts as a plant growth regulator. Glyphosate's primary mode of action is inhibition of the biosynthesis of aromatic amino acids in plants.

2. *Safety*. Monsanto Company has submitted numerous toxicology studies in support of glyphosate. According to Monsanto Company, the acute toxicity and irritation potential of glyphosate is low. There are large margins of safety for subchronic and chronic effects. Glyphosate does not produce reproductive effects and is not a teratogen, mutagen, carcinogen or a neurotoxin. Risk assessment calculations indicate the margin of safety for agricultural workers and the population in general far exceed the EPA required level of 100.

The following mammalian toxicity studies have been conducted to support glyphosate:

A rat acute oral study with a combined LD_{50} of >5,000 mg/kg.

A rabbit acute dermal LD_{50} of > 5,000 mg/kg.

A primary eye irritation study in the rabbit which showed severe irritation for glyphosate acid. However, glyphosate is normally formulated as one of several salts and eye irritation studies on the salts showed essentially no irritation.

A primary dermal irritation study which showed essentially no irritation.

A primary dermal sensitization study which showed no sensitization.

A 90–day feeding study in rats fed dosage levels of 0, 1,000, 5,000 and 20,000 ppm with a no-observable-effect level (NOEL) of 20,000 ppm based on no effects even at the highest dose tested.

A 90–day feeding study in mice fed dosage levels of 0, 5,000, 10,000 and 50,000 with a NOEL of 10,000 ppm based on body weight effects at the high dose.

A 90–day feeding study in dogs given glyphosate, via capsule, at doses of 0, 200, 600 and 2000 mg/kg/day with a NOEL of 2000 mg/kg/day based on no effects even at the highest dose tested.

A 12–month oral study in dogs given glyphosate, via capsule, at doses of 0, 20, 100 and 500 mg/kg/day with a NOEL of 500 mg/kg/day based on no adverse effects at any dose level.

A 26–month chronic/feeding oncogenicity study with rats fed dosage levels of 0, 3, 10 and 31 mg/kg/day (males) and 0, 3, 11 and 34 mg/kg/day (females) with a systemic NOEL of 31 mg/kg/day (males) and 34 mg/kg/day (females) based on no carcinogenic or other adverse effects at any dose level.

A 24–month chronic/feeding oncogenicity study with rats fed dosage levels of 0, 89, 362 and 940 mg/kg/day (males) and 0, 113, 457 and 1,183 mg/kg/day (females) with a systemic NOEL of 362 mg/kg/day based on body weight effects in the female and eye effects in males. There was no carcinogenic response at any dose level.

A mouse oncogenicity study with mice fed dosage levels of 0, 150, 750 and 4,500 mg/kg/day with a NOEL of 750 mg/kg/day based on body weight effects and microscopic liver changes at the high dose. There was no carcinogenic effect at the highest dose tested of 4,500 mg/kg/day.

An oral developmental toxicity study with rats given doses of 0, 300, 1,000 and 3,500 mg/kg/day with a maternal NOEL of 1,000 mg/kg/day based on clinical signs of toxicity, body weight effects and mortality, and a fetal NOEL of 1,000 mg/kg/day based on reduced body weights and delayed sternebrae maturation at the highest dose tested of 3,500 mg/kg/day.

An oral developmental toxicity study with rabbits given doses of 0, 75, 175 and 350 mg/kg/day with a maternal of NOEL of 175 mg/kg/day based on clinical signs of toxicity and mortality, and a fetal NOEL of 350 mg/kg/day based on no developmental toxicity at any dose tested.

A three-generation reproduction study with rats fed dosage levels of 0, 3, 10 and 30 mg/kg/day with a NOEL for systemic and reproductive/developmental parameters of 30 mg/kg/day based on no adverse effects noted at any dose level.

A two-generation reproduction study with rats fed dosage levels of 0, 100, 500 and 1,500 mg/kg/day with a NOEL for systemic and developmental parameters of 500 mg/kg/day based on body weight effects, clinical signs of toxicity in adult animals and decreased pup bodyweights, and a reproductive NOEL of 1,500 mg/kg/day.

A number of mutagenicity studies were conducted and were all negative. These studies included: chromosomal aberration in vitro (no aberrations in Chinese hamster ovary cells were caused with or without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice.

3. *Threshold effects— chronic effects.* The reference dose (RfD) for glyphosate based on maternal effects in a developmental study with rabbits (NOEL of 175 mg/kg bwt/day) and using a hundred-fold safety factor is calculated to be 2.0 mg/kg body weight/day.

Acute toxicity. Based on the available acute toxicity data, glyphosate does not pose any acute dietary risks.

4. *Non-threshold effects— carcinogenicity*. The Health Effects Division Carcinogenicity Peer Review Committee has classified glyphosate in Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not appropriate.

5. *Aggregate exposure*. For purposes of assessing the potential dietary exposure, Monsanto has estimated

aggregate exposure based on the tolerances for glyphosate on field corn grain at 1.0 ppm, field corn forage at 1.0 ppm, field corn fodder at 100 ppm, corn aspirated grain fractions at 200 pm, grain sorghum at 15 ppm, grain sorghum fodder at 40 ppm and oats at 20 ppm. Corn forage and fodder, sorghum fodder and aspirated grain fractions are fed to animals; thus exposure of humans to residues in these commodities might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of animal metabolism studies and the amount of glyphosate residues expected in animal feeds, Monsanto has concluded that there is no reasonable expectation that residues of glyphosate will exceed existing tolerances in meat, milk, poultry or eggs. In conducting this exposure assessment, Monsanto has made very conservative assumptions — 100 percent of these crops will contain glyphosate residues and those residues would be at the level of the tolerance — which result in an overestimate of human exposure. Thus, in making a safety determination for these tolerances, Monsanto is taking into account this conservative exposure assessment. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. A Maximum Concentration Level (MCL) has been established for residues of glyphosate in drinking water at 0.7 mg/l since glyphosate is approved for direct application to water. The MCL represents the level at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety, and is based on the reference dose (RfD). Non-occupational exposure to glyphosate is expected based on the currently-registered uses; however, due to the low acute toxicity and lack of other toxicological concerns, the risk posed by non-occupational exposure to glyphosate is minimal. Monsanto believes that EPA consideration of a common mechanism of toxicity is not appropriate at this time since Monsanto believes that EPA does not have information to indicate that toxic effects produced by glyphosate would be cumulative with those of any other chemical compound.

6. *Determination of safety for U.S. population*. RfD: The theoretical maximum residue contribution (TMRC) for existing, published tolerances for glyphosate is 0.021460 mg/kg bwt/day or 1.0 percent of the RfD for the overall U.S. population. Using the conservative exposure assumptions described above, the proposed new tolerances on corn, sorghum and oat commodities will contribute 0.0023 mg/kg/day to the TMRC. This aggregate exposure will utilize an additional 0.12 percent of the RfD for the overall U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD. 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 from aggregate exposure to residues of glyphosate, including all anticipated dietary exposure and all other non-occupational exposures.

7. *Determination of safety for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of glyphosate, data were considered from developmental toxicity studies in the rat and rabbit and multi-generation reproduction studies in rats.

No birth defects were observed in the offspring of rats given glyphosate by gavage at dose levels of 0, 300, 1,000, and 3,500 mg/kg/day on days 6 through 19 of gestation. The NOEL for this study was 1,000 mg/kg/day based on maternal and developmental toxicity observed at the highest dose tested, 3,500 mg/kg/day. The high-dose in this study was 3.5 times higher than the limit dose that is currently required by the guidelines.

No birth defects were observed in the offspring of rabbits given glyphosate by gavage at dose levels of 0, 75, 175, and 350 mg/kg/day on days 6 through 27 of gestation. The NOEL for this study is considered to be 175 mg/kg/day based on maternal toxicity at the high-dose of 350 mg/kg/day. Because no developmental toxicity was observed at any dose level, the developmental NOEL is considered to be 350 mg/kg/day.

Male and female rats were fed glyphosate at dose levels of 0, 3, 10, and 30 mg/kg/day every day throughout the production of three successive generations. No adverse treatment-related effects on reproduction were observed. Because no toxicity was noted even at the highest dose tested, a second reproduction study at higher dose levels was performed and is described below.

Male and female rats were fed glyphosate at dose levels of 0, 100, 500, and 1,500 mg/kg/day every day throughout the production of two successive generations. Reduced body weights and soft stools occurred at 1,500 mg/kg/day (3 percent of the diet); therefore, the systemic NOEL is considered to be 500 mg/kg/day. Glyphosate did not affect the ability of rats to mate, conceive, carry or deliver normal offspring at any dose level.

The results of these studies indicate that glyphosate does not produce birth defects and is not a reproductive toxin.

Reference Dose (RfD). The TMRC for existing, published tolerances for glyphosate ranges from 0.015561 for nursing infants to 0.049134 for non-nursing infants (0.8 to 2.5 percent of the RfD). Using the conservative exposure assumptions described above, the proposed new tolerances on corn, sorghum and oat commodities will contribute 0.0158 mg/kg/day to the TMRC for non-nursing infants. For non-nursing infants, the proposed new tolerances and previously established tolerances will utilize a total of 3.2 percent of the RfD. EPA generally has no concern for exposures below 100 percent of the RfD. 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 from aggregate exposure to residues of glyphosate, including all anticipated dietary exposure and all other non-occupational exposures.

8. *Estrogenic effects*. The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine-modulating activity. No effects have been identified in subchronic, chronic or developmental toxicity studies to indicate any endocrine-modulating activity by glyphosate. In addition, negative results were obtained when glyphosate was tested in a dominant-lethal mutation assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

9. *Chemical residue*. The nature of the residue in plants and animals is adequately understood. The residue to be regulated is the parent glyphosate. The submitted residue data adequately support the proposed tolerances on field corn grain (1.0 ppm), field corn forage (1.0 ppm), field corn stover (100 ppm), aspirated grain fractions (200 ppm), grain sorghum (15 ppm), grain sorghum

fodder (40 ppm) and oats (20 ppm). Residues from genetically-modified glyphosate tolerant field corn varieties did not exceed those from unmodified varieties and there were no residues of metabolites which would be of toxicological concern. Codex maximum residue levels (MRLs) have been established for residues of glyphosate on oats at 20 ppm and on corn grain and grain sorghum at 0.1 ppm. The Codex MRLS on corn and sorghum were established based on preplant/ preemergent uses of glyphosate, and are identical to the exixting tolerances for these crops under the same use conditions in the United States. The increased tolerances now being proposed on corn and sorghum are based on the new preharvest uses of glyphosate to these crops in the United States. Monsanto will be submitting a petition to request that the Codex MRLs on these crops be increased; however the Codex Commission does not generally begin the data review until the new use has been approved by a member company. Any secondary residues occurring in milk, eggs, meat, fat, liver and kidney of cattle, goats, horses, hogs, poultry and sheep are covered by existing tolerances. There is a practical analytical method for detecting and measuring levels of glyphosate in or on food with a limits of detection (0.05 ppm) that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. This method is available to anyone who is interested in pesticide residue enforcement from the Field Operations Division, Office of Pesticide Programs.

10. *Environmental fate.* Glyphosate adsorbs strongly to soil and is not expected to move vertically below the 6–inch soil layer; residues are expected to be immobile in soil. Glyphosate is readily degraded by soil microbes to AMPA, which is degraded to carbon dioxide. Glyphosate and AMPA are not likely to move to ground water due to their strong adsorptive characteristics. However, due to its aquatic use patterns and through erosion, glyphosate does have the potential to enter surface waters, where it will adsorb to sediment and undergo microbial degradation.

Glyphosate is no more than slightly toxic to birds and is practically non-toxic to fish, aquatic invertebrates and honeybees.

II. Administrative Matters

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket number [PF–679]. All written comments filed in response to this petition will be availble , 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 under docket numbers [PF–679] (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 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 16, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–32531 Filed 12–20–96; 10:00 am]

BILLING CODE 6560–50–F

[PF–681; FRL–5576–8]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of the herbicide bromoxynil (3,5-dibromo-4 hydroxybenzonitrile), resulting from the application of its octanoic and heptanoic acid esters. The proposal would extend the time-limited tolerance in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million. This notice includes a summary of the petition that was prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket number [PF–681], must be received on or before, January 23, 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 in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–681]. 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 of 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: Robert Taylor Product Manager (PM 25) Rm., 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 703–305–6224, e-mail: Taylor.Robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 3F4233 from Rhone-Poulenc Ag Company, PO Box 12014 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709 porposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. section 346a(d), to amend CFR part 180 by establishing a tolerance for residues of the herbicide bromoxynil (3,5-dibrom-4-hydroxybenxonitrile), resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity cottonseed at 0.04 ppm. The proposed analytical method is a revised version of Method 1 in the Pesticide Analytical Manual (PAM), Vol II.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Rhone-Poulenc included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the document control number [PF–681]. All written comments filed in response to this petition will be availble, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Fridy, except legal holidays.

A record has been established for this notice under docket numbers [PF–681] (including com ents 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.

I. Petition Summary

There is an extensive data base supporting the registration of Bromoxynil and its esters. This data base is current as the majority of the studies have been submitted and accepted under the reregistration process mandated by FIFRA 88. The Reregistration Eligibility Document (RED) for Bromoxynil has been scheduled by the Agency for early in fiscal year 1997. Included in this data submitted were studies which showed the nature and magnitude of Bromoxynil residue in ruminants and poultry. Based on these studies the Agency has determined that the nature of the residue in ruminants and poultry are understood and that any secondary residues from this tolerance occurring in the fat, meat, and meat byproducts of cattle, goats, horses, poultry, and sheep will be covered by existing tolerances.

The nature of the residue in Transgenic Cotton is considered to be adequately understood. The primary Bromoxynil metabolite is 3,5-dibrom-4-hydroxybenzoic acid (DBHA). DBHA is only a major metabolite in/on transgenic cotton treated with Bromoxynil. For the purposes of extending the time-limited tolerance, only the parent compound should be regulated as in 40 CFR 180.324. This interim decision is based on several factors. There will be very minimal risk from total residues of the parent compound and the DBHA metabolite in cotton seed contributing only about 1/1000th of the total dietary exposure from all registered uses of Bromoxynil. The registration of Bromoxynil on Transgenic Cotton in 1997 will be limited to 400,000 acres. This represents less than 3% of the total cotton acres anticipated to be planted in 1997. The only other potential source of dietary exposure from this use would be from cattle fed cotton gin trash. Any potental dietary risk from this source would be even less than the risk from cottonseed. This is based on again less than 3% of the cotton acres being treated with Bromoxynil. It is also based on the fact that the majority of the cotton gin trash is disked back into the fields and not fed to cattle. Even when the cotton gin trash is fed to cattle it represents only a maximum of 30% of the diet.

Adequate methodology is available for enforcement purposes, based upon methods for the parent compound. The method involves sample reflux in methanolic KOH, partitioning with ether/hexane and analysis by GC. The limit of detection (LOD) for this method is 0.02 ppm. The method is a modified version of Method I in the Pesticide Analytical Manual (PAM), Vol. II.

A. Toxicological Profile

The following mammalian toxicity studies have been conducted to support the tolerance of bromoxynil:

1. *Acute Toxicity--Bromoxynil Phenol Technical.* A complete battery of acute toxicity studies for Bromoxynil Phenol were completed. The acute oral toxicity study resulted in a LD^{50} of 81 mg/kg (males) and a LD^{50} of 93 mg/kg (females). The acute dermal toxicity study in rabbits resulted in a LD^{50} of >2000 mg/kg for both males and females. The acute inhalation study in rats resulted in a LC^{50} of 0.269 mg/L for males and 0.150 for females. The primary eye irritation study showed corneal opacity resolved within 3 days, iritis resolved within 4 days and conjuctival irritation which persisted for 10 days. There was no irritation in the Primary dermal irritation study and the dermal sensitization study in guinea pigs was negative. Based on the results of these studies Bromoxynil Phenol is placed in toxicity Category II.

2. *Acute Toxicity--Bromoxynil Octanoate Technical.* A complete battery of acute toxicity studies for Bromoxynil Octanoate technical were completed. The acute oral toxicity study resulted in a LD^{50} of 400 mg/kg (males) and a LD 50 of 238 mg/kg (females). The acute dermal toxicity study in rabbits resulted in a LD^{50} of 2000 mg/kg for males with abraded skin, 1310 mg/kg for females with intact skin and 1660 mg/kg for females with abraded skin. The

acute inhalation study in rats resulted in a LC^{50} of 0.81 mg/L for males and 0.72 mg/L for females. The primary eye irritation study showed corneal opacity and irritation lasting for 24–72 hours. It had cleared by 96 hours. The primary dermal irritation study showed erythema for 72 hours and no edema. The dermal sensitization study in guinea pigs showed compound to be a positive contact sensitizer in modified Draize test. Based on the results of these studies Bromoxynil Octanoate is placed in toxicity category II.

3. *Acute Toxicity--Bromoxynil Heptanoate Technical*. A complete battery of acute toxicity studies for Bromoxynil Heptanoate were completed. The acute toxicity study resulted in a LD^{50} of 362 mg/kg (males) and a LD^{50} of 292 mg/kg (females). The acute dermal toxicity study in rabbits resulted in a LD^{50} of >2020 mg/kg. The acute inhalation study in rats resulted in a LC^{50} of 1.975 mg/L for males and 1.479 mg/L for females. Based on the results of these studies Bromoxynil Heptanoate is placed in toxicity Category II.

Conclusion: Based on the acute toxicity data cited above and a margin of safety between the most conservative acute oral toxicity value and the oral RfD of 0.015 mg/kg/day of >9000, Rhone-Poulenc it is concludeds that neither Bromoxynil nor its octanoic or heptanoic acide esters pose any acute dietary risks.

B. Mutagenicity

1. *Mutagenicity--Bromoxynil Phenol Technical*. Mutagenicity studies completed included an unscheduled DNA synthesis study-rat primary hepatocytes (negative); in vitro transformation assay--mouse cells (negative); sister chromosomal exchange study--CHO cells (negative); forward mutation study--mouse lymphoma cells (negative without activation and positive with activation); DNA repair test--E. Coli (positive); in vitro chromosomal aberration (negative without activation and positive with activation); two separate micronucleus assays (both negative); forward mutation-- CHO cells (negative); and an Ames Study--Salmonella typhimurium (negative with and without activation).

2. *Mutagenicity--Bromoxynil Octanoate Technical*. Mutagenicity studies completed included an Ames Study--Salmonella typhimurin (negative with and without activation); micronucleus assay (negative); and an unscheduled DNA synthesis--rat primary hepatocytes (negative).

Conclusion. Based on the data cited above Rhone-Poulenc concludes neither Bromoxynil nor its octanoic or heptanoic acid esters are considered to be mutagenic.

C. Rat Metabolism

1. *Rat Metabolism--Bromoxynil Heptanoate Technical*. Similar results were obtained when a single low dose (2 mg/kg), a single high dose (20 mg/kg) and a low dose (2 mg/kg) administered for 14 consecutive days were fed to rats. Bromoxynil Heptanoate is rapidly absorbed and widely distributed in most tissues. The highest concentrations were found in the blood, plasma, liver, kidney and thyroid. Higher tissue concentrations were found in females than in males while excretion was more rapid in males. Most of the radioactivity was excreted in the urine. Most of this was in the form of Bromoxynil Phenol. Both Bromoxynil Phenol and Bromoxynil Heptanoate were present in the feces. There was no significant retention in tissues after 7 days. Bromoxynil Heptanoate was essentially metabolized to Bromoxynil Phenol via ester hydrolysis.

2. *Rat Metabolism--Bromoxynil Octanoate Technical*. The study demonstrated that 2 mg/kg of radiolabeled Bromoxynil Octanoate was rapidly absorbed, distributed, and excreted in rats following repeated oral administration. A sex-related difference was seen in the excretion of Bromoxynil Octanoate. The urine was the major route of excretion, representing 80.24% of the administered dose in males and 67.91% in females at 7 days post-dosing. The urinary excretion rate was also higher in males than in females. The feces accounted for 7 - 10% of the administered dose at 7 days post-dosing. A sex-related difference was also noted in tissue bioaccumulation of Bromoxynil Octanoate with 1.482% of the dose in males and 8.036% in females. Tissue distribution was similar for both sexes with the highest radioactivity recovered in the liver and kidney. Bromoxynil Octanoate was essentially metabolized to Bromoxynil Phenol via ester hydrolysis.

D. Chronic Effect:

A 1 year oral dog study was run with dogs administered Bromoxynil Phenol at dose levels of 0, 0.1, 0.3, 1.5, and 7.5 mg/kg/day in capsules. The NOEL/LEL is 1.5 mg/kg/day for both females and males based on decreased body weight gain, decreased RBC count, decreased hemoglobin, decreased PCV, increased liver weights.

Conclusion: The chronic dog study was determined by the EPA to be the most appropriate study for setting the RfD of 0.015 mg/kg/day (includes a 100 fold safety factor). Based on the chronic toxicity data cited above Rhone-Poulenc concludes that neither Bromoxynil nor its octanoic or heptanoic acid esters pose any chronic dietary risks.

E. Carcinogenicity

Several feeding/carcinogenicity studies were conducted with Bromoxynil Phenol. These studies are summarized below.

1. A 2 year combined feeding/carcinogenicity study was conducted with rats administered (oral) dosages of 0, 60, 190, or 600 ppm (0, 2.6, 8.2, or 28 mg/kg/day in males; 0, 3.3, 11.0, or 41 mg/kg/day in females) Bromoxynil Phenol in the diet. In males the no-observed-effect-level (NOEL) for systemic toxicity is 2.6 mg/kg/day, and the Lowest-effect-level (LEL) is 8.2 mg/kg/day. In females, the NOEL is 3.3 mg/kg/day, and the LEL is 11.0 mg/kg/day. This study did not demonstrate any increase in tumor incidences in either male or female rats.

2. A 2 year combined feeding/carcinogenicity study was conducted with rats administered Bromoxynil Phenol in the diet at dose levels of 0, 10, 30, or 100 ppm (0, 0.5, 1.5, or 5 mg/kg/day). In both males and females, the NOEL and LOEL for systemic toxicity was 5 mg/kg/day and >5 mg/kg/day, respectively. At the highest dose tested, increased liver weights were observed at 12 months, but not at 24 months. This study was considered negative for carcinogenicity.

3. An 18 month carcinogenicity study was conducted with mice administered Bromoxynil Phenol at dose levels of 0, 10, 30, or 100 ppm (0, 1.3, 3.9, or 13 mg/kg/day) in the diet. For males, dose related increases in hyperplastic nodules and liver adenomas/carcinomas were observed which were statistically significant at the 13 mg/kg/day level. Increased relative liver weights were also observed. In females, increased absolute liver weights and relative liver and kidney weights were observed. The study was considered negative for carcinogenicity for females.

4. An 18 month carcinogenicity study was conducted with mice administered Bromoxynil Phenol at dose levels of 0, 20, 75, or 300 ppm (0, 3.1, 12 or 46 mg/kg/day in males and 0, 3.7, 14, or 53 mg/kg/day in females). Mice given 300 ppm had significantly increased absolute and relative liver weights. Histopathology of the liver revealed increased hepatocellular hypertrophy, hepatocellular degeneration, necrosis of individual hepatocytes, and pigment accumulation in hepatocytes and Kupffer cells. Male

mice had statistically significant increased numbers of hepatocellur adenomas and carcinomas at 20 ppm, but not 75 ppm. In contrast, no significant increase in tumor incidence was observed for female mice by pair-wise analysis. The trend test was significant for adenomas or carcinomas in females, only at $p<0.05$, not $p<0.01$ as would be appropriate for this type of tumor. The trend is due entirely to the high dose group and therefore is of questionable validity.

Conclusion. Bromoxynil is a weak, single sex, single species, non-metastic, single target organ carcinogen, inducing hepatocellular tumors in male mice exposed to 300 ppm for 18 months. These tumors and associated histopathological findings are consistent with secondary mechanisms such as peroxisome proliferation, a mechanism known to have marked species differences and questionable relevance for humans. The data are not suitable for quantitative risk assessment. A threshold safety factor approach is more appropriate and is commonly used for single sex, single species carcinogens such as Bromoxynil that are thought to work through secondary mechanisms. Based on these data, Rhone-Poulenc concludes Bromoxynil is not expected to pose any increased dietary risks.

F. Teratology

1. *Bromoxynil Phenol Technical*. Several teratology studies were conducted with Bromoxynil Phenol Technical. These are summarized below:

a. A teratology study was conducted with rats administered (orally) Bromoxynil Phenol at dose levels of 0, 4, 12.5, or 40 mg/kg/day. The maternal NOEL and LEL are 12.5 and 40 mg/kg/day respectively. The developmental NOEL and LEL are 4.0 and 12.5 mg/kg/day, respectively. Maternal body weights and food consumption were reduced in the high dose group. Fetal effects observed were reduced body weight, with associtaed decreases in ossification. An increase in 14th ribs, was observed in the mid and high dose levels.

b. A teratology study was conducted with rats administered (orally) Bromoxynil Phenol at dose levels of 0, 5, 15, or 35 mg/kg/day. The maternal NOEL and LEL are 5.0 and 15 mg/kg/day, respectively. The fetotoxicity and developmental NOEL and LEL are less than 5 and 5 mg/kg/day, respectively. Significant maternal mortality and decreased body weight gain were associated with the high dose, indicating that the MTD was exceeded. Decreases in maternal body weight gain were also observed in the mid and low dose levels. At the mid-dose level a statistically significant increase in the number of fetuses with supernumerary ribs, a common fetal variant was observed.

c. A teratology study was conducted with rats administered (orally) Bromoxynil Phenol at dose levels of 0, 1.7, 5, or 15 mg/kg/day. The maternal NOEL and LEL sre 5 and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 and 15 mg/kg/day, respectively. This study was classified as unacceptable, primarily due to reporting deficiendies.

d. A teratology study was conducted with rabbits administered (orally) Bromoxynil Phenol at dose levels of 0, 15, 30, or 60 mg/kg/day. The maternal NOEL and LEL are 15 and 30 mg/kg/day, respectively. The developmental NOEL and LEL are less than 15 and 15 mg/kg/day, respectively. Significant body weight gain decrements were reported at the two highest dose levels along with observed decreases in food sonsumption. The severe maternal toxicity among high dose dams was associated with fetoxicity and teratogenicity. A slight, nonsignificant increase in supernumerary ribs was reported at the mid and low dose levels.

e. A teratology study was conducted with mice administered (orally) Bromoxynil Phenol at dose levels of 0, 11, 32, or 96 mg/kg/day. Maternal mortality was observed at 32 and 96 mg/kg/day. Fetal body weight was decreased at the top dose level, associated with a decrease in caudal vertebral ossification and an increase in supernumerary ribs. The maternal NOEL and LEL are 11 and 32 mg/kg/day respectivel. The developmental NOEL and LEL are 32 and 96 mg/kg/day, respectively.

2. *Bromoxynil Octanoate Technical*. A teratology study was conducted with Bromoxynil Octanaote administered (orally) to rats at dose levels of 0, 2.4, 7.3 or 21.8 mg/kg/day. This is equivalent to 0, 1.7, 5, or 15 mg/kg/day Bromoxynil Phenol. Transient decreases in maternal body weight were observed at the highest dose level. Fetal body weight was also decreased and the incidence of supernumerary ribs was increased at this dose level. The maternal NOEL and LEL are 5 and 15 mg/kg/day, respectively. The developmental NOEL and LEL are also 5 and 15 mg/kg/day, respectively.

Conclusion. Based on all the studies cited above Rhone-Poulenc concludes that neither Bromoxynil nor Bromoxynil Octanoate are teratogens at doses that are not maternally toxic.

G. Reproductive Effects

1. Two reproduction studies were conducted with Bromoxynil Phenol. These are summarized below:

a. A reproduction study was conducted with rats administered (orally) Bromoxynil Phenol at dose levels of 0. 0.8, 4, or 21 mg/kg/day in the diet. The systemic adult rat NOEL is 4 mg/kg/day and the LEL is 21 mg/kg/day. The reproductive NOEL is 21 mg/kg/day, and the LEL is greater than 21 mg/kg/day. The postnatal developmental NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day. Body weight gain decrements were reported. However, no adverse effects on fertility, fecundity, reproductive performance or pre and postnatal development were observed.

b. A reproduction study was conducted with rats administered (orally) Bromoxynil Phenol at dose levels of 0, 1.5, 5, or 15 mg/kg/day in the diet. The systemic rat NOEL is 1.5 mg/kg/day, and the LEL is is 5 mg/kg/day. The reproductive NOEL is 15 mg/kg/day, and the LEL is greater than 15 mg/kg/day. The offspring developmental NOEL is 5 mg/kg/day and the LEL is 15 mg/kg/day. Body weight gain decrements were reported. However, no adverse effects on fertility, fecundity, reproductive performance or pre and postnatal development were observed.

Conclusion. Based on the studies cited above Rhone-Poulenc concludes Bromoxynil is not considered a reproductive toxicant and shows no evidence of endocrine effects.

2. *Aggregate Exposure*. The Food Quality Protection Act of 1996 list three other potential sources of exposure to the general population that must be addressed. These are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. Based on available studies which show a short half-life of Bromoxynil in the environment (average half-life of 3–7 days under actual field conditions), Rhone-Poulenc does not anticipate residues of Bromoxynil in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for Bromoxynil under the Safe Drinking Water Act.

The potential for non-occupational exposure to the general public is also insignificant. There are no residential lawn or garden uses for Bromoxynil products where the general population may be exposed via inhalation or dermal routes. Bromoxynil is registered for use on grass grown for seed or sod

production and for non-residential turfgrass. These uses are very minor and applied at only 0.5 lbs per acre. These uses will therefore not significantly add to the aggregate exposure.

Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable data to indicate that the toxic effects caused by Bromoxynil would be cumulative with those of any other compound. Based on this point, Rhone-Poulenc has considered only the potential risks of Bromoxynil in its exposure assessment.

C. Safety Determination

1. *DRES-U.S. Population, Infants, Children (1–6 years old)*

a. *General U.S. population*. Using the stated EPA RfD for bromoxynil of 0.015 mg/kg/day and the conservative assumptions stated above, and based on the completeness of the toxicology database, it has been determined that aggregate exposure to Bromoxynil will use 2.4% of the RfD for the US population. This is assuming that 100% of the acres for each crop for which a tolerance has been established (including transgenic cotton) was treated and the residue found was at the tolerance level. If one assumes market share values this number is decreased to 1.4%.

b. *Infants and children (1–6 years old)*. The Food Quality Protection Act of 1996 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. The NOEL/LEL of 1.5 mg/kg/day in the chronic dog study, on which the RfD is based, is already lower than the NOELs from the developmental and reproductive toxicity studies. Rhone-Poulenc concludes that an adequate margin of safety is therefore provided by the currents RfD. Using the stated EPA RfD for Bromoxynil of 0.015 mg/kg/day and the conservative assumptions stated above, it has been determined that aggregate exposure to Bromoxynil will use 2.3% for infants and 4.9% for children under 6 years old. This is assuming that 100% of the acres for each crop for which a tolerance has been established (including transgenic cotton) was treated and the residue found was at the tolerance level. If one assumes market share values these values are decreased to 1.8% for infants and 2.8% for children under 6 years old.

c. *Additional Comments on Safety to Infants and Children*. In assessing the potential for additional sensitivity of infants and children to residues of Bromoxynil, the available teratology and reproductive toxicity studies and the potential for endocrine modulation by Bromoxynil were considered. Developmental toxicity studies in three species indicates that Bromoxynil is not a teratogen at doses that are not maternally toxic. Two multi-generation rodent reproduction studies demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOELs and LOELs were comparable indicating no increase susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. Rhone-Poulence concludesIt is therefore concluded that Bromoxynil poses no additional risk for infants and children and no additional uncertainty factor is warrented.

d. *Environmental Fate*. Extensive laboratory and field studies indicate that bromoxynil has little tendency to move within or persist in soil or water under field conditions. Once in contact with soil, bromoxynil rapidly degrades. An average half-life of 3–7 days for bromoxynil has been demonstrated under field conditions. The soil breakdown process begins almost immediately and involves hydrolysis, dehalogenation, as well as other complex metabolic pathways carried out by soil bacteria and other microorganisms.

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–681]. 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 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice of filing under docket number [PF–681] 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, except 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 an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form 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, Pesticide and pest, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–32530 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5669–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act; Sussex County Landfill No. 5 Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request 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), notice is hereby given of a proposed administrative cost recovery settlement concerning the Sussex County Landfill No. 5 Superfund Site, Laurel, Sussex County, Delaware (Proposed Settlement).

The Proposed Settlement with Sussex County, Delaware (Settling Party) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on December 13, 1996, pursuant to Section 122(h) of CERCLA,

42 U.S.C. 9622, and is subject to review by the public pursuant to this notice. The Proposed Settlement resolves EPA's claim for past response costs under Section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Party, and requires the Settling Party to make two payments of EPA's past response costs totalling $381,536.23. The first payment of $335,524.81 represents reimbursement EPA's costs to oversee the Settling Party's conduct of the Remedial Investigation at the Site. That amount does not include $8,596.80 in EPA's oversight costs attributable to start-up costs to oversee the Settling Party's conduct of a Feasibility Study, the preparation of which EPA determined not to be necessary. The second payment of $46,011.42 represents a partial reimbursement of other unreimbursed past costs incurred by EPA in connection with the Site as set forth in the EPA Financial Management System as of October 5, 1994.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be provided on or before January 23, 1997.

ADDRESSES: The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement agreement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107; telephone number (215) 566–2476. Comments should reference the ''Sussex County Landfill No. 5 Superfund Site'' and ''EPA Docket No. III–96–72–DC'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Michael A. Hendershot (3RC33), (215) 566–2641, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

Dated: December 13, 1996.

W. Michael McCabe,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 96–32661 Filed 12–23–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 96–1958; Report No. AUC–96–13–A, as corrected by Report No. AUC–96–13–B, and as modified by Report No. AUC–96–13–C]

Auction Notice and Filing Requirements for 981 Interactive Video and Data Service (IVDS) Licenses, Scheduled for February 18, 1997

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau announced the application procedures for the upcoming IVDS auction (Auction #13) in a Public Notice dated December 4, 1996, corrected on December 10, 1996, and modified on December 17, 1996. The auction is scheduled to begin on February 18, 1997 and will consist of 981 licenses: two licenses in each of the 428 RSAs in the United States, plus 125 selected MSA licenses. The purpose of the notice is to inform the general public of the auction procedures the Commission will utilize in Auction #13 and the filing requirements to become an eligible bidder.

FOR FURTHER INFORMATION CONTACT: Ruby Hough, Howard Griboff, or Christina Eads Clearwater, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Licenses to Be Auctioned: 981 licenses to provide Interactive Video and Data Service (''IVDS''). The auction will consist of two licenses (Frequency Blocks ''A'' and ''B'') in each of the 428 Rural Service Areas (''RSA'') in the United States, plus 125 Metropolitan Statistical Area (''MSA'') licenses where winning bidders from a previous auction have been found to be in default. MSAs and RSA correspond with cellular radio service areas. Each license authorizes service on 500 kilohertz of spectrum (218.0–218.5 or 218.5–219.0 MHz) in each service area:

Frequency Block A: 218.0—218.5 MHz
Frequency Block B: 218.5—219.0 MHz

A list of licenses subject to auction is provided in Attachment A.

2. Auction Date: The auction will commence on Tuesday, February 18, 1997. The precise schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

3. Auction Number: This is the thirteenth spectrum auction the FCC has conducted, and will be referred to as Auction No. 13.

4. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

5. Pre-Auction Deadlines:

* Short-Form Application (FCC Form 175):
  Tuesday, January 21, 1997, 5:30 p.m. EST
* Upfront Payments:
  Wire Transfer: Monday, February 3, 1997, 6:00 p.m. EST
  Cashier's Check: Monday, February 3, 1997, 11:59 p.m. EST
* Orders for Remote Bidding Software:
  Tuesday, February 4, 1997, 5:30 p.m. EST
* Mock Auction:
  Wednesday and Thursday, February 12–13, 1997

6. Telephone Contacts:

* FCC Wireless Consumer Assistance Branch: 800–322–1117 (Bidder Information Packages/General Auction Information)
* FCC Technical Support Hotline: 202–414–1250

7. List of Attachments:

* Attachment A: List of Licenses Offered
* Attachment B: Electronic Filing of FCC Form 175
* Attachment C: Guidelines for Completing FCC Form 175 and Exhibits
* Attachment D: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

8. Bidder Information Package: More complete details about this auction will be contained in a Bidder Information Package. The FCC will provide one copy free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to ''Federal Communications Commission'' or ''FCC.'' To place an order, please contact the FCC Wireless Consumer Assistance Branch at 800–322–1117. Bidders who do not receive their Packages within two weeks of ordering should contact the Branch.

9. Participation: Those wishing to participate in the auction must submit a short-form application on the FCC Form 175. The FCC Form 175 must be completed and filed in accordance with the Commission's rules and the instructions provided in the Bidder Information Package, and must be received at the Commission's Gettysburg office no later than 5:30 p.m. EST on Tuesday, January 21, 1997.

10. Applicants are strongly encouraged to file their FCC Form 175 electronically, although manual filing (via hard copy) will be permitted. Electronic filing enables applicants to receive interactive feedback while completing the application, and immediate acknowledgment that the FCC Form 175 has been submitted for filing. In addition, only those applicants who file applications electronically will have the option of bidding either electronically or telephonically; applicants who file their applications manually will be permitted to bid only telephonically.

11. Applicants whose FCC Form 175s are accepted will be required to submit an upfront payment and an FCC Remittance Advice (FCC Form 159). The upfront payment must be made in U.S. dollars by wire transfer or cashier's check. Payments submitted by wire transfer must be received at Mellon Bank in Pittsburgh, Pennsylvania, no later than Monday, February 3, 1997 at 6:00 p.m. EST. Payments made by cashier's check must be received at Mellon Bank in Pittsburgh no later than Monday, February 3, 1997, at 11:59 p.m. EST. Note: No other form of payment will be accepted.

12. Relevant Authority: Prospective bidders should familiarize themselves thoroughly with the FCC's rules relating to the Interactive Video and Data Service, contained in Title 47, Part 95, Subpart F of the Code of Federal Regulations (''CFR''), and relating to application and auction procedures, contained in Title 47, Part 1, Subpart Q.

13. Prospective bidders should also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 FR 22980 (May 4, 1994), and associated *Erratum* (released May 12, 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93–253, 9 FCC Rcd 7245 (1994), 59 FR 44272 (Aug. 26, 1994), and associated *Erratum* (released Oct. 19, 1994); the *Fourth Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2330 (1994), 59 FR 24947 (May 18, 1994); the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in PP Docket No. 93–253, FCC 96–330 (released Sept. 10, 1996), 61 FR 49066 (Sept. 18, 1996) and 61 FR 49103 (Sept. 18, 1996); and the *Tenth Report and Order* in PP Docket No. 93–253, FCC 96–447 (released Nov. 21, 1996), 61 FR 60198 (Nov. 27, 1996) (collectively referred to as ''the Relevant Orders'').

14. The Terms contained in the FCC's rules, the Relevant Orders, this Public Notice, and in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before participating in the auction.

15. Potential bidders should also be aware that petitions for reconsideration of the FCC's actions in the *Tenth Report and Order* may be filed, and that those of the Terms adopted therein are therefore subject to change upon reconsideration or appeal. Furthermore, potential bidders should be aware that petitions for reconsideration and petitions for rulemaking are currently on file with the Commission with regard to issues such as the provision of mobile service by IVDS licensees and the length of IVDS license terms. Accordingly, bidders are advised to keep current on any developments that may affect the FCC's rules or Terms.

16. The Commission may amend or supplement the information contained in this Public Notice and in the Bidder Information Package at any time. The FCC will issue public notices to convey new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all FCC rules and with all public notices pertaining to this auction. Copies of FCC documents, including public notices, may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at 202–857–3800. Additionally, many documents can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov. Bidders should also note that a separate IVDS Web page is available at the FCC Internet node.

17. Prohibition of Collusion: To ensure competitiveness of the auction process, the FCC's rules prohibit applicants for the same MSA and RSA areas from communicating with each other during the auction about bids, bidding strategies or settlements. This prohibition begins with the filing of short-form applications, and ends when winning bidders submit down payments. The prohibition does not apply where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in the short-form application. *See* 47 CFR Section 1.2105(c). *See also* the summary of documents from the Commission and the Wireless Telecommunications Bureau addressing application of the anti-collusion rules in Attachment D to this Public Notice.

18. Bidder Alerts: All applicants must certify under penalty of perjury on their FCC Form 175 applications that they are legally, technically, financially and otherwise qualified to hold a license. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

19. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the IVDS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

* The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

* The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

* The amount of the minimum investment is less than $25,000.

* The sales representative makes verbal representations that: (a) the IRS, FTC, SEC, FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

The Commission does not approve any individual investment proposal, nor does it provide a warranty with respect to any license being auctioned. Potential applicants and investors are reminded that winning an IVDS license in this auction is not a guarantee of success in the marketplace.

20. Information about deceptive telemarketing investment schemes is available from the Federal Trade Commission (FTC) at 202–326–2222 and from the Securities and Exchange Commission (SEC) at 202–942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC,

or the National Fraud Information Center at 800–876–7060. Consumers who have concerns about specific IVDS investment proposals may also call the FCC Wireless Consumer Assistance Branch at 800–322–1117.

II. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

21. As described in Part 1 above, this auction offers a total of 981 IVDS licenses, with two licenses available in each of the 428 RSAs (Frequency Blocks ''A'' or ''B''), and 125 defaulted MSA licenses available for reauction. Each license authorizes service on 500 kilohertz of spectrum (218.0–218.5 MHz (Frequency Block ''A'') or 218.5–219.0 MHz (Frequency Block ''B'')) in each service area.

22. Section 95.813 of the Commission's Rules sets out eligibility requirements for IVDS licensees. Under Section 95.813(b)(1), no entity is eligible to hold an IVDS system license if it already holds, or has an interest in, an IVDS system license for the same service area. Prospective bidders should be aware that the Commission has recently concluded that, in the limited instance where IVDS licensees wish to participate in a subsequent auction in order to ''switch'' licenses in a service area, the prospective bidder may file, as an attachment to its pre-auction short-form application, a request for waiver of the common ownership rule for this limited purpose. If the prospective bidder is granted the waiver and ultimately wins the second license, it must divest itself of the first license within ninety (90) days of the grant of the second license. *See Sixth Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* FCC 96–330, 61 FR 49066.

B. Special Financial Provisions for Qualifying Small Businesses

23. Qualifying small business applicants are eligible for two special financial provisions: bidding credits and installment payments.

(1) Definitions of Small Businesses

24. The Commission revised the small business definitions for the IVDS auctions in the *Tenth Report and Order,* FCC 96–447, 61 FR 60198, and added a second tier of small businesses, referred to as ''very small businesses.''

* A *small business* is defined as an entity with average gross revenues that are not more than $15 million for the preceding three years.

* A *very small business* is defined as an entity with average gross revenues that are not more than $3 million for the preceding three years.

25. Gross revenues includes all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

26. In determining whether an entity qualifies as a small business at either threshold, gross revenues of all ''controlling'' principals will be attributed to the prospective small business applicant, as well as the gross revenues of affiliates of the applicant. However, personal net worth is not included in the determination of eligibility for bidding as a small business. The term ''control'' includes both *de jure* and *de facto* control of the applicant. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) the entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. The definition of ''affiliate'' is set forth at Section 1.2110(b)(4) of the Commission's Rules.

(2) Bidding Credits

27. The size of an IVDS bidding credit depends on the annual gross revenues of the bidder and its affiliates, as averaged over the preceding three years:

* A bidder with average gross annual revenues of not more than $15 million (a ''small business'') receives a 10-percent discount on its winning bid for IVDS licenses.

* A bidder with average gross annual revenues of not more than $3 million (a ''very small business'') receives a 15-percent discount on its winning bid for IVDS licenses.

These bidding credits are not cumulative.

(3) Installment Payments

28. Upon issuance of the IVDS licenses, a qualifying small or very small business may elect to pay the balance of its net winning bids (actual bids less the applicable bidding credits) in quarterly installments over the five-year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for five-year U.S. Treasury obligations. While the Commission will endeavor to issue all licenses at the same time, bidders should note that license issue dates and corresponding interest rates may vary between the licenses. Payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining three years of the license term. A license issued to an eligible small business that elects installment payments shall be conditioned on the full and timely performance of the license holder's quarterly payments.

(4) Application Showing

29. Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements to bid as a small business or very small business in this auction, and are subject to audits to confirm their eligibility. *See* 47 CFR Section 95.816(d)(3).

(5) Unjust Enrichment

30. IVDS winning bidders should note that unjust enrichment provisions apply to winning bidders who use bidding credits or installment financing and subsequently assign or transfer control of their IVDS licenses to an entity that does not qualify for the special financial provisions. *See* 47 CFR Section 1.2111 (c)–(d).

III. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due Tuesday, January 21, 1997

31. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application to the Commission. This application must be received at the Commission's Gettysburg office by 5:30 p.m. EST on Tuesday, January 21, 1997. Late applications will not be accepted.

32. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an

applicant will have to submit an upfront payment. See Part 3.C below.

(1) Filing Options

33. Applicants are encouraged to file their applications electronically in order to take advantage of the greater efficiencies and convenience of electronic filing. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application, and (b) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and *must bid telephonically,* unless the FCC Form 175 is amended electronically. The following is a brief description of each filing method.

(a) Electronic filing. 34. Applicants wishing to file electronically may generally do so on a 24-hour basis beginning at about the same time as release of the Bidder Information Package. All the information required to file the FCC Form 175 electronically (*i.e.*, software, help files and configuration samples) will be available over both the Internet and the FCC's Bulletin Board System (''BBS''). Information about downloading, installing, and running the FCC Form 175 application software is included in Attachment B to this Public Notice.

(b) Manual filing. 35. Auction applicants will be permitted to file their FCC Form 175 applications in hard copy, with microfiche or 3.5-inch diskette attachments where any manually filed FCC Form 175 and 175–S exceeds five pages in length. Manual filers must verify that they are using the FCC Form 175 marked ''October 1995'' in the lower right corner. Earlier versions of the form will not be accepted for filing. Copies of FCC Forms 175 and 175–S will be included in the Bidder Information Package, or can be obtained by calling 202–418–FORM.

36. Manual applications may be submitted by hand delivery (including private ''overnight'' courier), or by U.S. mail (certified mail with return receipt recommended). They must be addressed to:

FCC Form 175 Filing, Auction No. 13,
Federal Communications Commission,
Office of Operations, 1270 Fairfield Road,
Gettysburg, PA 17325–7245

Note: Manual applications delivered to any other location will not be accepted.

(2) Completion of the FCC Form 175

37. Applicants should carefully review 47 CFR Sections 1.2105 and 95.816, and must complete all items on the FCC Form 175 (and 175–S, if applicable). Instructions for completing the FCC Form 175 will be contained in the Bidder Information Package and are in Attachment C to this Public Notice.

38. Failure to sign a manually filed FCC Form 175 or failure to submit the required ownership information (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

B. Application Processing and Minor Corrections

39. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing. Then it will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

40. As described more fully in the Commission's rules, after the January 21, 1997 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or sign the application). *See* 47 CFR Section 95.816(c)(2)(i).

C. Upfront Payments—Due Monday, February 3, 1997

41. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice (FCC Form 159). All upfront payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, by Monday, February 3, 1997, at the time specified below (which varies based on method of payment).

Please note that:

* All payments must be made in U.S. dollars.

* All payments must be made by wire transfer (preferred method) or cashier's check, and payable to the ''Federal Communications Commission'' or ''FCC.'' No personal checks, credit card payments, or other form of payment will be accepted.

* Upfront payments for Auction 13 go to a different lockbox number from the one used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

* Failure to deliver the upfront payment by the deadline specified below will result in dismissal of the application and disqualification from participation in the auction.

(1) Wire Transfers

42. The FCC strongly encourages applicants to make their upfront payments by wire transfer, which experience has shown provides the greatest reliability and efficiency. Wire transfer payments must be received by 6:00 p.m. EST on Monday, February 3, 1997. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC—910–0171
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
FCC ACCOUNT NO. (same as FCC Form 159, Block 1)
PAYMENT TYPE CODE (same as FCC Form 159, Block 14A: ''AWIU'')
FCC CODE (same as FCC Form 159, Block 17A: ''13'')
PAYOR NAME (same as FCC Form 159, Block 3)
LOCKBOX NO. 358430

Note: The BNF and Lockbox No. are specific to the upfront payments for IVDS; do not use BNF or Lockbox numbers from previous auctions.

43. Applicants making upfront payments by wire transfer must fax a completed FCC Form 159 to Mellon Bank at 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event #13''.

(2) Cashier's Checks

44. Cashier's checks must be drawn on financial institutions whose deposits are insured by the Federal Deposit Insurance Corporation, and must be received by 11:59 p.m. EST on Monday, February 3, 1997. Each bidder should submit a single check and FCC Form 159 covering its entire upfront payment. But if payments for more than one bidder are sent together, each bidder's check and the associated FCC Form 159 must be in a separate inside envelope.

45. For delivery by U.S. Postal Service, send cashier's check(s) and accompanying FCC Form 159(s) to:

Mellon Bank, Attn: Upfront Payments Auction # 13, P.O. Box 358430, Pittsburgh, PA 15251–5430

46. For delivery in person or by courier or messenger service, send cashier's check(s) and accompanying FCC Form 159(s) to:

Mellon Bank, Attn: Wholesale Lockbox Shift Supervisor, 27th Floor (153–2713), 3 Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA 15259–0001

(Note: Please indicate on the inside envelope ''Lockbox No. 358430'').

(3) FCC Form 159

47. Each upfront payment must be accompanied by a completed FCC Remittance Advice (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Instructions for completing FCC Form 159 will be contained in the Bidder Information Package.

(4) Amount of Upfront Payment

48. The amount of the upfront payment required to participate in Auction No. 13 is $9,000 per MSA license and $2,500 per RSA license. The upfront payment associated with each license offered is listed in Attachment A to this Public Notice.

49. A bidder should calculate its total upfront payment on the basis of the largest combination of bidding units on which the bidder anticipates being active in any single round of bidding. The number of bidding units associated with any particular license equals the amount of the upfront payment for that license, as set forth in Attachment A. The combination of bidding units on which a bidder is active in a round equals the sum of the bidding units associated with the licenses on which the bidder has submitted a bid, or on which the bidder is the standing high bidder.

50. The upfront payment submitted by each applicant is not attributed to specific licenses but instead will define the largest combination of bidding units on which the applicant will be permitted to bid in any round of bidding. Thus, if an applicant submits a $16,500 total upfront payment, the applicant could be active in any single round on three RSAs and one MSA, or on any combination of licenses for which the sum of associated bidding units does not exceed 16,500.

51. Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment. As explained in Parts 4.A(2) and 4.A(4) below, bidders will be required to remain active in each round of the auction on a specified percentage of bidding units reflected in their upfront payments in order to retain their current eligibility.

(5) Refunds

52. Because experience with prior auctions has shown that, in most cases, wire transfers provide quicker and more efficient refunds than paper checks, the FCC currently intends to use wire transfers for all Auction 13 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: William Koch, at 202–418–2843. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number before it can disburse refunds.) Eligibility for refunds is discussed later in Part 5.D.

D. Auction Registration

53. No later than five business days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and who have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

54. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids, sent only to the contact person and applicant address listed in the FCC Form 175.

55. Applicants who do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant who has not received both mailings within three business days after the release of the qualified bidders public notice should contact the FCC Wireless Consumer Assistance Branch at 800–322–1117. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

56. Qualified bidders must be aware that lost login codes, passwords or bidder identification numbers can only be replaced by appearing in person at the FCC Auction Headquarters located at 2 Massachusetts Avenue, NE, Washington, DC 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

57. Qualified bidders who file or amend the FCC Form 175 electronically may purchase remote electronic bidding software for $175.00, including shipping and handling. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction 13.) Information about this software and an order form will be included in the Bidder Information Package. Bidders who order remote bidding software by the February 4, 1997 deadline will receive it with the registration mailings.

F. Mock Auction

58. All applicants whose FCC Form 175s have been accepted for filing will be eligible to participate in a mock auction on February 12–13, 1997. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation is strongly recommended. Details will be announced by public notice.

IV. Auction Event

A. Auction Structure

(1) Simultaneous Multiple Round Auction

59. The two licenses (Frequency Blocks ''A'' and ''B'') in each of the 428 RSAs, and the 125 defaulted MSA licenses will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

(2) Activity Rule

60. As explained in Part 3.C(4) above, an applicant's upfront payment determines its maximum bidding eligibility in any single round of bidding.

61. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than waiting until the end before

participating. A bidder that does not satisfy the activity rule either loses bidding eligibility or uses an activity rule waiver, as explained in Part 4.A(3) below.

62. A bidder is considered ''active'' on a license in the current round if it either is the high bidder at the end of the previous round's bid withdrawal period, or submits an acceptable bid (see Part 4.B(2) below) in the current round. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility and increases as the auction progresses, as described in Part 4.A(4) below.

(3) Activity Rule Waivers

63. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

64. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver in any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic election as discussed below and more fully explained in the Bidder Information Package.

65. A bidder with insufficient activity who wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bid submission period. In this case, the bidder's eligibility is permanently reduced as described in Part 4.A(4) below, and it will not be permitted to later regain its lost bidding eligibility.

66. Finally, a bidder may proactively use an activity rule waiver in a way that is not necessarily related to the bidder's activity level. If a bidder submits a proactive waiver during a bid submission period in which no bids are submitted, the auction will remain open. (Note that an automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.) Thus in the later rounds of the auction, if a bidder does not intend to bid but wants to ensure that the auction does not close, it should enter a proactive waiver in place of a bid.

(4) Auction Stages

67. The auction is composed of three stages, which are each defined by an increasing activity rule:

68. Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 50 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by two (2).

69. Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 80 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

70. Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

71. Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bid submission period of the first round following a stage transition. This is especially critical for bidders who have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level either by using the remote bidding software's bid submission module or by calling a telephone bid assistant.

(5) Stage Transitions

72. The auction will start in Stage One. Under the Commission's general guidelines, the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, then from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on ten percent or less of the spectrum being auctioned (as measured in bidding units). However, the FCC retains the discretion to accelerate the auction by announcing that the next stage will begin in the next bidding round.

(6) Auction Stopping Rules

73. Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license or applies a proactive waiver.

74. The FCC retains the discretion, however, to keep an auction open even if no new acceptable bids and no proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

75. Further, in its discretion, the FCC reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding three rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC will probably first attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension or Cancellation

76. By public notice or by announcement during the auction, the FCC may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the FCC, in its sole discretion, may elect to: resume the

auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the FCC to delay or suspend the auction.

B. Bidding Procedures

(1) Round Structure

77. Generally, there will be one bidding round per day during the early portion of the auction. Each bidding round contains the following performance and review periods:

- Bid submission period
- Bid submission round results
- Bid withdrawal period
- Bid withdrawal round results

78. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the performance and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Minimum Acceptable Bids

79. There will be no minimum opening bid and no minimum bid increment for a license until the license has received an initial bid. Once there is a standing high bid on a license, the minimum bid increment for that license will be set initially at the greater of ten percent of the previous high bid or the amount of the upfront payment for the license. The Commission retains the discretion to vary the minimum bid increments in each round of the auction for individual licenses or groups of licenses by announcement prior to each round.

(3) High Bids

80. Each bid will be date- and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid.

(4) Bid Submission

81. Each bidder may submit bids only once in each round for as many licenses as it is eligible. Eligibility in the first round of the auction is determined by: (a) the licenses applied for on FCC Form 175 and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175.

82. Bidders who file the FCC Form 175 electronically (or amend electronically by the minor correction deadline) and purchase remote electronic bidding software may place their bids and withdrawals either electronically or telephonically, as they wish or circumstances warrant. Each electronic bidder will be required to login to the FCC auction system during the bid submission period using the FCC account number, bidder identification number, and confidential security codes provided in the registration materials. Bidders can download and print bid confirmations after they submit their bids electronically.

83. To place a bid telephonically, a bidder must call the FCC Bidding Line during the bid submission period. This telephone number will be provided only to qualified bidders in the registration materials. The bid operator will request the bidder's FCC account number, bidder identification number, confidential security codes, and name of the authorized bidder. The FCC will fax a hard copy bid confirmation to those who bid by telephone.

(5) Bid Withdrawal

84. A high bidder that wants to withdraw one or more of its standing high bids during the course of the auction may do so during any bid withdrawal period, subject to the bid withdrawal payment specified in Section 1.2104(g) of the Commission's Rules. The procedure for withdrawing a high bid and receiving a withdrawal confirmation is essentially the same as the bid submission procedure described in Part 4.B(4) above. To prevent strategic delays to the close of the auction, the FCC retains the discretion to limit the number of times that a bidder may re-bid on a license from which it has withdrawn a high bid.

85. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to in the case of tie bids, the amount of the withdrawn bid, without any increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

(6) Round Results

86. Upon the conclusion of each bid submission period, the FCC will compile reports of all bids placed, current high bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. The process of compilation and verification is not instantaneous, but the reports will be available before the start of the bid withdrawal period.

87. Following each bid withdrawal period, the FCC will compile additional reports reflecting any high bids withdrawn, post-withdrawal high bids, and minimum accepted bids for the next bid submission period. Again, bidders should allow some time for compilation and verification.

88. Reports reflecting bidders' identities and bidder identification numbers will be available before and during the auction. Thus, bidders will know in advance of the auction the identities of the bidders against whom they are bidding.

(7) Auction Announcements

89. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(8) Other Matters

90. As noted in Part 3.B above, after the short-form filing deadline applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Electronic filers should make these changes on-line, and submit a letter to Kathleen O'Brien Ham, Chief, Auctions Division (and mail a carbon copy to Ruby Hough, Auctions Division), briefly summarizing the changes. Manual filers must send a hard-copy amendment to the address given in Part 3.A(1)(b) above, plus fax a copy to 202–418–2082. Questions about other changes should be directed to the FCC Auctions Division at 202–418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

91. After bidding has ended, the FCC will issue a public notice declaring the auction closed (''auction closing notice''), identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

92. Within five business days after release of the auction closing notice, each winning bidder must submit sufficient funds to bring the total amount of money on deposit with the government (upfront payment less any

withdrawal payments) to 20 percent, unless it is an eligible small or very small business who elected to pay using the installment payment plan, then it must submit sufficient funds to bring the total amount of money on deposit with the government (upfront payment less any withdrawal payments) to 10 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR Section 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under Section 1.2104(g)(1) of the Commission's Rules, as discussed in Part 4.B(5) above. Upfront payments are applied first to satisfy any outstanding bid withdrawal payments before being applied toward down payments.

B. Long-Form Application (FCC Form 600)

93. Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed FCC Form 600 application and required exhibits for each IVDS license won through the auction. Winning small business or very small business bidders must include an exhibit demonstrating their eligibility for the small business incentives. A copy of FCC Form 600 will be included in the Bidder Information Package. *See* 47 CFR Sections 1.2107(c)-(d) and 95.816(c)(2)(ii). Further FCC Form 600 filing instructions will be provided to auction winners at the close of the auction.

94. The FCC Form 600 may be filed electronically. Alternatively, a hard copy plus required microfiche or 3.5″ properly-formatted diskette copies must be sent to: FCC Form 600 Filing, Auction No. 13, Federal Communications Commission, Office of Operations, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

C. Application Processing and Grant; Final Payments and Installment Payments

95. Once a high bidder has submitted its down payment and filed an acceptable FCC Form 600 application, the FCC will release a public notice announcing acceptance of the long-form application. After the FCC reviews an applicant's FCC Form 600, it will determine whether there are any reasons why the license should not be granted. If there are none, the Commission will grant the license conditioned on timely payments for the license; otherwise it will take appropriate action.

96. Within five (5) business days after conditional license grant:

* Unless paying under an installment plan, winning bidders are required to pay the balance of their winning bids in a lump sum. 47 CFR Section 95.816(c)(5).

* Eligible winning bidders who elected to pay for their licenses under the installment payment plan must bring the total amount on deposit with the FCC up to 20 percent of their net winning bids. *See* 47 CFR Section 1.2110(e). These bidders will be required to execute a promissory note and security agreement for the balance due. The payments will be paid off in quarterly installments under the terms described in Part 2.B(3) above.

Winning bidders will receive further instructions and detailed payment information after the auction closes.

D. Refund of Remaining Upfront Payment Balance

97. All applicants who submitted upfront payments but were not winning bidders for any IVDS license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

98. Bidders who drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders who reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders who have exhausted all their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request, along with a Taxpayer Identification Number (''TIN'') and a copy of their bidding eligibility screen print, to: Federal Communications Commission; Attn: William Koch, 1919 M Street, N.W., Room 452, Washington, D.C. 20554.

99. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact William Koch at 202–418–1995.

E. Default and Disqualification

100. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, fails to make an installment payment, or is otherwise disqualified) will be subject to the payments described in Sections 1.2104(g) and 1.2109 of the Commission's Rules. In the event that the amount of those payments cannot be determined (*i.e.* until the license has been reauctioned), the FCC can require a ''deposit'' of at least three (3) percent of the defaulted bid amount. *See* In Re C. H. PCS, Inc., BTA No. B347 Frequency Block C, *Order*, DA 96–1825 (released November 4, 1996). *See also* Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules, *Public Notice*, DA 96–41 (April 4, 1996). Under certain circumstances the FCC can also reauction the license to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 CFR Section 1.2109(b)–(c). In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the FCC may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR Section 1.2107(d).

F. Service and Construction Requirements

101. Construction requirements for IVDS licensees include making the service available to at least 30 percent of the population or land area within the service area within three years of the grant of an IVDS license, and fifty percent of the population or land area within five years of the grant of an IVDS license. *See* 47 CFR Section 95.833.

102. Subject to the initial construction requirements in Section 95.833 of the Commission's Rules as described above, each IVDS system licensee must make service available to at least fifty percent of the population or land area located within the service area. *See* 47 CFR Section 95.831.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Attachment A

List of Licenses Offered

The following tables list the 981 IVDS licenses To Be auctioned. The tables identify the following: the 125 MSA licenses where winning bidders from a previous auction have been found to be in default, plus two licenses (Frequency Blocks ''A'' and ''B'') in each of the 428 RSAs.

LIST OF DEFAULTED IVDS MSA LICENSES TO BE REAUCTIONED

Market No. and metropolitan statistical area	License No.	Population
MSA—Arkansas: M165—Fort Smith	ZVM165A	219,181
MSA—Arizona: M026—Phoenix	ZVM026A	2,122,101
MSA—California:		
M018—San Diego	ZVM018A	2,498,016
M018—San Diego	ZVM018B	2,498,016
M027—San Jose	ZVM027A	1,497,577
M035—Sacramento	ZVM035A	1,355,107
M107—Stockton	ZVM107A	480,628
M124—Santa Barbara-Santa Maria-Lompoc	ZVM124A	369,608
M126—Salinas-Seaside-Monterey	ZVM126A	355,660
M142—Modesto	ZVM142A	370,522
MSA—Colorado: M019—Denver-Boulder	ZVM019A	1,851,389
MSA—Connecticut:		
M042—Bridgeport-Stanford-Norwalk-Danbury	ZVM042A	827,645
M049—New Haven-West Haven-Waterbury-Meriden	ZVM049A	804,219
M154—New London-Norwich	ZVM154B	254,957
MSA—Delaware: M069—Wilmington	ZVM069A	578,587
MSA—Florida:		
M012—Miami-Fort Lauderdale-Hollywood	ZVM012A	3,192,582
M022—Tampa-St. Petersburg	ZVM022A	1,966,844
M022—Tampa-St. Petersburg	ZVM022B	1,966,844
M051—Jacksonville	ZVM051A	925,213
M051—Jacksonville	ZVM051B	925,213
M060—Orlando	ZVM060B	1,072,748
M072—West Palm Beach-Boca Raton	ZVM072A	863,518
M072—West Palm Beach-Boca Raton	ZVM072B	863,518
M114—Lakeland-Winter Haven	ZVM114A	405,382
M114—Lakeland-Winter Haven	ZVM114B	405,382
M137—Melbourne-Titusville-Palm Bay	ZVM137B	398,978
M146—Daytona Beach	ZVM146B	370,712
M164—Fort Myers	ZVM164B	335,113
M167—Sarasota	ZVM167B	277,776
M168—Tallahassee	ZVM168A	247,800
M168—Tallahassee	ZVM168B	247,800
M192—Gainesville	ZVM192B	204,111
M208—Fort Pierce	ZVM208A	251,071
M211—Bradenton	ZVM211A	211,707
M211—Bradenton	ZVM211B	211,707
M245—Ocala	ZVM245A	194,833
M245—Ocala	ZVM245B	194,833
M283—Panama City	ZVM283B	126,994
MSA—Georgia: M017—Atlanta	ZVM017A	2,695,480
MSA—Hawaii: M050—Honolulu	ZVM050A	836,231
MSA—Iowa:		
M195—Cedar Rapids	ZVM195B	168,767
M201—Waterloo-Cedar Falls	ZVM201B	146,611
M253—Sioux City	ZVM253A	115,018
M296—Iowa City	ZVM296B	96,119
MSA—Illinois:		
M103—Peoria	ZVM103A	339,172
M176—Springfield	ZVM176B	189,550
M305—Alton-Granite City	ZVM305B	20,539
MSA—Indiana:		
M028—Indianapolis	ZVM028A	1,249,822
M054—Gary-Hammond-East Chicago	ZVM054B	604,526
M129—South Bend-Mishawaka	ZVM129B	289,234
M185—Terre Haute	ZVM185A	166,578
MSA—Louisiana:		
M029—New Orleans	ZVM029B	1,156,383
M100—Shreveport	ZVM100A	376,330
M174—Lafayette	ZVM174A	208,740
M184—Houma-Thibodaux	ZVM184B	182,842
M197—Lake Charles	ZVM197A	168,134
M205—Alexandria	ZVM205B	149,082
M219—Monroe	ZVM219B	142,191
MSA—Maryland: M014—Baltimore	ZVM014A	2,348,219
MSA—Michigan:		
M005—Detroit/Ann Arbor	ZVM005A	4,531,636
M094—Saginaw-Bay City-Midland	ZVM094A	399,320
M132—Kalamazoo	ZVM132A	293,471
M181—Muskegon	ZVM181B	181,437
MSA—Minnesota:		
M015—Minneapolis	ZVM015A	2,438,203

LIST OF DEFAULTED IVDS MSA LICENSES TO BE REAUCTIONED—Continued

Market No. and metropolitan statistical area	License No.	Population
M198—St. Cloud	ZVM198B	190,921
MSA—Missouri:		
M011—St. Louis	ZVM011A	2,423,560
M024—Kansas City	ZVM024A	1,447,336
M275—St. Joseph	ZVM275A	97,715
MSA—North Carolina:		
M047—Greensboro-Winston-Salem-High Point	ZVM047A	914,232
M061—Charlotte-Gastonia	ZVM061A	770,737
M061—Charlotte-Gastonia	ZVM061B	770,737
M071—Raleigh-Durham	ZVM071A	699,066
M183—Asheville	ZVM183A	191,774
M280—Burlington	ZVM280A	108,213
MSA—New Hampshire:		
M133—Manchester-Nashua	ZVM133A	336,073
M156—Portsmouth-Dover-Rochester	ZVM156B	268,820
MSA—New Jersey:		
M062—New Brunswick-Perth Amboy-Sayreville	ZVM062B	671,780
M134—Atlantic City	ZVM134B	319,416
M228—Vineland-Millville-Bridgeton	ZVM228A	138,053
MSA—Nevada:		
M093—Las Vegas	ZVM093A	741,459
M093—Las Vegas	ZVM093B	741,459
M171—Reno	ZVM171A	254,667
MSA—New York:		
M044—Albany-Schenectady-Troy	ZVM044A	829,565
M115—Utica-Rome	ZVM115A	316,633
M122—Binghamton	ZVM122A	304,877
M144—Orange County	ZVM144A	307,647
MSA—Ohio:		
M031—Columbus	ZVM031A	1,217,150
M040—Dayton	ZVM040A	843,835
M052—Akron	ZVM052B	657,575
M087—Canton	ZVM087B	394,106
M180—Springfield	ZVM180A	183,567
MSA—Oklahoma:		
M045—Oklahoma City	ZVM045A	929,828
M045—Oklahoma City	ZVM045B	929,828
M057—Tulsa	ZVM057A	742,320
MSA—Oregon: M030—Portland	ZVM030A	1,457,344
MSA—Pennsylvania:		
M013—Pittsburgh	ZVM013A	2,097,447
M013—Pittsburgh	ZVM013B	2,097,447
M056—Northeast Pennsylvania	ZVM056A	642,897
M084—Harrisburg	ZVM084A	474,242
M118—Reading	ZVM118A	336,523
MSA—South Carolina: M227—Anderson	ZVM227A	145,196
MSA—South Dakota: M289—Rapid City	ZVM289A	103,221
MSA—Tennessee:		
M036—Memphis	ZVM036A	1,747
M046—Nashville-Davidson	ZVM046A	985,026
M046—Nashville-Davidson	ZVM046B	985,026
MSA—Texas:		
M033—San Antonio	ZVM033A	1,302,099
M292—Sherman-Denison	ZVM292A	95,021
MSA—Utah:		
M039—Salt Lake City-Ogden	ZVM039A	1,098,828
M039—Salt Lake City-Ogden	ZVM039B	1,098,828
M159—Provo-Orem	ZVM159A	263,590
M159—Provo-Orem	ZVM159B	263,590
MSA—Virginia:		
M043—Norfolk-Virginia Beach-Portsmouth	ZVM043A	976,058
M059—Richmond	ZVM059A	739,735
M104—Newport News-Hampton	ZVM104A	433,785
M104—Newport News-Hampton	ZVM104B	433,785
M157—Roanoke	ZVM157A	228,849
M235—Petersburg-Colonial Heights-Hopewell	ZVM235A	125,905
M256—Charlottesville	ZVM256B	131,107
MSA—Washington: M020—Seattle-Everett	ZVM020A	1,972,961
MSA—Wisconsin:		
M021—Milwaukee	ZVM021A	1,432,149
M244—Kenosha	ZVM244A	128,181
MSA—Puerto Rico:		
M091—San Juan-Caguas	ZVM091A	1,894,438

LIST OF DEFAULTED IVDS MSA LICENSES TO BE REAUCTIONED—Continued

Market No. and metropolitan statistical area	License No.	Population
M091—San Juan-Caguas	ZVM091B	1,894,438
M147—Ponce	ZVM147B	256,818
M202—Arecibo	ZVM202B	174,880

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED

Market No. and State	Lead county	License No.	Population
RSA—Alabama:			
R307	1. Franklin	ZVR307A/B	318,294
R308	2. Jackson	ZVR308A/B	121,990
R309	3. Lamar	ZVR309A/B	135,303
R310	4. Bibb	ZVR310A/B	136,149
R311	5. Cleburne	ZVR311A/B	206,735
R312	6. Washington	ZVR312A/B	117,474
R313	7. Butler	ZVR313A/B	163,487
R314	8. Lee	ZVR314A/B	163,907
RSA—Alaska:			
R315	1. Wade Hampton	ZVR315A/B	117,500
R316	2. Bethel	ZVR316A/B	134,766
R317	3. Haines	ZVR317A/B	68,989
RSA—Arizona:			
R318	1. Mohave	ZVR318A/B	93,947
R319	2. Coconino	ZVR319A/B	204,305
R320	3. Navajo	ZVR320A/B	139,249
R321	4. Yuma	ZVR321A/B	120,739
R322	5. Gila	ZVR322A/B	156,595
R323	6. Graham	ZVR323A/B	161,862
RSA—Arkansas:			
R324	1. Madison	ZVR324A/B	66,235
R325	2. Marion	ZVR325A/B	82,204
R326	3. Sharp	ZVR326A/B	98,260
R327	4. Clay	ZVR327A/B	201,056
R328	5. Cross	ZVR328A/B	122,599
R329	6. Cleburne	ZVR329A/B	93,125
R330	7. Pope	ZVR330A/B	104,770
R331	8. Franklin	ZVR331A/B	63,880
R332	9. Polk	ZVR332A/B	62,480
R333	10. Garland	ZVR333A/B	144,511
R334	11. Hempstead	ZVR334A/B	67,056
R335	12. Ouachita	ZVR335A/B	190,582
RSA—California:			
R336	1. Del Norte	ZVR336A/B	199,172
R337	2. Modoc	ZVR337A/B	57,015
R338	3. Alpine	ZVR338A/B	125,908
R339	4. Madera	ZVR339A/B	303,190
R340	5. San Luis Obispo	ZVR340A/B	217,162
R341	6. Mono	ZVR341A/B	28,237
R342	7. Imperial	ZVR342A/B	109,303
R343	8. Tehama	ZVR343A/B	90,698
R344	9. Mendocino	ZVR344A/B	130,976
R345	10. Sierra	ZVR345A/B	81,828
R346	11. El Dorado	ZVR346A/B	125,995
R347	12. Kings	ZVR347A/B	101,469
RSA—Colorado:			
R348	1. Moffat	ZVR348A/B	40,988
R349	2. Logan	ZVR349A/B	60,151
R350	3. Garfield	ZVR350A/B	233,884
R351	4. Park	ZVR351A/B	60,064
R352	5. Elbert	ZVR352A/B	23,712
R353	6. San Miguel	ZVR353A/B	59,620
R354	7. Saguache	ZVR354A/B	42,362
R355	8. Kiowa	ZVR355A/B	44,214
R356	9. Costilla	ZVR356A/B	27,520
RSA—Connecticut:			
R357	1. Litchfield	ZVR357A/B	174,092
R358	2. Windham	ZVR358A/B	102,525
RSA—Delaware: R359	1. Kent	ZVR359A/B	224,222
RSA—Florida:			
R360	1. Collier	ZVR360A/B	177,872
R361	2. Glades	ZVR361A/B	195,858

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
R362	3. Hardee	ZVR362A/B	154,339
R363	4. Citrus	ZVR363A/B	378,311
R364	5. Putnam	ZVR364A/B	93,771
R365	6. Dixie	ZVR365A/B	46,175
R366	7. Hamilton	ZVR366A/B	90,575
R367	8. Jefferson	ZVR367A/B	50,554
R368	9. Calhoun	ZVR368A/B	37,051
R369	10. Walton	ZVR369A/B	101,832
R370	11. Monroe	ZVR370A/B	78,024
RSA—Georgia:			
R371	1. Whitfield	ZVR371A/B	196,220
R372	2. Dawson	ZVR372A/B	251,641
R373	3. Chattooga	ZVR373A/B	193,219
R374	4. Jasper	ZVR374A/B	115,644
R375	5. Haralson	ZVR375A/B	211,405
R376	6. Spalding	ZVR376A/B	184,488
R377	7. Hancock	ZVR377A/B	126,095
R378	8. Warren	ZVR378A/B	145,920
R379	9. Marion	ZVR379A/B	114,598
R380	10. Bleckley	ZVR380A/B	141,440
R381	11. Toombs	ZVR381A/B	144,200
R382	12. Liberty	ZVR382A/B	182,600
R383	13. Early	ZVR383A/B	140,823
R384	14. Worth	ZVR384A/B	220,614
RSA—Hawaii:			
R385	1. Kauai	ZVR385A/B	51,177
R386	2. Maui	ZVR386A/B	100,504
R387	3. Hawaii	ZVR387A/B	120,317
RSA—Idaho:			
R388	1. Boundary	ZVR388A/B	203,009
R389	2. Idaho	ZVR389A/B	59,974
R390	3. Lemhi	ZVR390A/B	14,541
R391	4. Elmore	ZVR391A/B	119,673
R392	5. Butte	ZVR392A/B	139,749
R393	6. Clark	ZVR393A/B	264,028
RSA—Illinois:			
R394	1. Jo Daviess	ZVR394A/B	305,145
R395	2. Bureau	ZVR395A/B	252,074
R396	3. Mercer	ZVR396A/B	203,155
R397	4. Adams	ZVR397A/B	203,299
R398	5. Mason	ZVR398A/B	93,061
R399	6. Montgomery	ZVR399A/B	196,556
R400	7. Vermillion	ZVR400A/B	235,424
R401	8. Washington	ZVR401A/B	328,966
R402	9. Clay	ZVR402A/B	152,812
RSA—Indiana:			
R403	1. Newton	ZVR403A/B	204,232
R404	2. Kosciusko	ZVR404A/B	160,094
R405	3. Huntington	ZVR405A/B	145,175
R406	4. Miami	ZVR406A/B	179,002
R407	5. Warren	ZVR407A/B	115,586
R408	6. Randolph	ZVR408A/B	217,938
R409	7. Owen	ZVR409A/B	213,199
R410	8. Brown	ZVR410A/B	240,233
R411	9. Decatur	ZVR411A/B	135,763
RSA—Iowa:			
R412	1. Mills	ZVR412A/B	62,354
R413	2. Union	ZVR413A/B	50,932
R414	3. Monroe	ZVR414A/B	98,842
R415	4. Muscatine	ZVR415A/B	152,026
R416	5. Jackson	ZVR416A/B	107,815
R417	6. Iowa	ZVR417A/B	151,217
R418	7. Audubon	ZVR418A/B	54,289
R419	8. Monona	ZVR419A/B	54,769
R420	9. Ida	ZVR420A/B	63,665
R421	10. Humboldt	ZVR421A/B	180,876
R422	11. Hardin	ZVR422A/B	109,247
R423	12. Winneshiek	ZVR423A/B	114,478
R424	13. Mitchell	ZVR424A/B	66,821
R425	14. Kossuth	ZVR425A/B	109,439
R426	15. Dickinson	ZVR426A/B	84,222
R427	16. Lyon	ZVR427A/B	102,052

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
RSA—Kansas:			
R428	1. Cheyenne	ZVR428A/B	28,895
R429	2. Norton	ZVR429A/B	32,064
R430	3. Jewell	ZVR430A/B	54,477
R431	4. Marshall	ZVR431A/B	135,871
R432	5. Brown	ZVR432A/B	112,090
R433	6. Wallace	ZVR433A/B	20,329
R434	7. Trego	ZVR434A/B	82,345
R435	8. Ellsworth	ZVR435A/B	125,611
R436	9. Morris	ZVR436A/B	58,401
R437	10. Franklin	ZVR437A/B	103,641
R438	11. Hamilton	ZVR438A/B	80,134
R439	12. Hodgeman	ZVR439A/B	41,701
R440	13. Edwards	ZVR440A/B	30,701
R441	14. Reno	ZVR441A/B	171,589
R442	15. Elk	ZVR442A/B	154,509
RSA—Kentucky:			
R443	1. Fulton	ZVR443A/B	181,346
R444	2. Union	ZVR444A/B	125,113
R445	3. Meade	ZVR445A/B	294,851
R446	4. Spencer	ZVR446A/B	229,606
R447	5. Barren	ZVR447A/B	148,321
R448	6. Madison	ZVR448A/B	236,714
R449	7. Trimble	ZVR449A/B	155,259
R450	8. Mason	ZVR450A/B	113,300
R451	9. Elliott	ZVR451A/B	197,121
R452	10. Powell	ZVR452A/B	148,108
R453	11. Clay	ZVR453A/B	166,470
RSA—Louisiana:			
R454	1. Claiborne	ZVR454A/B	111,524
R455	2. Morehouse	ZVR455A/B	116,322
R456	3. De Soto	ZVR456A/B	156,029
R457	4. Caldwell	ZVR457A/B	71,634
R458	5. Beauregard	ZVR458A/B	372,532
R459	6. Iberville	ZVR459A/B	180,185
R460	7. West Feliciana	ZVR460A/B	170,894
R461	8. St. James	ZVR461A/B	103,312
R462	9. Plaquemines	ZVR462A/B	25,575
RSA—Maine:			
R463	1. Oxford	ZVR463A/B	81,610
R464	2. Somerset	ZVR464A/B	155,356
R465	3. Kennebec	ZVR465A/B	215,589
R466	4. Washington	ZVR466A/B	82,256
RSA—Maryland:			
R467	1. Garrett	ZVR467A/B	28,138
R468	2. Kent	ZVR468A/B	399,768
R469	3. Frederick	ZVR469A/B	150,208
RSA—Massachusetts:			
R470	1. Franklin	ZVR470A/B	70,092
R471	2. Barnstable	ZVR471A/B	204,256
RSA—Michigan:			
R472	1. Gogebic	ZVR472A/B	207,820
R473	2. Alger	ZVR473A/B	106,095
R474	3. Emmet	ZVR474A/B	142,463
R475	4. Cheboygan	ZVR475A/B	122,886
R476	5. Manistee	ZVR476A/B	142,765
R477	6. Roscommon	ZVR477A/B	130,445
R478	7. Newaygo	ZVR478A/B	222,175
R479	8. Allegan	ZVR479A/B	90,509
R480	9. Cass	ZVR480A/B	284,799
R481	10. Tuscola	ZVR481A/B	130,377
RSA—Minnesota:			
R482	1. Kittson	ZVR482A/B	49,617
R483	2. Lake Of The Woods	ZVR483A/B	59,788
R484	3. Koochiching	ZVR484A/B	57,162
R485	4. Lake	ZVR485A/B	14,283
R486	5. Wilkin	ZVR486A/B	200,399
R487	6. Hubbard	ZVR487A/B	230,924
R488	7. Chippewa	ZVR488A/B	164,980
R489	8. Lac qui Parle	ZVR489A/B	69,541
R490	9. Pipestone	ZVR490A/B	136,006
R491	10. Le Sueur	ZVR491A/B	225,271

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
R492	11. Goodhue	ZVR492A/B	200,652
RSA—Mississippi:			
R493	1. Tunica	ZVR493A/B	163,934
R494	2. Benton	ZVR494A/B	230,172
R495	3. Bolivar	ZVR495A/B	158,134
R496	4. Yalobusha	ZVR496A/B	124,283
R497	5. Washington	ZVR497A/B	162,430
R498	6. Montgomery	ZVR498A/B	179,882
R499	7. Leake	ZVR499A/B	173,575
R500	8. Claiborne	ZVR500A/B	153,922
R501	9. Copiah	ZVR501A/B	117,950
R502	10. Smith	ZVR502A/B	147,300
R503	11. Lamar	ZVR503A/B	175,210
RSA—Missouri:			
R504	1. Atchison	ZVR504A/B	44,488
R505	2. Harrison	ZVR505A/B	34,133
R506	3. Schuyler	ZVR506A/B	55,897
R507	4. De Kalb	ZVR507A/B	68,147
R508	5. Linn	ZVR508A/B	69,744
R509	6. Marion	ZVR509A/B	84,830
R510	7. Saline	ZVR510A/B	157,047
R511	8. Callaway	ZVR511A/B	92,590
R512	9. Bates	ZVR512A/B	74,660
R513	10. Benton	ZVR513A/B	83,161
R514	11. Moniteau	ZVR514A/B	138,175
R515	12. Maries	ZVR515A/B	117,406
R516	13. Washington	ZVR516A/B	85,321
R517	14. Barton	ZVR517A/B	93,482
R518	15. Stone	ZVR518A/B	96,560
R519	16. Laclede	ZVR519A/B	89,145
R520	17. Shannon	ZVR520A/B	52,288
R521	18. Perry	ZVR521A/B	111,570
R522	19. Stoddard	ZVR522A/B	197,439
RSA—Montana:			
R523	1. Lincoln	ZVR523A/B	131,234
R524	2. Toole	ZVR524A/B	37,175
R525	3. Phillips	ZVR525A/B	14,991
R526	4. Daniels	ZVR526A/B	41,685
R527	5. Mineral	ZVR527A/B	163,675
R528	6. Deer Lodge	ZVR528A/B	61,823
R529	7. Fergus	ZVR529A/B	27,310
R530	8. Beaverhead	ZVR530A/B	79,438
R531	9. Carbon	ZVR531A/B	30,796
R532	10. Prairie	ZVR532A/B	19,776
RSA—Nebraska:			
R533	1. Sioux	ZVR533A/B	91,049
R534	2. Cherry	ZVR534A/B	31,535
R535	3. Knox	ZVR535A/B	114,784
R536	4. Grant	ZVR536A/B	35,875
R537	5. Boone	ZVR537A/B	141,611
R538	6. Keith	ZVR538A/B	101,846
R539	7. Hall	ZVR539A/B	87,665
R540	8. Chase	ZVR540A/B	58,314
R541	9. Adams	ZVR541A/B	82,025
R542	10. Cass	ZVR542A/B	84,271
RSA—Nevada:			
R543	1. Humboldt	ZVR543A/B	35,118
R544	2. Lander	ZVR544A/B	41,343
R545	3. Storey	ZVR545A/B	90,607
R546	4. Mineral	ZVR546A/B	25,600
R547	5. White Pine	ZVR547A/B	13,039
RSA—New Hampshire:			
R548	1. Coos	ZVR548A/B	218,470
R549	2. Carroll	ZVR549A/B	204,631
RSA—New Jersey:			
R550	1. Hunterdon	ZVR550A/B	107,776
R551	2. Ocean	ZVR551A/B	433,203
R552	3. Sussex	ZVR552A/B	130,943
RSA—New Mexico:			
R553	1. San Juan	ZVR553A/B	233,568
R554	2. Colfax	ZVR554A/B	22,300
R555	3. Catron	ZVR555A/B	72,474

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
R556	4. Santa Fe	ZVR556A/B	229,211
R557	5. Grant	ZVR557A/B	51,744
R558	6. Lincoln	ZVR558A/B	226,366
RSA—New York:			
R559	1. Jefferson	ZVR559A/B	249,713
R560	2. Franklin	ZVR560A/B	229,131
R561	3. Chautauqua	ZVR561A/B	478,254
R562	4. Yates	ZVR562A/B	352,296
R563	5. Otsego	ZVR563A/B	374,182
R564	6. Columbia	ZVR564A/B	107,721
RSA—North Carolina:			
R565	1. Cherokee	ZVR565A/B	168,596
R566	2. Yancey	ZVR566A/B	152,380
R567	3. Ashe	ZVR567A/B	152,896
R568	4. Henderson	ZVR568A/B	311,333
R569	5. Anson	ZVR569A/B	125,092
R570	6. Chatham	ZVR570A/B	139,146
R571	7. Rockingham	ZVR571A/B	267,853
R572	8. Northampton	ZVR572A/B	275,610
R573	9. Camden	ZVR573A/B	113,371
R574	10. Harnett	ZVR574A/B	253,794
R575	11. Hoke	ZVR575A/B	206,285
R576	12. Sampson	ZVR576A/B	116,147
R577	13. Greene	ZVR577A/B	227,613
R578	14. Pitt	ZVR578A/B	221,295
R579	15. Cabarrus	ZVR579A/B	382,095
RSA—North Dakota:			
R580	1. Divide	ZVR580A/B	105,589
R581	2. Bottineau	ZVR581A/B	61,933
R582	3. Barnes	ZVR582A/B	94,616
R583	4. McKenzie	ZVR583A/B	67,057
R584	5. Kidder	ZVR584A/B	52,217
RSA—Ohio:			
R585	1. Williams	ZVR585A/B	125,902
R586	2. Sandusky	ZVR586A/B	254,715
R587	3. Ashtabula	ZVR587A/B	99,821
R588	4. Mercer	ZVR588A/B	212,256
R589	5. Hancock	ZVR589A/B	231,045
R590	6. Morrow	ZVR590A/B	420,766
R591	7. Tuscarawas	ZVR591A/B	248,100
R592	8. Clinton	ZVR592A/B	158,946
R593	9. Ross	ZVR593A/B	235,090
R594	10. Perry	ZVR594A/B	164,918
R595	11. Columbiana	ZVR595A/B	108,276
RSA—Oklahoma:			
R596	1. Cimarron	ZVR596A/B	25,743
R597	2. Harper	ZVR597A/B	51,110
R598	3. Grant	ZVR598A/B	200,099
R599	4. Nowata	ZVR599A/B	183,263
R600	5. Roger Mills	ZVR600A/B	61,277
R601	6. Seminole	ZVR601A/B	211,914
R602	7. Beckham	ZVR602A/B	123,249
R603	8. Jackson	ZVR603A/B	95,108
R604	9. Garvin	ZVR604A/B	195,350
R605	10. Haskell	ZVR605A/B	81,005
RSA—Oregon:			
R606	1. Clatsop	ZVR606A/B	157,979
R607	2. Hood River	ZVR607A/B	64,918
R608	3. Umatilla	ZVR608A/B	138,966
R609	4. Lincoln	ZVR609A/B	200,927
R610	5. Coos	ZVR610A/B	236,898
R611	6. Crook	ZVR611A/B	161,017
RSA—Pennsylvania:			
R612	1. Crawford	ZVR612A/B	195,402
R613	2. McKean	ZVR613A/B	87,922
R614	3. Potter	ZVR614A/B	95,025
R615	4. Bradford	ZVR615A/B	95,147
R616	5. Wayne	ZVR616A/B	67,910
R617	6. Lawrence	ZVR617A/B	363,436
R618	7. Jefferson	ZVR618A/B	214,174
R619	8. Union	ZVR619A/B	403,149
R620	9. Greene	ZVR620A/B	184,901

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
R621	10. Bedford	ZVR621A/B	182,838
R622	11. Huntingdon	ZVR622A/B	110,986
R623	12. Lebanon	ZVR623A/B	113,744
RSA—Rhode Island: R624	1. Newport	ZVR624A/B	87,194
RSA—South Carolina:			
R625	1. Oconee	ZVR625A/B	57,494
R626	2. Laurens	ZVR626A/B	218,293
R627	3. Cherokee	ZVR627A/B	129,308
R628	4. Chesterfield	ZVR628A/B	202,502
R629	5. Georgetown	ZVR629A/B	224,254
R630	6. Clarendon	ZVR630A/B	186,339
R631	7. Calhoun	ZVR631A/B	146,473
R632	8. Hampton	ZVR632A/B	154,480
R633	9. Lancaster	ZVR633A/B	186,013
RSA—South Dakota:			
R634	1. Harding	ZVR634A/B	34,170
R635	2. Corson	ZVR635A/B	23,180
R636	3. McPherson	ZVR636A/B	53,889
R637	4. Marshall	ZVR637A/B	66,705
R638	5. Custer	ZVR638A/B	23,434
R639	6. Haakon	ZVR639A/B	38,828
R640	7. Sully	ZVR640A/B	65,558
R641	8. Kingsbury	ZVR641A/B	72,547
R642	9. Hanson	ZVR642A/B	90,663
RSA—Tennessee:			
R643	1. Lake	ZVR643A/B	291,074
R644	2. Cannon	ZVR644A/B	150,599
R645	3. Macon	ZVR645A/B	312,163
R646	4. Hamblen	ZVR646A/B	236,628
R647	5. Fayette	ZVR647A/B	318,396
R648	6. Giles	ZVR648A/B	145,294
R649	7. Bledsoe	ZVR649A/B	233,580
R650	8. Johnson	ZVR650A/B	13,766
R651	9. Maury	ZVR651A/B	54,812
RSA—Texas:			
R652	1. Dallam	ZVR652A/B	51,249
R653	2. Hansford	ZVR653A/B	94,265
R654	3. Parmer	ZVR654A/B	141,211
R655	4. Briscoe	ZVR655A/B	42,500
R656	5. Hardeman	ZVR656A/B	78,545
R657	6. Jack	ZVR657A/B	80,087
R658	7. Fanni	ZVR658A/B	343,449
R659	8. Gaines	ZVR659A/B	135,303
R660	9. Runnels	ZVR660A/B	175,130
R661	10. Navarro	ZVR661A/B	290,035
R662	11. Cherokee	ZVR662A/B	271,075
R663	12. Hudspeth	ZVR663A/B	23,586
R664	13. Reeves	ZVR664A/B	31,937
R665	14. Loving	ZVR665A/B	48,293
R666	15. Concho	ZVR666A/B	148,918
R667	16. Burleson	ZVR667A/B	301,415
R668	17. Newton	ZVR668A/B	221,872
R669	18. Edwards	ZVR669A/B	185,431
R670	19. Atascosa	ZVR670A/B	203,052
R671	20. Wilson	ZVR671A/B	129,981
R672	21. Chambers	ZVR672A/B	20,088
RSA—Utah:			
R673	1. Box Elder	ZVR673A/B	108,393
R674	2. Morgan	ZVR674A/B	31,135
R675	3. Juab	ZVR675A/B	48,840
R676	4. Beaver	ZVR676A/B	74,114
R677	5. Carbon	ZVR677A/B	72,726
R678	6. Piute	ZVR678A/B	25,224
RSA—Vermont:			
R679	1. Franklin	ZVR679A/B	199,096
R680	2. Addison	ZVR680A/B	226,583
RSA—Virginia:			
R681	1. Lee	ZVR681A/B	145,936
R682	2. Tazewell	ZVR682A/B	133,258
R683	3. Giles	ZVR683A/B	196,787
R684	4. Bedford	ZVR684A/B	164,382
R685	5. Bath	ZVR685A/B	61,360

LIST OF RSA IVDS LICENSES TO BE REAUCTIONED—Continued

Market No. and State	Lead county	License No.	Population
R686	6. Highland	ZVR686A/B	201,289
R687	7. Buckingham	ZVR687A/B	85,736
R688	8. Amelia	ZVR688A/B	80,427
R689	9. Greensville	ZVR689A/B	81,019
R690	10. Frederick	ZVR690A/B	214,602
R691	11. Madison	ZVR691A/B	219,152
R692	12. Caroline	ZVR692A/B	164,573
RSA—Washington:			
R693	1. Clallam	ZVR693A/B	226,395
R694	2. Okanogan	ZVR694A/B	111,805
R695	3. Ferry	ZVR695A/B	46,158
R696	4. Grays Harbor	ZVR696A/B	102,516
R697	5. Kittitas	ZVR697A/B	103,950
R698	6. Pacific	ZVR698A/B	163,686
R699	7. Skamania	ZVR699A/B	24,905
R700	8. Whitman	ZVR700A/B	111,091
RSA—West Virginia:			
R701	1. Mason	ZVR701A/B	74,121
R702	2. Wetzel	ZVR702A/B	78,719
R703	3. Monongalia	ZVR703A/B	262,009
R704	4. Grant	ZVR704A/B	153,264
R705	5. Tucker	ZVR705A/B	127,441
R706	6. Lincoln	ZVR706A/B	188,246
R707	7. Raleigh	ZVR707A/B	217,070
RSA—Wisconsin:			
R708	1. Burnett	ZVR708A/B	102,381
R709	2. Bayfield	ZVR709A/B	81,328
R710	3. Vilas	ZVR710A/B	128,151
R711	4. Marinette	ZVR711A/B	111,821
R712	5. Pierce	ZVR712A/B	83,365
R713	6. Trempealeau	ZVR713A/B	110,131
R714	7. Wood	ZVR714A/B	268,803
R715	8. Vernon	ZVR715A/B	221,882
R716	9. Columbia	ZVR716A/B	354,513
R717	10. Door	ZVR717A/B	124,989
RSA—Wyoming:			
R718	1. Park	ZVR718A/B	46,900
R719	2. Sheridan	ZVR719A/B	70,889
R720	3. Lincoln	ZVR720A/B	136,489
R721	5. Niobrara	ZVR721A/B	126,956
R722	5. Converse	ZVR722A/B	11,128
RSA—Puerto Rico:			
R723	1. Rincon	ZVR723A/B	134,464
R724	2. Adjuntas	ZVR724A/B	243,212
R725	3. Ciales	ZVR725A/B	101,540
R726	4. Aibonito	ZVR726A/B	260,752
R727	5. Ceiba	ZVR727A/B	38,882
R728	6. Vieques	ZVR728A/B	7,076
R729	7. Culebra	ZVR729A/B	15,498
R730	1. St. Thomas	ZVR730A/B	51,670
R731	2. St. Croix	ZVR731A/B	50,139
RSA—Pacific Islands:			
R732	Guam	ZVR732A/B	133,000
R733	American Samoa	ZVR733A/B	47,000
R734	Northern Mariana Islands	ZVR734A/B	43,000

Attachment B

Electronic Filing of FCC Form 175

The Commission has implemented a remote access system to allow applicants to submit their FCC Form 175 applications electronically. The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day beginning at approximately the same time as the release of this Public Notice. FCC Form 175 applications that are filed electronically using this remote access system must be submitted and confirmed by 5:30 p.m. EST on January 21, 1997. Late applications or unconfirmed submissions of electronic data will not be accepted. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections.

Parties interested in filing FCC Form 175 applications electronically may do so via a (202) area code telephone service with no additional access charge or via the 900 number telephone service at a charge of $2.30 per minute. The first minute of connection time to the 900 number service will be at no charge.

Similarly, parties interested in reviewing FCC Form 175 applications electronically will do so via the 900 telephone service at a charge of $2.30 per minute. The first minute of

connection time to the 900 number service will be at no charge.

Those applicants who wish to file their FCC Form 175 electronically or review other FCC Form 175 applications on-line will need the following hardware and software:

Hardware Requirements

* CPU: Intel 80486 or above
* RAM: 8 MB (more recommended if you intend to open multiple applications)
* Hard Disk: 12MB available disk space
* Modem: v.32bis 14.4kbps Hayes compatible modem
* Monitor: VGA or above
* Mouse or other pointing device

To create backup installation disks for the FCC Form 175 Application, you will need the following:

* 1.44MB 3.5'' Floppy Drive
* Three blank MS-DOS formatted 1.44MB floppy disks

Software Requirements

* FCC Form 175 Application Software (available through the Internet and the FCC Bulletin Board System)
*15 Microsoft Windows 3.1 or Microsoft Windows for Workgroups v3.11 in an enhanced mode

Note: The FCC Form 175 Application has not been tested in a Macintosh, OS/2, or Windows95 environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 3.1 or Microsoft Windows for Workgroups v3.11 in an enhanced mode. This includes any other emulated Windows environment. If your Windows is in a networked environment, you should check with your local network administrator for any potential conflicts with the PPP (Point-to-Point Protocol) Dialer that is incorporated into the FCC Form 175 Application. This usually includes any TCP/IP installed network protocol.

The PPP Dialer that is incorporated into the FCC Form 175 Application will establish a point-to-point connection from your PC to the FCC Network. This point-to-point connection is not routed through the Internet.

Applicants who wish to file their FCC applications electronically or who wish to view other applicants' applications must first download the software from either the Internet or the FCC Bulletin Board System. Applicants must download the following compressed files to install the software: f175v9a.exe, f175v9b.exe, f175v9c.exe.

Internet Access:

In order to download the compressed files from the Internet, you will need to have access to the Internet and an ftp client software as follows:

**World Wide Web:* ftp://ftp.fcc.gov

Once you connect to the FCC ftp server, select the following directory and download the following files:

Directory: /pub/Auctions/IVDS/Auction—13/Programs
File: f175v9a.exe, f175v9b.exe, f175v9c.exe

* *FTP:* The following instructions are for the command line version of ftp.

1. Connect to the FCC ftp server by typing: ftp ftp.fcc.gov
2. At the user name prompt, type: anonymous [Enter]
3. At the password prompt, type your Internet e-mail address [Enter]
4. To allow the file to be downloaded type: binary [Enter]
5. Change your current directory to the Programs directory by typing: cd /pub/Auctions/IVDS/Auction—13/Programs [Enter]
6. Use the get command to download the files from the FCC ftp server by typing: get f175v9a.exe [Enter];
   get f175v9b.exe [Enter];
   get f175v9c.exe [Enter]
7. If you wish to exit, type: bye [Enter]

* *Gopher:* gopher.ftp.fcc.gov or use any gopher to get to ''all the gophers in the world'' then 'U.S.' then 'DC' then 'FCC'.

Dial-In Access to the FCC Auction Bulletin Board System (BBS)

The FCC Auction Bulletin Board System provides dial-in access for the FCC Form 175 Application Software. In order to access the FCC Auction BBS, use a communications package that can handle at least xmodem protocol (*e.g.,* pcAnyWhere, Telix, Procomm) to dial in to (202) 682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,N,1).

** For new users follow steps 1–5, otherwise go to step 6 in the ANSI Protocol Instructions section or the Non-ANSI Protocol Instructions section (whichever is applicable)*

1. Type New and press [Enter]. If the word ANSI is blinking, type Y for yes. If the word ANSI is not blinking, type N for No.
2. Type in your first and last name and press [Enter]. This will be your login name.
3. Type in Y and press [Enter] when asked to verify your login name.
4. Type in what you want your password to be and press [Enter]
5. Retype the password for verification and press [Enter]

** ANSI Protocol Instructions (Once the Account Is Generated)*

6. Type I for IVDS Auction Files and press [Enter]
7. Type B for Auction 13 and press [Enter]
8. Type P for Programs and press [Enter]
9. Type C for Current Library and press [Enter]
10. Move the cursor to the file named f175v9a.exe and type [Control]-D (hold the Ctrl key down and press the D key) for Download and press [Enter] (You may need to change the transfer protocol first—please see note below.)
11. The FCC Auction BBS will begin transferring the file. You may need to give your terminal emulation software a command to receive the file; please consult your terminal emulation software manual for instructions concerning how to do so.
12. Type X to return to the Programs menu. Repeat steps 10 and 11 to download the following files: f175v9b.exe, f175v9c.exe
13. Type X to return to the Programs menu, then type X again. Type X to Exit and press [Enter] and continue to do so until asked if you want to Exit the BBS. Press Y for Yes when asked to verify that you want to exit.

** Non-ANSI Protocol Instructions (Once the Account Is Generated):*

6. Type I for IVDS Auction Files and press [Enter]
7. Type B for Auction 13 and press [Enter]
8. Type P for Programs and press [Enter]
9. Type C for Current Library and press [Enter]
10. Type the letter next to the file named f175v9a.exe and press [Enter]
11. Type D for Download now and press [Enter] (You may need to change the transfer protocol first—please see the note below.)
12. The FCC Auction BBS will begin transferring the file. You may need to give your terminal emulation software a command to receive the file; please consult your terminal emulation software manual for instructions concerning how to do so.
13. Repeat steps 10 through 12 to download the following files: f175v9b.exe, f175v9c.exe
14. Type X, then type X to Exit and press [Enter] and continue to do so until asked if you want to Exit the BBS. Press Y for Yes when asked to verify that you want to exit.

Note: To download files, you will need to match the transfer protocol on your BBS account to the transfer protocol set in your terminal emulation software.

To set the BBS transfer protocol, return to the initial menu and type L for Library and [Enter],
P for Preferences and [Enter], and

P for File Transfer Protocol and [Enter].
Type the letter next to the protocol you desire and press [Enter].
You may now download files.

Extracting the FCC Form 175 Application

The FCC Form 175 Application files are downloaded in a self-extracting, compressed file format. When you have downloaded all of the compressed files for the FCC Form 175 Application, you must extract the FCC Form 175 Application from those files. To extract the software, start File Manager in the Main Program group, open the file folder where you downloaded the files, and double-click on f175v9a.exe. A message will appear listing the default directory to which the software will extract. If this directory does not exist, it will be created automatically. Press Unzip to begin extracting the software from the compressed file.

When the extraction is complete, a message will appear listing the number of files that were unzipped. Press OK and repeat the above process for the remaining compressed files (f175v9b.exe, f175v9c.exe). Be sure to extract to the same directory as the first compressed file.

Installing the FCC Form 175 Application

After you extract the software from the compressed files, you must install the FCC Form 175 Application. To install the software, start File Manager, open the file folder to which you extracted the software and double-click on setup.exe.

When the setup program begins, a screen will appear listing the default directory to which the software will install. Press the Install button, then press OK to install to the specified directory. If the directory does not exist, the setup program will create it automatically.

When the installation is complete, a message may appear asking you to restart Windows so that the changes made by the installation may take effect. Press Restart to restart Windows, or press Stay Here to prevent the restart. Do not use the FCC Form 175 Application until you restart Windows.

Creating Backup Installation Disks for the FCC Form 175 Application

To create backup installation disks for the FCC Form 175 Application, go to File Manager, open the file folder to which you extracted the software, double-click on backup.bat, and follow the instructions on the screen.

Running the FCC Form 175 Application

When the installation process is complete, you will have a new Program Manager group called FCC Form 175 Application v9 with the following icons: Configure PPP, FCC Form 175 Submit, FCC Form 175 Review, Suggestion Box, and Readme.

You must verify/modify the parameters in the Configure PPP program prior to establishing a PPP connection. Please consult the readme.txt file included with the software for information regarding Configure PPP.

Double-click on an icon to start the respective system.

Uninstalling the FCC Form 175 Application

To uninstall the FCC Form 175 Application, start File Manager and delete the directory to which you installed the software, then switch to Program Manager and delete the FCC Form 175 Application v9 icons and group.

If you have installed multiple versions of the FCC Form 175 Application to the same installation directory, delete the directory only when you wish to delete all the versions contained in that directory.

You may delete the files and directory to which you extracted the software after installing the FCC Form 175 Application and (optionally) creating backup installation diskettes.

Detailed instructions for using all FCC remote Electronic Aution System sofware can be found in the README file associated with the software and in the context-sensitive help function associated with each software system.

Help: For technical assistance in installing or using the FCC Form 175 Application, contact the FCC Technical Support Hotline at (202) 414–1250. The FCC Technical Support Hotline will be generally available Monday through Friday, from 9 a.m. to 6 p.m. EST.

Attachment C

Guidelines for Completing FCC Form 175 and Exhibits

A. FCC Form 175

Because of the significance of the Form 175 application to the auction, bidders should especially note the following:

Paper form version: Manual filers must use the October 1995 editions of FCC Forms 175 and 175–S. Earlier versions will not be accepted.

Items 2–5: Give a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery. The FCC will send all registration materials and other written communications to the applicant at this address.

Item 6: The Interactive Video and Data Services auction will be the thirteenth auction conducted by the FCC. For ''Auction No.'' in item 6 of FCC Form 175, enter ''13''.

Item 7: Applicants must create a ten-digit FCC Account Number, which the Commission will use to identify and track applicants:

* A bidder that has a taxpayer identification number (TIN) must create this FCC account number by using its TIN, plus the prefix of ''0'' (i.e., 0123456789). A TIN is either the Employer Identification Number (EIN) in the case of a business, or the Social Security Account Number (SSAN) in the case of an individual.

* If—and only if—an applicant does not have a taxpayer identification number, the applicant should use its ten-digit area code and telephone number (i.e., 2025551234) on an interim basis. However, the FCC must have a TIN before it will be able to issue a license or refund upfront payments.

Each applicant must include its FCC Account Number when submitting amendments, additional information, or other correspondence or inquiries regarding its application, and must include this same number on each FCC Form 159 (FCC Remittance Advice) accompanying required auction deposits or payments.

Item 8: Applicants must indicate their legal classification. Limited liability companies or joint ventures should check the ''Other'' box and indicate their classification in the blank.

Items 9 and 10: A box does not need to be checked in Item 9 unless small business status is selected in Item 10. Applicants should be aware that they will be committed to their election choices. (Applicants are also requested to indicate their status as a rural telephone company, minority-owned business or woman-owned business as well, so the FCC can monitor its performance in promoting economic opportunities for these designated entities.) Be advised that this is the sole opportunity applicants have to elect small business status, bidding credit level (if applicable), and payment by the installment payment plan (if eligible) and there is no opportunity to change the election(s) made once the short-form filing deadline passes.

* Small or very small business applicants eligible for bidding credits should check that gross revenues do not exceed the maximum dollar amount specified in the FCC rules governing the auctionable service in Item 9.

* Small or very small business applicants should enter the applicable bidding credit in Item 10: either 10 or

15 percent. Applicants should be aware that this is the sole opportunity that they will have to elect the appropriate bidding credit.

* Small or very small business applicants (if eligible) intending to use the installment payment plan should enter Plan Type ''A'' in Item 10. Applicants not intending to use the installment payment plan should leave the Plan Type blank.

All applicants should pay particular attention to the provisions of 47 CFR Section 95.816(d). In accordance with 47 CFR Section 95.816(d)(3), the FCC will conduct random audits to ensure that applicants meet the eligibility requirements.

Item 11: For each license on which they seek bidding eligibility, applicants must identify the market number (for example, R307) in the Market No. column, and the frequency block or blocks in the Frequency Block set of columns. The market number for each RSA or MSA subject to reauction is listed in Attachment A; frequency blocks are A or B. Applicants that wish to bid on both frequency blocks on all markets should check the ''ALL'' boxes in the Market No. and Frequency Block/Channel No. headings. Applicants that wish to bid on both frequency blocks for each identified market should check the ''ALL'' box in the Frequency Block/Channel No. column and list the RSA or MSA market(s) desired in the Market No. columns. However, applicants who wish to bid on both frequency blocks for only some of the markets should not check the ''ALL'' box in the Frequency Block/Channel Block No. heading, but instead should list separately the frequency blocks for each market in the Frequency Block/Channel No. columns. Since FCC Form 175 provides space to list only five markets, applicants should use one or more FCC Form(s) 175–S to list any additional markets applied for.

Applicants should identify all licenses they want to be eligible to bid on in the auction in Item 11. Be advised that there is no opportunity to change this list once the short-form filing deadline passes. The FCC auction system will not accept bids on licenses an applicant has not applied for on its FCC Form 175.

Item 12: Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

Certifications: Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Contact person: If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for a telephone number, fax number, and e-mail address. All written communications and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175. Applicants must provide a street address; no P.O. Box addresses may be used.

Signature: Manually filed FCC Form 175s must bear an original signature. Absence of an original signature will result in dismissal of the application and disqualification from participating in the auction. (Applicants filing electronically should type the name of the certifying official in the signature block.)

Microfiche or Diskette Copies: Microfiche copies must be submitted with any manually filed FCC Form 175 and 175–S that exceeds five pages in length. For this auction the FCC will accept, in lieu of microfiche copies, a 3.5-inch diskette which contains ASCII text (.TXT) files of all exhibit documentation attached to the FCC Form 175. (Applicants that use a word processing program to prepare these files must be sure to save the files in the ASCII format before submitting the diskette, and verify that the ASCII files contain all exhibit information.)

Completeness: Applicants must submit all information required by FCC Form 175 and by applicable rules, including a certifying signature on manual filings. Failure to submit required information will result in dismissal of the application and inability to participate in the auction.

Continuing Accuracy: Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. See 47 CFR Section 1.65. It is the staff's position that ten business days from a reportable change is a reasonable period of time in which applicants must amend their FCC Form 175s. Applicants are reminded that Certification (6) on FCC Form 175 includes consent to be audited. See 47 CFR Section 95.816(d)(3).

B. Exhibits and Attachments

In addition to FCC Form 175 itself, applicants must submit additional information required by the FCC's rules. Although the Commission does not require a particular organization or format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The Commission encourages applicants filing both electronically and manually to submit this information using the following format.

Exhibit A—Applicant Identity and Ownership Information: 47 CFR Section 1.2105(a)(2) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. This information should provide the name, citizenship and address of all partners, if the applicant is a partnership; of a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust; or, if the applicant is none of the foregoing, list the name, address and citizenship of a principal or other responsible person.

Exhibit B—Agreements with Other Parties/Joint Bidding Arrangements: Applicants must attach an exhibit identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangement or undertakings of any kind, relating to the licenses being auctioned, including any such agreements relating to post-auction market structure. 47 CFR Section 1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding the amount to be bid, bidding strategies or the particular licenses on which the applicant will or will not bid. *See* 47 CFR Section 1.2105(a)(2)(ix). To prevent collusion, the Commission's rules generally prohibit communications during the course of the auction among applicants for the same license areas when such communications concern bids, bidding strategies, or settlements. 47 CFR Section 1.2105(c).

Exhibit C—Status as a Small or Very Small Business Applicant: Applicants claiming status as a small or very small business must attach an exhibit regarding this status.

* Small or very small business applicants must state the average gross revenues for the preceding three years for the applicant (including affiliates), as prescribed by 47 CFR Section 95.816(d)(4). Certification that the average gross revenues for the preceding three years do not exceed the required limit is not sufficient.

Exhibit D—Information Requested of Designated Entities: Applicants owned by minorities or women as defined in 47 CFR Section 1.2110(b), or who are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information in Item 10, will assist the Commission in monitoring the participation of designated entities in its auctions.

Exhibit E—Miscellaneous Information: Applicants wishing to submit additional information should include it in Exhibit E.

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set out in 47 CFR Section 0.459. Any such requests must be submitted manually, even if the applicant chooses to file electronically, in which case the applicant must indicate in Exhibit E that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

Waivers: Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought.

Cross-References: To ensure that the FCC considers all information submitted, manual filers must list the number of Forms 175–S and the number of supplemental exhibits at the end of Item 11 on FCC Form 175.

Attachment D

Summary Listing of Documents From the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

To date, discussion concerning the anti-collusion rules may be found in the following Commission and Bureau items:

Commission Decisions

Second Report and Order in PP Docket No. 93–253, FCC 94–61, 9 FCC Rcd 2348 (1994), paragraphs 221–226.

Fifth Report and Order in PP Docket No. 93–253, FCC 94–178, 9 FCC Rcd 5532 (1994), paragraphs 91–92.

Second Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–215, 9 FCC Rcd 7245 (1994), paragraphs 48–55.

Fourth Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–264, 9 FCC Rcd 6858 (1994), paragraphs 47–60.

Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–295, 9 FCC Rcd 7684 (1994), paragraphs 8–12.

Wireless Telecommunications Bureau Decisions

Order in PP Docket No. 93–253 and MM Docket No. 94–131, DA 95–2292 (released November 3, 1995).

Public Notices

''Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,'' Public Notice, DA 95–2244 (released October 26, 1995).

''Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders,'' Public Notice, DA 96–1460 (released August 28, 1996).

Letters From the Office of General Counsel and the Wireless Telecommunications Bureau

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95–2404 (released November 28, 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 96–587 (released April 16, 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 96–1566 (released September 17, 1996).

[FR Doc. 96–32630 Filed 12–23–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, January 7, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington,D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 9, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1996–49: PrimeCo Personal Communications, L.P., by counsel, William H. Boger.

Advisory Opinion 1996–51: Gwynn Kansfield, Treasurer, Reform Party of Arkansas.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–32834 Filed 12–20–96; 3:21 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are

considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James A. Matthys, Blue Grass, Iowa; to acquire an additional 4.8 percent, for a total of 26.1 percent, of the voting shares of APM Bancorp, Inc., Buffalo, Iowa, and thereby indirectly acquire Buffalo Savings Bank, Buffalo, Iowa.

Board of Governors of the Federal Reserve System, December 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–32614 Filed 12-23-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Alamogordo Bancorp of Nevada, Inc., Reno, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Alamogordo, Alamogordo, New Mexico, and the First National Bank of Ruidoso, Ruidoso, New Mexico.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Westamerica Bancorporation, San Rafael, California; to merge with and/or acquire 19.9 percent of the voting shares of ValliCorp Holdings, Inc., Fresno, California, and thereby indirectly acquire ValliWide Bank, Fresno, California.

Board of Governors of the Federal Reserve System, December 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–32613 Filed 12-23-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112596 AND 120696

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Camerco Corporation, Magnox Electric plc., Power Resources Inc	97–0266	11/25/96
Pacific Electric Wire & Cable Co., Ltd.—a Taiwanese Co., Monaco Finance, Inc., Monaco Finance, Inc	97–0364	11/25/96
Thomas H. Lee Equity Fund III, L.P., Syratech Corporation, Syratech Corporation	97–0386	11/25/96
Senior Engineering Group, plc, Ketema, Inc., Ketema, Inc.	97–0389	11/25/96
J.J. Haines & Company, Inc., Independent Distributors, Inc., Independent Distributors, Inc.	97–0391	11/25/96
Wolters Kluwer nv, The Atlantic Foundation, Blessing/White Inc	97–0394	11/25/96
Fiskars Oy Ab, Alterra Holdings Corporation, Alterra Holdings Corporation	97–0395	11/25/96
Universal Outdoor Holdings, Inc., William B. Tanner, Tanner Peck LLC and TOA Enterprises	97–0397	11/25/96
Southgard Corporation, Tosco Corporation, Tosco Corporation	97–0402	11/25/96
Smit Internationale NV, SEACOR Holdings, Inc., SEACOR Holdings, Inc	97–0406	11/25/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112596 AND 120696—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Meillor S.A., Coltec Industries, Inc., Farnam Sealing Systems, Inc	97–0408	11/25/96
TransMontaigne Oil Company, Koch Industries, Inc., Koch Industries, Inc	97–0410	11/25/96
ADC Telecommunications, Inc., Cirrus Logic, Inc., Pacific Communications Sciencies, Inc	97–0415	11/25/96
Protective Life Corporation, Anthem Insurance Companies, Inc., Anthem Life Insurance Company of Indiana, Community	97–0419	11/25/96
Fluor Corporation, John P. McLaughlin, Corico Corporation; Contract Solutions, Inc.; Corico	97–0423	11/25/96
Vanstar Corporation, Malbert Smith, III, Contract Data Services, Inc	97–0430	11/25/96
Vanstar Corporation, A. Jackson Stenner, Contract Data Services, Inc	97–0431	11/25/96
NGC Corporation, Chevron Corporation, Venice Gathering Company	97–0432	11/25/96
Nextel Communications, Inc., Dr. Rajendra Singh, Wireless Ventures of Brazil, Inc. (a U.S. issurer)	97–0434	11/25/96
MedPartners, Inc., Summit Medical Group, P.A., Summit Medical Group, P.A	97–0438	11/25/96
Pacific Gas and Electric Company, Edisto Resources Corporation, Energy Source, Inc.; Energy Source Canada, Inc	97–0444	11/25/96
Vincent D. Rinaldi, Provident Bancorp., Inc., Provident Bancorp., Inc	97–0447	11/25/96
Federal Express Corporation, AMR Corporation,	97–0458	11/25/96
Hellman & Friedman Capital Partners, III, LP, Young & Rubicam Holdings, Inc., Young & Rubicam Holdings, Inc	97–0292	11/26/96
The Ogden Newspapers, Inc., Kenneth R. Thomson, Thomson Newspapers, Inc	97–0313	11/26/96
Kenneth R. Thomson, The Ogden Newspapers, Inc., Ogden Newspapers of Wisconsin, Inc	97–0320	11/26/96
First Bank System, Inc., Comerica Incorporated, Comerica Incorporated	97–0353	11/26/96
AlliedSignal Inc., Diagnostics Holdings, Inc., Burdick & Jackson, Inc	97–0372	11/26/96
Anheuser-Busch Companies Inc., Grupo Modelo, S.A. de C.V. (a Mexican company), Grupo Models and Diblo, SA de CV	97–0383	11/26/96
Willcox & Gibbs, Inc., Neil A. Macpherson, Macpherson Meistergram, Inc.; Geoffrey E. Macpherson	97–0387	11/26/96
Atmos Energy Corporation, United Cities Gas Company, United Cities Gas Company	97–0392	11/26/96
David D. Smith, Louis A. Cohen, Magna Financial Corporation	97–0446	11/26/96
Cox Enterprises, Inc., Hollinger Inc., a Canadian company, American Publishing Company	97–0284	11/27/96
Hollinger Inc., Kenneth R. Thomson, Thomson Newspapers, Inc	97–0285	11/27/96
Kenneth R. Thomson, Hollinger Inc., American Publishing Company	97–0286	11/27/96
Allied Colloids Group PLC, CPS Chemical Co., Inc., CPS Chemical Co., Inc	97–0362	11/27/96
Simmonds Capital Limited (a Canadian company), INTEX Diversified Corporation, INTEX Diversified Corporation	97–0452	12/03/96
Securicor PLC, INTEX Diversified Corporation, INTEX Diversified Corporation	97–0454	12/03/96
INTEK Diversified Corporation, Securicor PLC, Securicor Radiocoms Limited	97–0455	12/03/96
Clear Channel Communications, Inc., Tichenor Media Systems, Inc., Tichenor Media Systems, Inc	97–0047	12/04/96
University of Pittsburgh Medical Center System, Shadyside Health Education and Research Corporation, Shadyside Health Education and Research Corporation	97–0334	12/04/96
Hicks, Muse, Tate & Furst Equity Funding III, L.P., Osborn Communications Corporation, Osborn Communications Corporation	97–0388	12/04/96
George S. Hofmeister, Mark T. Megge, Carron & Company	97–0439	12/04/96
Kirtland Capital Partners II, L.P., Rimer Anstalt, PVC Container Corporation	97–0465	12/04/96
Swiss Reinsurance Company, National Life Insurance Company, LSW National Holdings, Inc	97–0478	12/04/96
New England Growth Fund I, L.P., The Stanley Works, Stanley Home Automation, Inc.	97–0338	12/05/96
Tele-Communications, Inc., Tele-Communications, Inc., TV Guide On-Screen, a partnership	97–0339	12/05/96
Tele-Communications, Inc., The News Corporation Limited, an Australian company, TV Guide On-Screen, a partnership	97–0340	12/05/96
Daniel K. Frierson, Shelter Components Corporation, Danube Carpet Mills, Inc	97–0367	12/05/96
AccuStaff Incorporated, TravCorps Corporation, TravCorps Corporation	97–0427	12/05/96
General Electric Company, The Ziegler Companies, Inc., Ziegler Leasing Corporation	97–0445	12/05/96
General Electric Company, American Auto Funding Corporation, American Auto Funding Corporation	97–0450	12/05/96
The Robert Plan Corporation, Royal & Sun Alliance Insurance Group, PLC (UK Corp.), Newark Insurance Company	97–0451	12/05/96
The Clayton & Dubilier Private Equity Fund IV, L.P., Ace Electric Supply Company, Ace Electric Supply Company	97–0453	12/05/96
Nabors Industries, Inc., Noble Drilling Corporation, Noble Drilling Corporation	97–0457	12/05/96
Peira and Shaheen Voting Trust-Agreement dated 4/30/92, Johnny A. West, Sunrise Carpet Ind., Inc., B&H Holdings, Inc., Whitecres	97–0461	12/05/96
Daewood Electronics, Co., Ltd., Lagardere SCA, Thomson Multimedia S.A	97–0467	12/05/96
Degussa AG, George D. Beharakis, Muro Pharmaceutical, Inc	97–0468	12/05/96
George D. Behrakis, Degussa AG, Degussa AG	97–0469	12/05/96
Loving Enterprises, Inc., Powell Duffryn plc, Powell Duffryn Terminals, Inc	97–0479	12/05/96
Thyssen Aktiengesellschaft (a German company), Copper and Brass Sales, Inc., Copper and Brass Sales, Inc	97–0480	12/05/96
Koninklijke Van Ommeren NV, Powell Duffryn, plc, Powell Duffryn Terminals Inc	97–0484	12/05/96
Fund American Enterprises Holdings, Inc., National Grange Mutal Insurance Company, Main Street America Holdings, Inc	97–0485	12/05/96
Northern States Power Company, Compania Boliviana de Energia Electrica, S.A., Compania Boliviana de Energia Electrica, S.A	97–0486	12/05/96
George Koch Sons, Inc., Marco Sales, Inc., Marco Sales, Inc	97–0497	12/05/96
The Goldman Sachs Group, L.P., Herbert E. Ehlers, Liberty Investment Management	97–0500	12/05/96
Brunswick Corporation, Metropolitan Life Insurance Company, Metropolitan Life Insurance Company, Igloo Holdings, Inc	97–0502	12/05/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112596 AND 120696—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Gordon Gray 1956 Living Trust, InterMedia Partners, L.P., Kauai CableVision, L.P	97–0510	12/05/96
Mercury General Corporation, William M. Cameron, American Fidelity Insurance Company	97–0511	12/05/96
Mercury General Corporation, Lynda L. Cameron, American Fidelity Insurance Company	97–0512	12/05/96
Ronald W. Burkle, The Starkman Family Trust, Jerry's Famous Deli, Inc.	97–0517	12/05/96
Unitrin, Inc., Gregory M. Shepard and Tracy M. Shepard, Union Automobile Indemnity Company	97–0518	12/05/96
Bemis Company, Inc., Paramount Packaging, L.L.C., Paramount Packaging, L.L.C	97–0520	12/05/96
American Financial Group, Inc., American Eagle Group, Inc., American Eagle Group, Inc	97–0523	12/05/96
Bemis Company, Inc., Paramount Packaging Corporation, Paramount Packaging Corporation	97–0526	12/05/96
Ryder System, Inc., Leland E.G. Larson, School Bus Services, Inc	97–0507	12/06/96
MEI Holdings, L.P., Mountasia Entertainment International, Inc., Mountasia Entertainment International, Inc	97–0625	12/06/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives—Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32665 Filed 12–23–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0458]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the affirmation of generally recognized as safe (GRAS) substances.

DATES: Submit written comments on the collection of information by February 24, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Affirmation of Generally Recognized As Safe (GRAS) Status (21 CFR 170.35(c)(1))—(OMB Control Number 0910–0132)—Extension

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS which are submitted on a voluntary basis by the food industry and other interested parties. Under section 409 of the act (21 U.S.C. 348), the agency has the authority to regulate food additives. Section 201(s) of the act (21 U.S.C. 321(s)), defines ''food additive'' and expressly excludes from the definition substances generally recognized as safe for use in food.

Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under § 170.35(c)(1). These regulations establish a process by which a person may obtain FDA concurrence with a GRAS determination; this concurrence is referred to as ''GRAS affirmation.'' These regulations set forth the information to be submitted to FDA to obtain agency concurrence that a substance is GRAS (§ 170.35(c)(1)).

GRAS petitions are reviewed by FDA to ascertain whether the available data establish that the intended use of the substance is GRAS based upon either a history of the safe use of the substance, or upon widely available safety data (scientific procedures). The GRAS affirmation process is a voluntary one, and there is some risk that FDA may not

agree with the petitioner's GRAS determination. The GRAS petition process does provide a public procedure for coordinating GRAS determinations. The process reduces the potential for public health problems when substances are marketed based upon unwarranted safety determinations and allows a food manufacturer to rely on the lawful status of a substance that has been affirmed by FDA as GRAS.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.35(c)(1)	5	1	5	2614 (avg.)	13,070

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of GRAS affirmation petitions received in 1995. Although the burden varies with the type, size, and complexity of the petition submitted, GRAS petitions may involve analytical work and analysis of appropriate toxicological studies, as well as the work of drafting the petition itself.

Since 1980, FDA has not received any petitions for affirmation of GRAS status under 21
CFR part 186—Indirect Food Substances Affirmed As Generally Recognized As Safe. Section 184.1(a) (21 CFR 184.1(a)) affirms the use of those substances affirmed as GRAS in 21 CFR part 184—Direct Food Substances Affirmed As Generally Recognized As Safe, for use as indirect food ingredients.

Dated: December 13, 1996.

William K. Hubbard.

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32551 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0467]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 23, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Geraldine M. Hogan, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1481.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Gender Differences in Perception of Risks Communicated by Prescription and Over-the-Counter (OTC) Drug Labels

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. The Marketing Practices and Communications Branch of FDA's Division of Drug Marketing, Advertising, and Communications is studying the effectiveness of various formats for the presentation of risk and benefit information for OTC and prescription drugs to male and female patients through patient labeling. To gain information about the value and utility of benefit and risk information presented in several formats, three studies will be undertaken. In each study subjects will examine materials varied by one or more risk formatting variables for one prescription and one OTC drug. Subjects will be recruited at large shopping malls. They will be brought to a private interview room where they will examine the materials, and a structured interview will be conducted. Equal numbers of subjects of each gender will be included in each study. In addition, there will be a control group for each study that receives ''no-risk'' information labels for the drugs. The original study design was to use male-oriented and female-oriented drugs with 2,700 respondents. Based on focus group responses, the design was refined. It was determined that more accurate information would be obtained by assessing males' and females' responses to gender-neutral drugs. Accordingly, the sample size has been reduced to 960. The annual estimated hour burden for respondents is 480 hours.

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
960	1	1	0.5	480

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32684 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0427]

Compliance Policy Guide; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of Compliance Policy Guide (CPG) Section 540.400, ''Shrimp—Fresh or Frozen, Raw, Headless, Peeled or Breaded—Adulteration Involving Decomposition (CPG 7108.11),'' because it no longer reflects agency policy. This action is being taken to ensure that FDA's CPG's accurately reflect agency policy and to limit misinterpretation and confusion.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION: FDA is revoking CPG Section 540.400, ''Shrimp—Fresh or Frozen, Raw, Headless, Peeled or Breaded—Adulteration Involving Decomposition (CPG 7108.11),'' because it no longer reflects agency policy. This CPG provides regulatory guidance on when shrimp is determined to be decomposed. Section 540.400 sets out criteria for deciding whether to initiate regulatory action based on the results of organoleptic and indole analyses of shrimp.

FDA's experience with this CPG as guidance has shown that the CPG is subject to misinterpretation by those within and outside the agency. To correct this problem, FDA has decided to revoke this CPG. Until such time as the agency develops appropriate new guidance, it intends to use any appropriate method of analysis for examining shrimp and to review recommendations for regulatory action against decomposed shrimp on a case-by-case basis.

FDA publishes its CPG's to present the agency's current thinking on issues that are before the agency. CPG's do not create or confer any rights for, or on, any person and do not operate to bind FDA or the public.

Dated: December 13,1996.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 96–32548 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0368]

Guidance for the Content of Premarket Submissions for Medical Devices Containing Software; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''ODE Guidance for the Content of Premarket Submissions for Medical Devices Containing Software.'' The draft guidance is not final nor is it in effect at this time. This guidance is available for comment and will eventually replace the ''Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review'' that was issued in 1991 (the 1991 draft guidance). This new draft guidance discusses the key elements reviewers look for in premarket medical device software submissions and provides a common baseline from which both manufacturers and scientific reviewers can operate. The new draft guidance is intended to provide applicants specific additional directions regarding information and data that should be submitted to FDA in a 510(k) submission for medical device software.

DATES: Submit written comments by January 23, 1997.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''ODE Guidance for the Content of Premarket Submissions for Medical Devices Containing Software'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0806 (outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Persons with access to the Internet may obtain the new draft guidance via the World Wide Web at http://www.fda.gov/cdrh/ode/dtswguid.html. The new draft guidance may also be obtained by calling the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a fax machine with a touch-tone telephone attached or built in. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and enter Shelf__ 616 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. Submit written comments on ''ODE Guidance for the Content of Premarket Submissions for Medical Devices Containing Software'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of ''ODE Guidance for the Content of Premarket Submissions for Medical Devices Containing Software'' and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joanna H. Weitershausen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: The final version of this guidance will provide guidance concerning regulatory review of premarket medical device software submissions under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) (the act). The new draft guidance has been developed to clarify the existing guidance. Through using the 1991 draft guidance for the last 4 years, FDA has gained experience in applying guidance to 510(k) submissions for medical devices using software. Comments were received from both manufacturers and scientific reviewers and have been incorporated into the new draft guidance. By clarifying the guidance, the agency hopes to receive a larger percentage of complete premarket submissions upon submittal. This will avoid the need for additional information requests which are time consuming for both FDA and manufacturers. In addition, the guidance has been updated to be consistent with emerging international consensus standards such as IEC 601–1–4 and ISO 9000.

The process for determining the level of concern (i.e., the severity of risk that a device could permit or inflict on a patient or operator as a result of latent failures, design flaws, or using the device) for medical device software, as discussed in the 1991 draft guidance, caused confusion for both FDA scientific reviewers and the medical device industry. Section 3 of the new draft guidance updates this process. However, the agency realizes that other

options exist; these options are identified in Attachment 2 of a letter included with the new draft guidance. Comments on the new draft guidance should indicate and explain the option(s) preferred.

On May 17, 1995, the new draft guidance was presented at the Indiana Medical Device Manufacturers Council seminar. This seminar focused on the development of medical device software in a regulated environment. The new draft guidance was again presented on September 21, 1995, at the 19th Annual Regulatory Affairs Professional Society Exhibition and Conference.

The intent of the final version of this guidance will be to provide applicants specific additional directions regarding information and data that should be submitted to FDA in a 510(k) submission for medical device software.

This guidance, when finalized, will apply to all software, which includes embedded software, operator assisted software, and software accessories to medical devices. The new draft guidance excludes pure hospital information systems and manufacturing process control software.

Although this guidance does not create or confer any rights on or for any person and does not operate to bind the agency in any way, it does represent FDA's current thinking on the content of premarket submissions for medical devices containing software.

Interested persons may, on or before January 23, 1997, submit to the Dockets Management Branch (address above) written comments on the ''ODE Guidance for the Content of Premarket Submission for Medical Devices Containing Software.'' Comments should: (1) Refer to specific line numbers, sections, and page numbers in the document; (2) discuss the issue; and (3) propose a recommended change. 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. The new draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Received comments will be considered in determining whether further revisions to the draft guidance are warranted.

Dated: December 13, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–32683 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Nurse Education and Practice Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Melaine Timberlake, Executive Secretary, National Advisory Council on Nurse Education and Practice, Room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Dated: December 19, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–32685 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

The National Health Service Corps (NHSC) Application Process (OMB No. 0915–0146); Revision and Extension

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally-designated Health Professional Shortage Area (HPSA).

In an effort to improve the procedures for selecting NHSC scholars, a revised application process was pilot tested in the spring of 1996. The revised application process is designed to broaden the scope of the information available on applicants in order to improve the Agency's ability to identify those applicants with the greatest potential to fulfill the objectives of the Scholarship Program. OMB approval is now being requested for full-scale implementation of the revised application process.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	3000	1	1.0	3000
Interview	900	1	1.67	1500

Estimated Total Annual Burden: 4500 hours. The interview burden includes 1 hour for travel time to the interview site.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 18, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–32686 Filed 12–23–96; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

National Institutes of Health; Proposed Data Collection; Comment Request; Validation of a New Food Frequency Questionnaire

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Validation of a New Frequency Questionnaire.

Type of Information Collection Request: New.

Need and use of Information Collection: The agency conducts and funds studies examining the relationship between diet and chronic diseases. This information collection is needed to validate and further refine a new diet history questionnaire to be used in studies of diet and disease. The new questionnaire will be validated against reference data from four non-consecutive 24-hour dietary recalls among a national sample of persons 20–70 years of age. The validity of the new questionnaire will be compared to two widely-used food frequency questionnaires. As a further validation, biological nutrition measures from blood specimens will be obtained from a 20% sub-sample of participants.

Frequency of response: One-time study.

Affected public: Individuals or households.

Types of Respondents: U.S. adults 20–70 years of age. The annual reporting burden is as follows:

Data collection form	Estimated number of respondents	Estimated number of responses per respondent	Avg. burden hours per response	Estimated total hour burden	Estimated total annual burden hours requested
Screener	2700	1	0.167	450.9	300.6
Recalls interview #1	1620	1	0.75	1215.0	810.0
Recall interview #2	1563	1	0.5	781.5	521.0
Recall interview #3	1507	1	0.5	753.5	502.3
Recall interview #4	1451	1	0.5	725.5	483.7
New Questionnaire	1225	1	0.75	918.8	612.5
Food Questionnaire 1	612	1	0.5	306.0	204.0
Food Questionnaire 2	612	1	0.668	408.8	272.5
Opinion form	1225	1	0.167	204.6	136.4
Blood substudy	240	2	0.25	120.0	80.0
Total	2700	.....	.....	5884.6	3923.0

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Amy F. Subar, Ph.D., Project Officer, National Cancer Institute, EPN, 313, 6130 Executive Blvd MSC 7344, Bethesda, MD 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to subara@dcpceps.nci.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before February 24, 1997.

Dated: December 13, 1996.

Nancie L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 96–32582 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of NIH Implementation of Section 491 of the Public Health Service Act, Mandating a Program of Protection for Research Subjects

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), Office of the Director (OD) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the Federal Register on October 10, 1996, page 53228–53229 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Evaluation of NIH Implementation of Section 491 of the Public Health Service Act, Mandating a Program of Protection for Research Subjects.

Type of Information Collection Request: Extension of OMB No. 0925–0404, expiration 12/31/96.

Need and Use of Information Collection: This study will assess the performance of the system of human subjects protections. It will provide up-to-date comprehensive and systematic information on the effectiveness and efficiency of procedural protections by measuring outcome, output, process, and resources of the current system to

develop possible recommendations. The study will use survey, interview, and record extraction methodologies. Development of the survey instruments and methodology has involved representatives of the affected public over the past 2 years.

Frequency of Response: One-time.

Affected Public: Individuals or households; Not-for-Profit Institutions; State, Local, or Tribal Government.

Type of Respondents: University officials, staff, and faculty.

The annual reporting burden is as follows:

Estimated Number of Respondents: 2,358.

Estimated Number of Responses per Respondent: 1.

Average Burden per Response: 0.485 hours.

Estimated Total Annual Burden Hours Requested: 1,145. The annualized cost to respondents is estimated at: $55,125. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points. (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Charles R. MacKay, Project Clearance Officer, Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director, NIH, Rockledge II, 6701 Rockledge Drive, MSC 7730, Room 2196, Bethesda, MD 20892–7730, or call nontoll-free number (301) 435–0978 or E-Mail your request, including your address to: cm13f@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before January 23, 1997.

Dated: December 17, 1996.

Geoffrey E. Grant,

Director, Office of Policy for Extramural Research Administration.

[FR Doc. 96–32583 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application patent referenced below may be obtained by contacting David Sadowski at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 288; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Container for Drying Biological Samples, Method of Making Such Container, and Method of Using Same

Kidd, G.L. (NEI)
Filed 20 Sep 96 (claiming priority date of 22 Sep 95)
Serial No. 08/717,114

Problem Addressed By This Invention: Many compounds, such as drugs, growth factors, etc., must be kept sterile and must be aliquotted for storage. Usually, these aliquots are best stored lyophilized. Yet, researchers have never had a way to keep aliquots sterile through the lyophilization process. Consequently, each aliquot has had to be filter-sterilized when reconstituted for use. This process has the disadvantages of consuming excessive filters, syringes, sterile, receptacles, and time and results in serious loss of precious sample due to absorption by the filters (especially with small aliquots less than 1 ml). Alternatively, researchers have had to forego lyophilization and store their solutions in the less-stable frozen form.

Solution Offered By This Invention: Sterile-lyophilization tubes having a 0.22 micron filter built into the cap. This unique feature allows a sterile solution to remain sterile throughout lyophilization, even after the vacuum is released and air reenters the tube. Thus, a starting solution is simply filter-sterilized while in a relatively large volume, using a single filter and therefore suffering minimal loss and consuming little time. It is then aliquotted into sterile-lyophilization tubes and lyophilized. The tubes can then be transferred directly to the freezer, if desired. The compound is reconstituted when needed, and may then be used immediately without further filtration.

Potential Applications Of This Invention: All researchers worldwide who utilize sterile, labile compounds will have an interest in this product, including governmental, university, institutional, and drug company laboratories. Most notably in need are investigators involved in drug-testing, which is normally done either in cell cultures, laboratory animals, or humans, and which requires sterility of many aliquots of many drugs. Additionally, this product will have a large market relating to basic research utilizing microbial, plant, or animal cell or organ cultures, to which sterile compounds such as growth factors are commonly added. Research in drugs, growth factors, etc., is expanding ever more rapidly, and generally requires a cell culture system in which to study such compounds. Most of these compounds are quite expensive. Loss of potency during storage and loss of material during filtration are widespread problems which may be overcome with this invention. Therefore, there exists a tremendous need, and immense market for, this sterile-lyophilization vessel.

Stage of Development: Development is complete and invention has been successfully tested. Prototypes are available.

Dated: November 26, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–32580 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Drug Abuse (NIDA) Special Emphasis Panel meeting:

Purpose/Agenda: To evaluate and review contract proposals.

Name of Committee: NIDA Special Emphasis Panel.

Date: January 16, 1997.

Time: 9:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health.)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32575 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 Grants (97–12).

Dates: January 7, 1997.

Time: 12:00 noon.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 Grants (97–14).

Dates: January 9, 1997.

Time: 2:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings 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. 93.121, Oral Diseases and Disorders Research)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Specialist, NIH.

[FR Doc. 96–32576 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Disease; 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:

Committee Name: National Institute of Diabetes and Digestive and Kidney Disease Special Emphasis Panel (Telephone Conference Call).

Date: January 8, 1996.

Time: 3:00 p.m.

Place: Natcher Building, Room 6AS–25N, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600.

Contact Person: Roberta J. Haber, Ph.D., Natcher Building, Room 6AS–25N, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600; Phone: 301–594–8898.

Agenda/Purpose: To review and evaluate a research grant application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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 application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32577 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: January 27, 1997.

Time: 11:00 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892, (301) 496–9223.

Contact Person: Dr. Howard Weinstein, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate four SBIR Phase I Contract Proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: December 17, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32578 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute (NHLBI); Request for Capability Statements From Parties Interested in Collaborating With the NHLBI on the Provision and/or Design of State-of-the-Art Disposable Plasticware Systems for the Collection, Processing, Cryopreservation, Storage, Thawing and Infusion of Umbilical Cord Blood Stem and Progenitor Cells for Transplantation

AGENCY: National Institutes of Health, PHS, NIH.

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) is seeking Capability Statements from parties interested in collaborating on a specific aspect of a large, multicenter clinical study. Statements should be focused on the ability to provide state of the art disposable plasticware systems or to design, develop and manufacture a system for the collection, processing, cryopreservation, storage, thawing and infusion of umbilical cord blood stem and progenitor cells for transplantation.

The responding party submit Capability Statements demonstrating previous experience in developing blood collection and processing systems similar to those used for obtaining blood and its components for transfusion. The final system must be a sterile, closed system of disposable plasticware with or without sterile docking capability and containing appropriate processing and cryoprotectant solutions. The system must be produced using good manufacturing practices. It is expected that the responding party will submit the necessary filings with the United States Food and Drug Administration to gain regulatory approval for the system and that there will be coordination with the NHLBI in gaining regulatory approval for all aspects of this study.

This system is to be used in an NHLBI-sponsored multicenter clinical study to determine if stem and progenitor cells from umbilical cord blood units are a clinically acceptable alternative to those from bone marrow or peripheral blood for unrelated-donor allogeneic transplantation. Cord blood banks will be established as part of the study consisting of a total of approximately 15,000 cryopreserved cord bloods units. Collections of cord blood units are planned to begin in the Spring of 1997. This is not a Request for Proposals (RFP), and responses should not include budgetary information. Firms responding to this advertisement should provide pertinent information to the requirements mentioned above within thirty (30) days of this publication. The nature and extent of this collaboration and the contractual mechanism under which it will be implemented will be determined based on review of the Capability Statements received.

Capability Statements should be submitted to Dr. Harold T. Safferstein, Technology Development Coordinator, National Heart, Lung, and Blood Institute, Technology Transfer and Commercialization Team, 31 Center Drive, MSC 2490, Bldg. 31/Room 1B32, Bethesda, Maryland 20892–2490, Phone: (301) 402–5579, Fax: (301) 594–3080. E-mail your Capability Statements to: <hs11a@nihgov>. Capability Statements must be received by the NHLBI on or before January 24, 1997.

Dated: December 16, 1996.

Sheila E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 96–32584 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Intra-Urethral Prosthetic Sphincter Valve and Intra-Urethral Valve with Integral Spring

AGENCY: Natinal Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, in contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,553,533 entitled ''Intra-Urethral Prosthetic Sphincter Valve'' and U.S. Patent Number 5,088,980 to AbbeyMoor Medical, Inc., having a place of business in Minneapolis, Minnesota. The patent rights in this application have been assigned to the Untied States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions generally relate to the urologic medical device field of urinary dysfunction. More specifically, these inventions relate to a non-surgically inserted prosthetic valve that will allow patients with urinary dysfunction to void in a substantially normal manner. The valve is fitted with a non-linear spring that avoids false openings at unintended times and does not require undue exertion during urination.

ADDRESSES: Requests for a copy of these patents, inquiries, comments, and other materials relating to the contemplated license should be directed to: John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7735 extension 285; Fax: 301/402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before February 24, 1997 will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 11, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–32579 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Gossypol Acetica Acid for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent No. 5,385,936 and U.S. Patent Application No. 08/379,872 to IVAX Corporation of Miami, Florida. U.S. Patent No. 5,385,936 is directed towards a method of treating cancers using Gossypol Acetic Acid (GAA). U.S. Patent Application No. 08/379,872 is directed towards the use of Gossypol for the treatment of cancer. The patent rights in

these inventions have been assigned to the United States of America. This notice revises a previous notice of a prospective grant of exclusive license to Cary Medical Corporation of Great Falls, Virginia for the same technology. See Federal Register, Vol. 61, No. 118, p. 30915–16 (June 18, 1996).

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Gossypol is a biphenolic compound derived from crude cottonseed oil that has been widely used in China as a male contraceptive. Clinical Trials have demonstrated GAA's efficacy against gliomas and adrenal cancer. Clinical trials are planned or underway for the use of GAA in breast and prostate cancer. GAA exhibits low toxicity relative to other chemotherapeutic agents and does not appear to cause myelosuppression, significant hair loss, cardiac failure or neurotoxicity. The milder side effects of the use of GAA include mild fatigue, muscle tremor, dry mouth, dry skin and occasional nausea. Patients treated with GAA, therefore, may be able to continue normal activities.

ADDRESSES: Requests for copies of the issued patent, patent application, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Allan Kiang, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7735 ext. 270; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before February 24, 1997 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 12, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–32581 Filed 12–23–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in January 1997.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301)443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA, Special Emphasis Panel II.

Meeting Date: January 7, 1997.

Place: Doubletree Hotel, Woodmont Room, 1750 Rockville Pike, Rockville, MD 20852.

Closed: January 7, 1997 9:00 a.m.–12:00 Noon.

Contact: Katie Baas, Room 17–89, Parklawn Building, Telephone: (301) 443–2437 and FAX: (301) 443–3437.

Dated: December 18, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA

[FR Doc. 96–32641 Filed 12–23–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare a National Environmental Policy Act document on the control of invading Spartina alterniflora grass on Willapa National Wildlife Refuge and surrounding tidelands of Willapa Bay, Pacific County, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of a National Environmental Policy Act (NEPA) document for the control of invading *Spartina alterniflora* grass on Willapa National Wildlife Refuge and surrounding tidelands of Willapa Bay, Pacific County, Washington. Public scoping meetings to solicit comments from all interested parties regarding the scope and content of the NEPA document will also be held. This notice is being furnished pursuant to the National Environmental Policy Act, implementing regulations, and FWS policy to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the document. Comments and participation in this scoping process are solicited.

SCOPING MEETINGS: Public scoping meetings will be held from 7:00 p.m. to 9:00 p.m. at the Raymond Community Center (323 Third Street, Raymond, WA) on January 6, 1997, and from 7:00 p.m. to 9:00 p.m. at the Peninsula Church Center (5000 N. Street, Seaview, WA) on January 7, 1997. Interested agencies, organizations, and individuals are encouraged to attend either of the scoping meetings to identify and discuss major issues, concerns, and opportunities that should be addressed in the NEPA Document. Interested parties are reminded that the primary purpose of the scoping process is to identify, rather than debate the significant issues related to the proposed action. In order to insure that all issues are correctly and completely recorded and considered, those persons providing oral presentations at the scoping meetings are encouraged to provide agency representatives with a written statement to more fully explain their remarks.

FOR FURTHER INFORMATION CONTACT: James A. Hidy, Refuge Manager Willapa National Wildlife Refuge, HC 01 Box

910, Ilwaco, WA 98624–9707, (360) 484–3482.

WRITTEN COMMENTS: Written comments should be addressed to James A. Hidy (see address provided above) and should be received by January 21, 1997. Written comments will also be accepted at the scoping meetings.

SUPPLEMENTARY INFORMATION: James A. Hidy is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, proposes to implement a long-term, integrated pest management (IPM) program at Willapa National Wildlife Refuge to control and reverse the invasion of the non-native grass, *Spartina alterniflora (Spartina)* on the Refuge and the surrounding tidelands of Willapa Bay.

Spartina is a perennial, deep-rooted saltmarsh species native to the Atlantic and Gulf coasts of North America. It was introduced to the West Coast during the 1890s, and is currently found from British Columbia to northern California. However, the infestation is increasing most rapidly in Washington, particularly Willapa Bay. In 1991, there were approximately 2,500 acres of *Spartina* in Willapa Bay. The grass is expected to cover over 30,000 acres within 45 years.

Spartina is spreading rapidly over tidelands of the Refuge and surrounding tidelands. It is degrading and displacing habitat that supports a diverse community of marine organisms including aquatic migratory birds, anadromous fish, and invertebrate and plant communities that support them. Widespread colonization by *Spartina* induces major modifications of physical, hydrological, chemical, and biological estuarine functions. *Spartina* displaces eelgrass (*Zostera spp.*) on mudflats and native vegetation in saltmarshes. Benthic invertebrate species composition in the intertidal zone changes substantially as *Spartina* occupies the tidelands. As *Spartina* becomes dominant in the tideland, mudflats are raised and channels are deepened. This eliminates the gently sloping, bare, intertidal zone that lies between the saltmarsh and the tidal channels.

Refuge objectives are to protect habitats for wintering and migrating aquatic birds including ducks, geese, swans, and shorebirds. The continued spread of *Spartina* constitutes a significant threat to those habitats. The proposed action is intended to stop habitat loss and degradation, and prevent future *Spartina* recolonization.

Important habitats for meeting Refuge objectives lie within the Lewis, Porter Point, and Riekkola Units (collectively known as the southern units), where the Service has fee-simple title to over 2,900 acres of tidelands supporting saltmarsh and mudflat habitats. Other Refuge-associated tidelands include about 1,600 acres of State-owned use deed lands adjacent to Long Island. Waterbird habitat value is being rapidly lost in both areas by *Spartina* invasions. The proposed action supports Refuge objectives by protecting and restoring aquatic bird habitats on Refuge tidelands of the southern units. Refuge objectives would be further supported through cooperative efforts with other public and private tideland owners directed at bay-wide *Spartina* management.

Four alternatives are being considered in the document.

No Action: Under this alternative, the Service would not participate in *Spartina* control on Willapa Bay.

Long-term Integrated Pest Management (Proposed Action): This is a dynamic approach to pest management which utilizes a full knowledge of a pest problem through an understanding of the ecology of the pest and related organisms. Programs are carefully designed under IPM using a combination of compatible techniques to limit damage caused by the pest to a tolerable level. In many cases, IPM will utilize combinations of mechanical, cultural, biological and chemical control techniques to meet objectives. At this time, biological and cultural techniques are not available for *Spartina* control, but they would be considered in the future.

Physical/Mechanical Controls Only: Physical and mechanical methods of controlling *Spartina* are those that physically manipulate the grass itself, or some aspect of the habitat on which the grass depends in order to kill the grass or control its spread.

Chemical Controls Only: This alternative would rely exclusively on application of herbicide (currently, only the chemical glyphosate is approved for use in the estuary) to *Spartina* using ground, water-borne, and/or aerial delivery systems.

Significant issues associated with these alternatives include potential effects on:

The Physical Environment: Soils and Topography, Hydrology, Water Quality, Ambient Sound.

The Biological Environment: Vegetation, Wildlife, Fish, Microbes and Marine Invertebrates, Biodiversity.

Social Environment: Human Health, Perceptions/Concerns, Recreation.

Economic Environment: Tourism, Mariculture and Fisheries.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other Federal regulations, and FWS policies and procedures.

We estimate the NEPA document for this proposal will be made available to the public in Spring, 1997.

Dated: December 17, 1996.

Michael J. Spear,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–32640 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–55–P

Service Migratory Bird Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service will conduct an open meeting on January 23, 1997, to identify and discuss preliminary issues concerning the 1997–98 migratory bird hunting regulations.

DATES: January 23, 1997.

ADDRESSES: The Service Regulations Committee will meet at the Patuxent National Wildlife Visitor Center, 10901 Scarlet Tanager Loop, Laurel, Maryland.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service, including the Flyway Council Consultants, will meet on January 23, 1997, at 9:00 a.m. to identify preliminary issues concerning the 1979–98 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings. The Service believes that, by opening this meeting to the public, a dialogue between the Flyway Councils and the Service can begin earlier in the regulations-development process.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: December 6, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–32682 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 4)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice of revised procedures.

SUMMARY: This notice announces revisions to Appendix 4 of the Departmental Manual (516 DM 6) for implementing the National Environmental Policy Act (NEPA) procedures within the Bureau of Indian Affairs (BIA), which were published in the Federal Register on March 31, 1988 (53 FR 10439).

EFFECTIVE DATE: December 24, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Willie R. Taylor, Director, Office of Environmental Policy and Compliance, at (202) 208–3891. For the BIA, contact Donald Sutherland at (202) 208–4791.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Background

On July 7, 1995, the BIA published a notice in the Federal Register (60 FR 35417) proposing revisions to 516 DM 6, Appendix 4. These provided more specific NEPA compliance guidance to the BIA by updating the BIA's organizational responsibilities for compliance, updating guidance to applicants, adding to the list of actions normally requiring an environmental impact statement(EIS), and updating, revising and adding to the list of actions categorically excluded from the NEPA process. The notice afforded the public 30 days to review and comment on the proposed revisions. Certain changes in this final version of the revisions are in response to those comments.

Discussion of Comments and Changes

The BIA received 14 comment letters on the proposed revisions to Appendix 4. Nine of these were from four federal agencies. Of these nine, one was from a central office and eight were from field offices. Three Indian tribes, an environmental organization and a private individual submitted the remaining five letters.

Seven changes were made to the proposed revisions as a result of the comments received. Two of the changes are deletions; section 4.2.C.24 because it was contradicted by section 4.2.B., and section 4.4.G.4 because it was inconsistent with the case law (*Connor* v. *Burford*). The other five changes are clarifications in wording. These are in sections 4.3.A.3, 4.4.C, 4.4.H.2, 4.4.J and 4.4.L.2.

One further change was made as a result of internal BIA review, and three as a result of Council on Environmental Quality (CEQ) review of the proposed revisions. The BIA change is the addition at section 4.4.M.5 of the categorical exclusion for the issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa–ll) in cases where the permitted work is connected with an action for which an environmental analysis has been, or is being prepared. In such cases, a separate environmental process for the archaeological permit would be redundant.

One of the changes resulting from the CEQ review is the deletion of section 4.4.M.3., and the subsequent re-numbering within 4.4.M. The deleted item would have categorically excluded actions where the BIA had concurrence or co-approval with another agency and the action was a categorical exclusion for that agency. To be used, an exclusion must be listed by the BIA, as well. The other two changes are clarifications in the wording of sections 4.3.B and 4.4.H.1.

Of the comments that did not result in changes, several recommended adding details that are covered in 30 BIAM Supplement 1. As noted under the supplemental information for the proposed revisions, Appendix 4 is intended to be used along with Supplement 1, as well as with Departmental procedures and the Council on Environmental Quality's regulations (40 CFR Parts 1500–1508). A number of other comments were editorial suggestions that offered no measurable improvement in the text. Yet others, while worthy of consideration in another context, were beyond the scope of this Appendix. One, for example, argued that BIA environmental guidance should be in the Code of Federal Regulations, not the Departmental Manual. Responses, by section, to comments that did not fall into one of the above three categories are as follows:

Section 4.3.A.1

Comment: Recommendation that all mining development applications be analyzed to determine if an EIS is required, rather than categorically excluding applications according to production and acreage criteria.

Response: The numbers provided in this section are intended as general guidance. The BIA understands that there will be exceptions to this categorical exclusion, and has a procedure to determine when such might be the case.

Section 4.4

Comment: Recommendation that program by program regulations for NEPA compliance for a number of parts under 25 CFR be promulgated.

Response: This would not be consistent with the Government's current policy of regulatory reduction.

Comment: Numerous suggestions for new categorical exclusions to be added to the list.

Response: The exclusions contained in this rule are flexible enough to cover the suggested exclusions. For example, most of the suggested additions fall within the broader exclusion for operation and maintenance (4.4.A.).

Section 4.4.I

Comment: Recommendation that a categorical exclusion be added for federally funded housing projects wherein the Department of Housing and Urban Development (HUD) will be complying with NEPA for the housing and the only BIA action would be to acquire the land in trust.

Response: The categorical exclusion was not included because such situations are covered under lead/cooperating agency arrangements in HUD's environmental documents.

Comment: Question as to whether the categorical exclusion of land conveyances where no change in land use is planned might still allow for some degree of planned development or physical alteration of the land without triggering NEPA review.

Response: It is unrealistic to expect land to be conveyed with no plan whatsoever for its future use. Whether or not the conveyance may be categorically excluded is a matter of judgement by the BIA official responsible for NEPA compliance as to how well the plan is established. The categorical exclusion does not, however, allow for any development or physical alteration to actually take place.

Comment: Recommendation that all land transfers be categorically excluded, regardless of plans for future

development or physical alteration, as long as the subsequent activity will be subject to NEPA review.

Response: This is in fact the way the categorical exclusion is meant to operate. What the BIA official responsible for NEPA compliance must decide is whether or not plans for development or physical alteration are established to the point where NEPA review of the proposed activity should be done in conjunction with the land transfer.

4.1 NEPA Responsibility

A. Deputy Commissioner of Indian Affairs is responsible for NEPA compliance of Bureau of Indian Affairs (BIA) activities and programs.

B. Director, Office of Trust Responsibilities (OTR) is responsible for oversight of the BIA program for achieving compliance with NEPA, program direction, and leadership for BIA environmental policy, coordination and procedures.

C. Environmental Services Staff, reports to the Director (OTR). This office is the Bureau-wide focal point for overall NEPA policy and guidance and is responsible for advising and assisting Area Offices, Agency Superintendents, and other field support personnel in their environmental activities. The office also provides training and acts as the Central Office's liaison with Indian tribal governments on NEPA and other environmental compliance matters. Information about BIA NEPA documents or the NEPA process can be obtained from this office.

D. Other Central Office Directors and Division Chiefs are responsible for ensuring that the programs and activities within their jurisdiction comply with NEPA.

E. Area Directors and Project Officers are responsible for assuring NEPA compliance with all activities under their jurisdiction and providing advice and assistance to Agency Superintendents and consulting with the Indian tribes on environmental matters related to NEPA. Area Directors and Project Officers are also responsible for assigning sufficient trained staff to ensure NEPA compliance is carried out. An Environmental Coordinator is located at each Area Office.

F. Agency Superintendents and Field Unit Supervisors are responsible for NEPA compliance and enforcement at the Agency or field unit level.

4.2 Guidance to Applicants and Tribal Governments

A. Relationship with Applicants and Tribal Governments.

1. Guidance to Applicants.

a. An ''applicant'' is an entity which proposes to undertake any activity which will at some point require BIA action. These may include tribal governments, private entities, state and local governments or other Federal agencies. BIA compliance with NEPA is Congressionally mandated. Compliance is initiated when a BIA action is necessary in order to implement a proposal.

b. Applicants should contact the BIA official at the appropriate level for assistance. This will be the Agency Superintendent, Area Director or the Director, Office of Trust Responsibilities.

c. If the applicant's proposed action will affect or involve more than one tribal government, one government agency, one BIA Agency, or where the action may be of State-wide or regional significance, the applicant should contact the respective Area Director(s). The Area Director(s), using sole discretion, may assign the lead NEPA compliance responsibilities to one Area Office or, as appropriate, to one Agency Superintendent. From that point, the Applicant will deal with the designated lead office.

d. Since much of the applicant's planning may take place outside the BIA system, it is the applicant's responsibility to prepare a milestone chart for BIA use at the earliest possible stage in order to coordinate the efforts of both parties. Early communication with the responsible BIA office will expedite determination of the appropriate type of NEPA documentation required. Other matters such as the scope, depth and sources of data for an environmental document will also be expedited and will help lead to a more efficient and more timely NEPA compliance process.

2. Guidance to Tribal Governments.

a. Tribal governments may be applicants, and/or be affected by a proposed action of BIA or another Federal agency. Tribal governments affected by a proposed action shall be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents. Notwithstanding the above, the BIA retains sole responsibility and discretion in all NEPA compliance matters.

b. Any proposed tribal actions that do not require BIA or other Federal approval, funding or ''actions'' are not subject to the NEPA process.

B. Prepared Program Guidance.

BIA has implemented regulations for environmental guidance for surface mining in 25 CFR Part 216 (Surface Exploration, Mining and Reclamation of Lands.) Environmental guidance for Forestry activities is found in 25 CFR 163.27 and 53 BIAM Supplements 2 and 3.

C. Other Guidance.

Programs under 25 CFR for which BIA has not yet issued regulations or directives for environmental information for applicants are listed below. These programs may or may not require environmental documents and could involve submission of applicant information to determine NEPA applicability. Applicants for these types of programs should contact the appropriate BIA office for information and assistance:

1. Partial payment construction charges on Indian irrigation projects (25 CFR Part 134).
2. Construction assessments, Crow Indian irrigation project (25 CFR Part 135).
3. Fort Hall Indian irrigation project, Idaho (25 CFR Part 136).
4. Reimbursement of construction costs, San Carlos Indian irrigation project, Arizona (25 CFR Part 137).
5. Reimbursement of construction costs, Ahtanum Unit, Wapato Indian irrigation project, Washington CFR Part 138).
6. Reimbursement of construction costs, Wapato-Satus Unit, Wapato Indian Irrigation project, Washington (25 CFR Part 139).
7. Land acquisitions (25 CFR Part 151).
8. Leasing and permitting (Lands) (25 CFR Part 162).
9. Sale of lumber and other forest products produced by Indian enterprises from the forests on Indian reservation (25 CFR Part 164).
10. Sale of forest products, Red Lake Indian Reservation, Minn. (25 CFR Part 165).
11. General grazing regulations (25 CFR Part 166).
12. Navajo grazing regulations (25 CFR Part 167).
13. Grazing regulations for the Hopi partitioned lands (25 CFR Part 168).
14. Rights-of-way over Indian lands (25 CFR Part 169).
15. Roads of the Bureau of Indian Affairs (25 CFR Part 170).
16. Concessions, permits and leases on lands withdrawn or acquired in connection with Indian irrigation projects (25 CFR Part 173).
17. Indian Electric Power Utilities (25 CFR Part 175).
18. Resale of lands within the badlands Air Force Gunnery Range (Pine Ridge Aerial Gunnery Range) (25 CFR Part 178).
19. Leasing of tribal lands for mining (25 CFR Part 211).

20. Leasing of allotted lands for mining (25 CFR Part 212).
21. Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma, for mining (25 CFR Part 213).
22. Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas (25 CFR Part 214).
23. Lead and zinc mining operations and leases, Quapaw Agency (25 CFR Part 215).
24. Leasing of Osage Reservation lands for oil and gas mining (25 CFR Part 226).
25. Leasing of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining (25 CFR Part 227).
26. Indian fishing in Alaska (25 CFR Part 241).
27. Commercial fishing on Red Lake Indian Reservation (25 CFR 242).
28. Use of Columbia River in-lieu fishing sites (25 CFR Part 248).
29. Off-reservation treaty fishing (25 CFR Part 249).
30. Indian fishing—Hoopa Valley Indian Reservation (25 CFR Part 150).
31. Housing Improvement Program (25 CFR Part 256).
32. Contracts under Indian Self-Determination Act (25 CFR Part 271).
33. Grants under Indian Self-Determination Act (25 CFR Part 272).
34. School construction or services for tribally operated previously private schools (25 CFR Part 274).
35. Uniform administration requirements for grants (25 CFR 276).
36. School construction contracts for public schools (25 CFR Part 277).

4.3 Major Actions Normally Requiring an EIS

A. The following BIA actions normally require the preparation of an Environmental Impact Statement (EIS):
1. Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit for:
a. New mines of 640 acres or more, other than surface coal mines.
b. New surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.
2. Proposed water development projects which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.
3. Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances.
4. Construction of a solid waste facility for commercial purposes.
B. In exceptional cases, where one of the above actions appears unlikely to have a significant impact on the human environment, an Environmental Assessment (EA), at least, must be prepared in accordance with 40 CFR 1508.9. In no case may one of these actions be treated as a categorical exclusion.

4.4 Categorical Exclusions

In addition to the actions listed in the Department's categorical exclusions in Appendix 1 of 516 DM 2, many of which the BIA also performs, the following BIA actions are hereby designated as categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2. These activities are single, independent actions not associated with a larger, existing or proposed, complex or facility. If cases occur that involve larger complexes or facilities, an EA or supplement should be accomplished.
A. Operation, maintenance, and replacement of existing facilities.
Examples are normal renovation of buildings, road maintenance and limited rehabilitation of irrigation structures.
B. Transfer of Existing Federal Facilities to Other Entities.
Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, follow BIA policy, and no change in operations or maintenance is anticipated.
C. Human resources programs.
Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.
D. Administrative actions and other activities relating to trust resources.
Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.
E. Self-Determination and Self-Governance.
1. Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.
2. Self-Governance compacts for BIA programs which are listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.
F. Rights-of-Way.
1. Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.
2. Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.
3. Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.
G. Minerals.
1. Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.
2. Approval of unitization agreements, pooling or communitization agreements.
3. Approval of mineral lease adjustments and transfers, including assignments and subleases.
4. Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.
H. Forestry.
1. Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 board feet.
2. Approval and issuance of cutting permits for forest products not to exceed $5,000 in value.
3. Approval and issuance of paid timber cutting permits or contracts for products valued at less than $25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
4. Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
5. Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.
6. Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.
7. Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
8. Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

9. Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

10. Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

I. Land Conveyance and Other Transfers.

Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations.

Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

1. Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

2. Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (Pub. L. 94–580), Comprehensive Environmental Response, Compensation, and Liability Act (Pub. L. 96–516) or Toxic Substances Control Act (Pub. L. 94–469).

L. Roads and Transportation.

1. Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

2. Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

3. Activities included in a ''highway safety plan'' under 23 CFR Part 402.

4. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

5. Emergency repairs under 23 U.S.C. 125.

6. Acquisition of scenic easements.

7. Alterations to facilities to make them accessible for the elderly or handicapped.

8. Resurfacing a highway without adding to the existing width.

9. Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (eg. widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).

10. Approvals for changes in access control within existing right-of-ways.

11. Road construction within an existing right-of-way which has been acquired for a HUD housing project, and for which earlier NEPA analysis already exists.

M. Other.

1. Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.

2. Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

3. Approval of an Application for Permit to Drill for a new water source or observation well.

4. Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

5. Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa–ll) when the permitted activity is being done as a part of an action for which an NEPA analysis has been, or is being prepared.

Dated: December 16, 1996.

Dr. Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–32588 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–W7–P

Bureau of Land Management

[NV–020–1990–01]

Final Environmental Impact Statement, Notice of Availability

ACTION: Notice of availability, final environmental impact statement for the Santa Fe Pacific Gold Corporation's Twin Creeks Mine Expansion Project.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca District of the Bureau of Land Management (BLM) has prepared, by third party contractor, and made available for a 30-day public review, the Final Environmental Impact Statement for Santa Fe Pacific Gold Corporation's Twin Creeks Mine Expansion Project, located in Humboldt County, Nevada.

DATES: The Final Environmental Impact Statement will be distributed and made available to the public on December 20, 1996. The period of availability for public review for the Final Environmental Impact Statement ends on January 21, 1997. At that time a Record of Decision will be issued regarding the Proposed Action.

ADDRESSES: A copy of the Final Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. The Final Environmental Impact Statement is available for inspection at the following locations: Bureau of Land Management Nevada State Office (Reno); Lander and Humboldt County Libraries; and the University of Nevada library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gerald L. Moritz, Project Manager, at the above Winnemucca District address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement has been reproduced in its entirety and contains the original analysis presented in the Draft EIS (issued July 5, 1996), with all text changes highlighted. In addition, the Final EIS also includes an evaluation of two additional alternatives, the West Side alternative (overburden/interburden reconfiguration) and the East Side alternative (stormwater control), that were not analyzed in the Draft EIS. Also included in the Final EIS are responses to comments received by BLM during the public comment period on the Draft EIS. The EIS analyzes the direct, indirect and cumulative impacts associated with continued mining and expansion of the South pit, ore processing facilities, overburden and interburden storage areas, expanded dewatering system and water disposal facilities, diversion of Rabbit Creek and tributaries, and ancillary facilities.

Dated: December 16, 1996.

Ron Wenker,

Winnemucca District Manager.

[FR Doc. 96–32571 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–HC–M

[ID–957–1040–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. December 9, 1996.

The plat reprsenting the dependent resurvey of portions of the subdivisional lines, of the 1895 meanders of the left bank of the Snake River, and of the 1960 meanders of an island designated as lot 16 in section 3, and the survey of the median line of a relicted channel of the Snake River in section 3, T. 6 S., R. 8

E., Boise Meridian, Idaho, Group No. 948, was accepted December 9, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: December 9, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–32570 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

30 Day Notice of Submission to OMB, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to OMB and request for comments on information collection related to National Park Service mining regulations.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)(D)), the National Park Service (NPS) invites comments on a submitted request to OMB to approve a reinstatement, with change, to a previously approved information budget for the NPS's minerals management regulatory program inside park units. Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology; and (5) information on the typical costs that prospective operators incur in preparing complete plans of operation under NPS mining regulations.

PRIMARY PURPOSE OF THE PROPOSED INFORMATION COLLECTION REQUEST: The NPS obtains information on prospective mineral development activities associated with mining claims and nonfederal oil and gas rights within National Park System units to ensure that it only permits operations that mitigate adverse impacts to park resources and values.

DATES: Public comments on this notice must be received by January 23, 1997.

ADDRESSES: Please send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department (1024–0064), Washington, D.C. 20503. Please also forward a copy of your comments to: Carol McCoy, Chief, Policy and Regulations Branch, Geologic Resources Division, National Park Service, P.O.Box 25287, Lakewood, Colorado 80225.

All comments will become a matter of public record. Copies of the information collection request may be obtained by contacting Carol McCoy at the above noted address or by calling her at (303) 969–2096.

SUPPLEMENTARY INFORMATION:

Title: NPS Minerals Management Program.

Form: None.

OMB Number: 1024–0064.

Expiration Date: October 31, 1996.

Type of Request: Reinstatement, with change, of a previously approved information collection.

Description of Need: Regulations at 36 CFR Part 9 require prospective developers of mineral claims under the Mining Law of 1872 and nonfederal oil and gas rights to submit proposed plans of operations to the NPS for review and approval. A plan of operations essentially represents a prospective operator's blueprint for conducting mineral development activities associated with valid mineral rights inside park unit boundaries. By requiring such a plan upfront, the NPS can assure that only mining operations that mitigate adverse impacts to park resources and values are authorized inside park unit boundaries.

Description of respondents: 1/3 medium to large publicly owned companies and 2/3 private entities.

Estimated annual reporting burden: 1600

Estimated average burden per respondent: 80 hours.

Estimated average number of respondents: 18.

Estimated frequency of response: One.

Dated: December 17, 1996.

David B. Shaver,

Chief, Geologic Resources Division, National Park Service.

[FR Doc. 96–32654 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–70–P

Gettysburg National Military Park; Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Summary of development opportunity.

The National Park Service (''NPS'') is seeking proposals from highly qualified persons to cooperate with NPS in the development of visitor center and museum facilities (the ''Visitor Center/Museum Facilities'') for Gettysburg National Military Park (the ''park''), under the terms of an NPS cooperative agreement. The cooperator may also develop and operate in cooperation with NPS specified related facilities (the ''Related Facilities'') as part of the overall NPS and cooperator project (the ''Complex''). This Request for Proposals (''RFP'') represents a unique opportunity for a visionary, creative organization which cherishes our nation's past to be part of a history-making public-private collaboration which is intended to create the premier facility of its kind. The specific goals of NPS (''NPS Goals'') for this project are described in the section of this RFP entitled ''National Park Service Goals for the Complex.'' NPS seeks to consider proposals for the cooperative agreement from all possible sources, including for-profit not-for-profit and/or governmental entities. Because there is no federal funding for construction, only limited federal funding for the operation of the Visitor Center/Museum Facilities, and no federal funding for construction or operation of the Related Facilities, NPS will consider a variety of mechanisms and locations to make the Complex a reality.

Gettysburg is the site of the July 1–3, 1863 battle which many consider to be the turning point of the Civil War. The park encompasses 5,900 acres of terrain upon which most of the battle occurred. Located through the park are monuments built by the battle's survivors to memorialize their comrades who fell in battle, as well as state memorials and unit markers. The national cemetery, where many Union dead are buried, and whose dedication was the occasion of Lincoln's Gettysburg Address, is also included in the park. The park also owns a notable collection of artifacts, archives and printed texts, many of which are priceless and irreplaceable. There is a long tradition of living history programs, guided walks by interpreters, and personalized tours by the park's federally licensed battlefield guides which help the park's more than 1.7 million visitors each year understand the meaning and magnitude of the Battle of Gettysburg. A more detailed description of the park and its environment can be found in the Draft Development Concept Plan/Environmental Assessment, Collections Storage, Visitor and Museum Facilities,

Gettysburg National Military Park, Pennsylvania.

The Visitor Center/Museum Facilities will be the gateway to the park. The visitors' experiences in these facilities will prepare them to understand and appreciate fully the Gettysburg Battlefield. The facilities will include the park's main visitor center, a history museum, a bookstore for sale of interpretive materials, a gallery for the display of the world-famous Gettysburg cyclorama painting, housing the park's extensive collections of artifacts and archives, and administrative office space. NPS envisions this facility as an educational, enriching, enlightening and entertaining destination where park visitors can learn about the Gettysburg Campaign. The museum will tell the story of the battle in its broad context of the Civil War and American History, and of its legacy and enduring importance to the American people. At the end of their stay at the facility, visitors should want to visit the battlefield, participate in related programs and activities in the community, and learn more about the era of the Civil War. The Visitor Center/Museum Facilities building program includes site rehabilitation, the removal of the existing Cyclorama Building, and removal of most of the existing Visitor Center. A very small visitor contact station will be developed somewhere in the vicinity of the existing centers.

NPS considers the most proposals received will suggest, as part of the overall cooperative arrangements, general NPS operation and maintenance of the Visitor Center/Museum Facilities, including, as is done now, collection of interpretive fees by NPS and general NPS operation of its programs.

Proposals, however, may also suggest other strategies to operate and maintain cooperatively the Visitor Center/Museum Facilities. Such strategies may include a blend of public and private management and operation or other solutions that provide the park with needed facilities and services while limiting NPS financial participation.

No specific site for the Complex has been proposed or selected. Sites both inside and outside the park's boundary will be considered under the Site Evaluation Criteria set forth below so long as it is within the area of consideration

NPS intends that the general scope of the Visitor Center/Museum Facilities will be the same no matter where the Complex is located. However, a cooperator's Related Facilities may be broader in scope if located outside of Park boundaries as discussed below. Whatever the location, however, NPS wishes to provide a fitting setting in which to honor the events comprising the Gettysburg Campaign and to serve its visitors. Therefore, the Complex must convey an image compatible with the mission and purpose of NPS.

In preparation for the selection of a proposal, NPS has completed a Draft Development Concept Plan. The Draft Development Concept Plan describes objectives and options for the Visitor Center/Museum Facilities and selects a preferred option. The Draft Development Concept Plan has been reviewed by the public and NPS and NPS has an environmental assessment of its impacts. Although it is the general desire of NPS that proposals will suggest implementation of the preferred alternative of the Draft Development Concept Plan (Option D), the NPS Goals, which are incorporated by reference in the Proposal Evaluation Criteria, are the controlling goals for this RFP. They are significantly more general than the description of Option D. Proposals are not required to adhere to Option D. Proposals may suggest any alternative or modifications to Option D that are consistent with the NPS Goals, including, but not limited to, modifications to Option D's descriptive building program for the Visitor Center/Museum Facilities.

NPS believes that most proposals received will include suggestions for Related Facilities. However, NPS points out that potential cooperators do not have to propose Related Facilities. Potential cooperators may submit proposals regarding only the cooperative.

SUPPLEMENTARY INFORMATION: The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before close of business April 11, 1997 to be considered and evaluated.

Dated: December 6, 1996.

John A. Latschan,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 96–32603 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 14, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 7, 1997.

Carol D. Shull

Keeper of the National Register

Arkansas

Pulaski County

Central High School Neighborhood Historic District (Boundary Increase), 1850 S. Park St., Little Rock, 96001555

Georgia

Hart County

Archibald Mewborn House, Approximately 1 mi. E of GA 172, 7 mi. S of Hartwell, Hartwell vicinity, 96001556

Iowa

Black Hawk County

Chicago, Great Western Railroad—Waterloo Frieght Depot (Waterloo MPS) Sixth St., Waterloo, 88001325

Minnesota

Hennepin County

Grace Evangelical Lutheran Church, 324 Harvard St., SE, Minneapolis, 96001557

Meeker County

Bridge No. 90980 (Iron and Steel Bridges in Minnesota MPS) Co. Rd. 190 over the N fork of Crow River, Kingston Township, Forest City vicinity, 96001560

Nicollet County

St. Peter Armory, 419 S. Minnesota Ave., St. Peter, 96001558

Ramsey County

Bullard, Casiville, House, 1282 Folsom St., St. Paul, 96001559

Missouri

Boone County

Hunt, William B., House, 8939 W. Terrapin Hills Rd., Columbia vicinity, 96001567

Montana

Lewis and Clark County

Mount Helena Historic District, Promontory roughly bounded by LeGrande Canon Blvd., Last Chance and Grizzly Gulches, and Helena National Forest boundary, Helena, 96001568

Nevada

Clark County

Camp Lee Canyon, NV 156, approximately 50 mi. NW of Las Vegas, Spring Mountains National Recreation Area, Las Vegas vicinity, 96001561

New Jersey

Bergen County Crocker—McMillen Mansion—Immaculate Conception Seminary, Ramapo Vallet Rd., jct. of Campgaw Rd., Mahwah Township, Ramsey vicinity, 96001562

Texas

Dallas County

Greer, George C., House, 5439 Swiss Ave., Dallas, 96001563

Fannin County

Texas and Pacific Railroad Depot, 1 Main St., Bonham, 96001564

Guadalupe County

Tewes, Edward and Texanna, House, 8280 Linne Rd., Seguin, 96001566

Smith County

Douglas, John B. and Ketura (Kettie), House, 318 S. Fannin Ave., Tyler, 96001565

West Virginia

Harrison County

Bridgeport Lamp Chimney Company Bowstring Concrete Arch Bridge, Between Mechanic St. and B.O.R.R. tracks, Bridgeport, 96001571

Jefferson County

Gap View Farm, WV 9, between Charles Town and Shenandoah Junction, Charles Town, 96001574

Mineral County

Fort Hill, Patterson Creek Rd., approximately 1.5 mi. S of jct. with US55–220, Burlington vicinity, 96001569

Ohio County

Cathedral Parish School, Jct. of 14th and Byron Sts., Wheeling, 96001572

Preston County

Lakin, James S., House, 102 Aurora Ave., Terra Alta, 96001573

Ritchie County

Harrisville Grade School, 217 W. Main St., Harrisville, 96001570

Wisconsin

Dane County

East Side Historic District, Roughly bounded by Ridge, Henry, Vernon, and Academy Sts., Stoughton, 96001577

Door County

Zachow, William, Farmstead, 9533 WI 57, Bailey's Harbor, 96001578

Marathon County

Fromm Brothers Fur and Ginseng Farm Complex, 436 Co. Hwy. F, Hamburg, 96001581

Milwaukee County

Exton Apartments Building, 1260 N. Prospect Ave., Milwaukee, 96001576

Rock County

North, Sterling, House, 409 W. Rollin St., Edgerton, 96001579

Vilas County

Hultin, Nicolaus H., House, To-To-Tom Ln., N of jct. with Indian Village Rd., Lac du Flambeau, 96001582

Waukesha County

Saint Joan of Arc Catholic Church, N50 W34851 Wisconsin Ave., NW of jct. with US 16, Okauchee, 96001580

Winnebago County

Van Ostrand, Dewitt Clinton, House, 413 Church St., Neenah, 96001575

[FR Doc. 96–32655 Filed 12–23–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Correction

As set forth in the Federal Register (FR Doc. 96–20162) Vol. 61, No. 154 at page 41427, dated August 8, 1996, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application to the Drug Enforcement Administration (DEA) for registration as an importer for certain basic classes of controlled substances.

By letter dated September 5, 1996, B. I. Chemicals, Inc. requested that the following controlled substances be deleted from their application:

Drug	Schedule
Acetylmethadol (9601)	I
Oxycodone (9143)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Thebaine (9333)	II

Therefore, the above listed controlled substances are hereby deleted from B.I. Chemicals, Inc.'s application for registration as an importer.

Dated: October 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32608 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substance; Notice of Registration

By Notice dated August 21, 1996, and published in the Federal Register on August 30, 1996, (61 FR 45986), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Celgene Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 19, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32609 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 21, 1996, and published in the Federal Register on August 30, 1996, (61 FR 45986), Ciba-Geigy Corporation, Pharmaceuticals Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer by methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ciba-Geigy Corporation to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 19, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32610 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 27, 1996, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
Heroin (9200)	I
Normorphine (9313)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 24, 1997.

Dated: November 18, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32611 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 26, 1996, and published in the Federal Register on March 4, 1996 (61 FR 8303), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Difenoxin (9168)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

Also, by notice dated April 3, 1996, and published in the Federal Register on April 10, 1996, Johnson Matthey made application to be registered as a bulk manufacturer of dihydrocodeine (9120) and by notice dated May 28, 1996 and published in the Federal Register on June 5, 1996 Johnson Matthey made application to be registered as a bulk manufacturer of thebaine (9333) and alfentanil (9737).

Three registered manufacturers of bulk controlled substances filed comments in response to the notice of application. The first commentor filed comments with respect to codeine, oxycodone, hydrocodone and morphine, and the second commentor with respect to codeine, oxycodone, hydocodone, morphine, dihydrocodeine, oxymorphone and thebaine. The third commentor filed comments with respect to methylphenidate.

The first and second commentors argued against approval of Johnson Matthey's application for the seven opiates (hereafter referred to as the opiates) because Johnson Matthey's registration could trigger a shortage of narcotic raw materials (NRM), that the ''80/20 Rule'' would be negatively impacted and that Johnson Matthey does not have the NRM importation and extraction experience needed to efficiently manufacture the opiates from NRMs.

These arguments are based on the assumption that Johnson Matthey will import NRMs to manufacture the opiates. However, Johnson Matthey has not made application to import NRMs or manufacture the opiates from NRMs. Investigation by DEA has determined that the firm will not bulk manufacture codeine and morphine and plans to use domestic sources to obtain the materials needed to manufacture the remaining opiates. Therefore, these comments would appear to be moot.

The first commentor further argues that Johnson Matthey should be registered because it would increase regulatory costs and that the current manufacturers are providing an adequate supply. The commentor also offers in evidence that as a result of hearing with respect to Johnson Matthey's 1992 application to bulk manufacture methylphenidate, the Administrative Law Judge (ALJ) concluded that Johnson Matthey's experience in manufacturing methylphenidate under a researcher registration presented a ''sorry history of evasion and/or outright violations of DEA regulations''.

The second commentor also argues against approval of Johnson Matthey's application citing the ALJs findings in the methylphenidate hearings. Also, this commentor argues that Johnson Matthey has a huge capability and experience gap that encompasses technical expertise, experienced personnel, research knowledge, security and compliance commitment.

Both the first and second commentors use the findings of the ALJ in support of their arguments that Johnson Matthey's application be denied. Nevertheless, the ALJ did conditionally approve Johnson Matthey's application to bulk manufacture methylphenidate and in a subsequent Federal Register notice dated September 4, 1996 (61 FR 46664), terminated all proceedings with respect to JM's application to bulk manufacture methylphenidate.

With respect to the first commentor's contention that another manufacturer is not needed because there is a current and adequate supply, the Controlled Substances Act (CSA) does not demand that such a finding be made before the Drug Enforcement Administration (DEA) can register a bulk manufacturer.

Furthermore, pursuant to 21 CFR 1301.43(b), DEA is not required to limit the number of manufacturers in any basic class to a number less than that

consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

DEA is confident that the registration of Johnson Matthey will not impede DEA's statutory obligation to guard against the diversion of controlled substances.

Also, with respect to the second commentor's allegation that John Matthey has a huge capability and experience gap, Johnson Matthey has been registered with DEA since 1985. In the past 11 years, Johnson Matthey has demonstrated its technical and manufacturing expertise with respect to other controlled substances. Based on this history and recent investigation, DEA is confident that Johnson Matthey will continue this practice with respect to the opiates.

Additionally, DEA has investigated Johnson Matthey on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. The results of these investigations have led DEA to conclude that Johnson Matthey is in compliance with the CSA and that its continued registration is consistent with the public interest.

The third commentor states that there is sufficient information to show that the registration of Johnson Matthey to bulk manufacture methylphenidate is not in the public interest and an order to show cause be issued to deny Johnson Matthey's application. However, in Federal Register notice 61 FR 46664 (September 4, 1996), it was ordered that a request for a hearing concerning Johnson Matthey's February 1995, registration application and the proceedings following and relevant to that request be, and they hereby are, terminated. Since the ALJ approved Johnson Matthey's 1992 application to bulk manufacture methylphenidate on September 29, 1994, as a result of a previous hearing and the hearing request for the 1995 application was terminated, DEA finds no basis for yet another hearing to deny Johnson Matthey's application to bulk manufacture methylphenidate.

After reviewing all the evidence, including the comments filed, DEA has determined, pursuant to 21 U.S.C. 823(a), that registration of Johnson Matthey as a bulk manufacturer of oxycodone, hydrocodone, dihyrocodeine, oxymorphone, thebaine and methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that the 1996 applications submitted by Johnson Matthey for registration as a bulk manufacturer of the listed controlled substances, excluding codeine and morphine, but including oxycodone, hydrocodone, dihydrocodeine, oxymorphone, thebaine and methylphenidate are granted.

Dated: December 12, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32612 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 21, 1996, and published in the Federal Register on September 5, 1996, (61 FR 46827), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application for renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

By a Notice of Correction dated October 21, 1996, and published in the Federal Register on November 14, 1996, (61 FR 58424), fentanyl was deleted from Noramco of Delaware, Inc.'s application for bulk manufacture.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted, except for fentanyl.

Dated: December 5, 1996.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 96–32606 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 2, 1996, Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application by letter dated October 2, 1996, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alpha-Ethyltryptamine (7249)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
Bufotenine (7433)	I
Codeine-N-oxide (9053)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Pholcodine (9314)	I
Alphamethadol (9605)	I
Betcetylmethadol (9607)	I
Betamethadol (9609)	I
Norlevorphanol (9634)	I
Para-Fluorofentanyl (9812)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Phenmetrazine (1631)	II
Glutethimide (2550)	II
Cocaine (9041)	II
Codeine (9050)	II
Levomethorphan (9210)	II

Drug	Schedule
Levorphanol (9220)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. Federal Register Representative (CCR), and must be filed no later than February 24, 1997.

Dated: November 19, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–32607 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; Local Law Enforcement Block Grants Progress Reporting Form.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtained comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by December 28, 1996. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC, 20530.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until February 24, 1997. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the propose collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Laura Burke (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Laura Burke, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of This Information Collection

(1) Type of Information Collection: New data collection.

(2) Title of the Form/Collection: Local Law Enforcement Block Grants Progress Reporting Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Form: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as the brief abstract: Primary: State and local units of government. Other: None. This data collection will gather information from each jurisdiction on the general spending operations within the purpose areas of the grant.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3200 respondents at 45 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,800 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 18, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–32615 Filed 12–23–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 18, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 x 166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 9 a.m. and 12 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS/DM/ESA/ETA/MSHA/OSHA/PWBA/VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), on or before January 23, 1997.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Standard Industrial Classification (SIC) Forms.

OMB Number: 1220–0032.

Frequency: Every 3 years.

Affected Public: Individuals or households; Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government.

Form No.	Number of respondents	Average time per respondent (minutes)
3023–VS	1,994,750	50
3023–VM	38,197	45
3023–CA	53,000	10

Total Burden Hours: 203,062.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Accurate industrial coding based on the 1987 Standard Industrial Classification Manual is needed by many Federal, state, and local government officials and private researchers. This extension will permit the use of previously approved forms to gather this information.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–32681 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–33,017]

Amy Industries, Fort Gaines, Georgia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 16, 1996 in response to a worker petition which was filed on December 16, 1996 on behalf of workers at Amy Industries, Fort Gaines, Georgia.

All workers were separated from the subject firm more than one year prior to the date of the petition (December 2, 1996). Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of December, 1996

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–32678 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 173G]

Exxon Company, USA, A/K/A Exxon Corporation-Houston; Production Department, New Orleans Division, New Orleans, Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 25, 1996, applicable to workers of Exxon Company, USA, Production Department, New Orleans Division, New Orleans, Louisiana. The notice was published in the Federal Register on July 9, 1996 (61 FR 36085).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that Exxon Company, USA is a subsidiary of Exxon Corporation. Some of the workers at Exxon Company, USA, Production Department in New Orleans have had their Unemployment Insurance (UI) wages reported to the UI tax account for Exxon Corporation-Houston. Accordingly, the Department is amending the worker certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Exxon Company, USA, Production Department who were affected by increased imports.

The amended notice applicable to TA–W–32,173G is hereby issued as follows:

'All workers of Exxon Company, USA, also known as Exxon Corporate-Exxon, Production Department, New Orleans Division, New Orleans, Louisiana, who became totally or partially separated from employment on or after November 8, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of December 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–32676 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,561; Midway, Georgia and TA–W–32–561D, Haw River, North Carolina]

Kingstree Knits a Division of Texfi Industries, Incorporated; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1996, applicable to all workers of Kingstree Knits, A Division of Texfi Industries, Incorporated located in Midway, Georgia. The notice was published in the Federal Register on October 1, 1996 (61 FR 51303). The worker certification was amended November 8, 1996 to include other South Carolina locations. That notice will soon be published in the Federal Register ,

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Company officials report that worker separations will occur at the subject firm's production facility in Haw River, North Carolina. The workers are engaged in employment related to the production of tee shirts for women, men and boys.

The intent of the Department's certification is to include all workers of Kingstree Knits adversely affected by imports. Accordingly, the Department is again amending the certification to include all workers at the Kingstree Knits, a division of Texfi Industries, Incorporated, Haw River, North Carolina.

The amended notice applicable to TW–W–32,561 is hereby issued as follows:

All workers at Kingstree Knits, a Division of Texfi Industries, Incorporated, Midway, Georgia (TA–W–32,561), and Haw River, North Carolina (TA–W–32,561D), who became totally or partially separated from employment on or after July 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of December 1996.

Russell T. Kile,

Program Manger, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 96–32679 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Reporting Requirements Pursuant to Baker v. Reich

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the extension of the information collection of the Reporting Requirements for Baker v. Reich, ETA 563a.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 24, 1997. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Russell T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

This information is needed in order to comply with a Federal Court Order issued on September 9, 1996, regarding individual eligibility determinations for Trade Readjustment Allowance (TRA) benefits under the North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) program. The data to be collected comply with the United States District Court for the District of Columbia's preliminary approval of, pending a final hearing, a settlement of *Baker* v. *Reich* between the Department of Labor and the United Auto Workers Union (UAW). The Court Order requires the Department to report to the UAW on the States' implementation of the settlement and beginning with the quarterly reporting period ending December 31, 1996, the States will provide the Department with quarterly written reports by petition number on: the number of people requesting determination of entitlement; the number of people determined entitled to benefits; and the number of people receiving TRA first payments under this settlement. The States are required to continue to report the data on a quarterly basis for five more quarters.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for an extension of collection of information currently approved and assigned OMB Control No. 1205–0372. There is a reduction of 40 burden hours from the previously approved data collection, because the one-time interim report on the implementation of the settlement, also approved under OMB Control No. 1205–0372, is no longer required.

Type of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: Reporting requirements pursuant to *Baker* v. *Reich*.

OMB Number: 1205–0372.

Frequency: Quarterly report for six quarters.

Affected Public: State or local government.

Number of Respondents: 40.

Estimated Time Per Respondent: 2 minutes per NAFTA–TAA petition.

Total Burden Hours: 168.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Total Estimated Cost: $800.

Total Burden Hours: 40.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 1996.

Russell T. Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 96–32674 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition for Trade Adjustment Assistance

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement of the information collection of the Petition for Trade Adjustment Assistance, ETA 8560, and its Spanish translation, Solicitud De Asistencia Para Ajuste, ETA 8559.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice

DATES: Written comments must be submitted on or before February 24, 1997. Written comments should evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techiques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Russel T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 221 (a) of Title II, Chapter 2 of the Trade Act of 1974, as amended, authorizes the Secretary of Labor to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by workers or their certified or recognized union or duly authorized representative. ETA Form 8560, Petition for Trade Adjustment Assistance, and its Spanish translation, ETA Form 8559, Solicitud De Asistencia Para Ajuste, establish a format which may be used for filing such petitions.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for a reinstatement of collection of information previously approved and assigned OMB Control No. 1205–0192. There is no change in burden.

Type of Review: Reinstatement without change.

Agency: Employment and Training Administration, Labor.

Title: Petition for Trade Adjustment Assistance; Solicitud De Asistencia Para Ajuste.

OMB Number: 1205–0192.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: Estimated 1,400.

Estimated Time Per Respondent: 15 minutes per response.

Total Estimated Cost: $1,750.

Total Burden Hours: 350.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 1996.

Russell T. Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 96–32675 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November and December, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,835; Schuller Manufacturing, Inc., Vienna, WV

TA–W–32,828; Lafayette Apparel Producers, Inc., Lafayette, TN

TA–W–32,776; Union Special Corp., Huntley, IL

TA–W–32,775; Jet Sew Technologies, Inc., Barneveld, NY

TA–W–32,796; Perdue Farms, Inc., Fayetteville, NC

TA–W–32,917; Pak-Mor, Inc., Duffield, VA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,860; TNS Mills, Inc., Eufaula, AL

TA–W–32,885; Controls Techniques Drives, Inc., Grand Island, NY

TA–W–32,807; Horsehead Resource Development Co., Palmerton, PA

TA–W–32,830; Witco Corp., Kendall/ Amalia Div., Bradford, PA

TA–W–32,801; Weyerhaeuser Co., Oregon Timberland & Regeneration Div., Klamath, OR

TA–W–32,764; Schreiber Foods, Inc., Green Bay, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,902; Old Ben Coal Co., Edgarton, WV

U.S. imports of coal decreased in 1995 compared to 1994. In the past three years, US imports relative to production were neglible.

TA–W–32,804; Consolidated Electric Supply, Miami, FL

TA–W–32,899; L. Robert Kimball & Associates, Ebensburg, PA

TA–W–32,953; Petrie Retail, Inc—Petrie Stores, Secaucus, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,778; Lance, Inc., Greenville, TX

Declines in employment are related to a company decision to transfer the production at the subject firm to another domestic company location in which there was excess capacity.

TA–W–32,923; Connors Rubber Technologies, For Wayne, IN

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,766; Garden State Tanning, Inc., Williamsport, MD

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion

of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,814; Chatham Mills, Inc., Pittsboro, NC: October 1, 1995.
TA–W–32,800; TRW Automotive Products Remanufacturing, McAllen, TX: September 16, 1995.
TA–W–32,736; Roxanne of Pennsylvania, Wilkes-Barre, PA: August 27, 1995.
TA–W–32,853; STS Apparel, Inc., Johnson City, TN: October 5, 1995.
TA–W–32,891; The Clarks Companies, Kennett Square, PA: October 10, 1995.
TA–W–32, 863; Hercules, Inc., Aqualon Div., Parlin, NJ: November 9, 1996.
TA–W–32,844; American Fiber & Finishing, Inc., Colrain, MA: October 10, 1996.
TA–W–32,864; National Energy Group, Inc—OK, Formerly Alexander Energy Corp., Oklahoma City, OK: October 9, 1995.
TA–W–32,837; Haddon Craftsmen, Inc., Scranton, PA: September 25, 1995
TA–W–32,887; Woolrich, Inc., Howard Facility, Howard, PA: October 25, 1995.
TA–W–32,832; Fashion Bed Group, Chicago, IL: October 10, 1995.
TA–W–32,882; Assembly Service, Inc., El Paso, TX: October 16, 1995.
TA–W–32,810; MAN Roland, Inc., WEB Press Div., Groton, CT: October 7, 1995.
TA–W–32,831; Crouzet Corp., Carrollton, TX: October 15, 1995.
TA–W–32,798; Rockwell International, Graphics Div., Cedar Rapids, IA: September 23, 1995.
TA–W–32,955; Philadelphia Sweater Mill, Philadelphia, PA: November 13, 1995.
TA–W–32,916; Groschopp, Sanborn, IA: October 30, 1995.
TA–W–32,911; Johnson Controls, Inc., Systems Products—Humbolt Facility, Milwaukee, WI: October 22, 1995.

All workers excluding those engaged in the production of actuator assembly for TV series valves.

TA–W–32857; IVAX Corp., Zenith Goldline Shreveport (aka H N Norton Co), Shreveport, LA: October 9, 1995.
TA–W–32,852; Stich 'R' US, Miami, FL: October 1, 1995.
TA–W–32,845; RYOBI Motor Product Corp., Anderson, SC: October 14, 1995.
TA–W–32,818; Accuride Corp., Henderson, KY: September 3, 1995.
TA–W–32,811; Basin Resources, Inc., Weston, CO: October 2, 1995.
TA–W–32873; Joelle Bridals, Inc., New York, NY: December 10, 1995.
TA–W–32,794; Americal, Inc., Pacific, MO: September 24, 1995.
TA–W–32,908; Jensports Div of Charland Sportwear, New Kenington, PA: October 28, 1995.
TA–W–32,839; Lee Co., Irvington, AL: October 7, 1995.
TA–W–32,932; The Stroh Brewery, Baltimore, MD: October 28, 1995.
TA–W–32,862; Spectro Knit, Mifflinburg, PA: October 9, 1995.
TA–W–32,909; Avery Dennison, Torrance, CA: November 12, 1995.
TA–W–32,808; Warnaco, Inc., Olga Div., City of Commerce, CA: September 16, 1995.
TA–W–32,826; UNOCAL, Oil and Gas Div., Sugar Land, TX & Operating at Various Locations in the Following States: A; TX, B; AL, C; LA, D; MI, E; NM, F; OK, G; UT: December 9, 1996
TA–W–32,754 & A, G; Bull HN Information Systems, Inc., Billerica, MA, Brighton, MA & Phoenix, AZ & Operating at Various Locations in the Following States: C; AL, D; CA, E; CO, F; FL, G; GA, H; IA, I; IL, J; MA, K; ME, l; MI, M; MN, N; MO, O; NE, P; NH, Q; NY, R; OH, S; OK, T; OR, U; PA, V; TX, W: VA: September 10, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) an in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issues during the month of November and December, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separation or threat of separation of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01280; Litco Wood Products Co., Parkerburg, WV
NAFTA–TAA–01260; Lafayette Apparel Producers, Inc., Lafayette, TN
NAFTA–TAA–01284; Horsehead Resource Development Co., Inc., Palmerton, PA
NAFTA–TAA–01303; Armour Swift-Eckrich, Kalamazoo, MI
NAFTA–TAA–01332; Old ben Coal Co., Mine #20, Edgarton, WV
NAFTA–TAA–01228; Boise Cascade Corp., Paper Div., Vancouver, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01294; Delta Painting, Inc., Deerfield Beach, FL
NAFTA–TAA–01306 & A,B,C; Father & Son Stores, A Div. of Endicott Johnson Corp, Johnson City, NY, Scranton, PA, Wilkes-Barre, PA, Whitehall, PA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01295; Royals, Inc., High Point, NC: October 25, 1995.
NAFTA–TAA–01266; Redpath Apparel Group, Denison, TX: October 3, 1995.
NAFTA–TAA–01287; Mead Corp (The), Packaging Div., Fairless Hills, PA: October 7, 1995.

NAFTA–TAA–01313; Alphabet, Greenwood, SC: October 28, 1995.

NAFTA–TAA–1310; Burns Philip Food, Inc., Specialty Brands Div., Bethlehem, PA: October 8, 1995.

NAFTA–TAA–01293; Ekco Group, Inc., Kellogg Brush Manufacturing Co., Easthampton, MA: October 22, 1995.

NAFTA–TAA–01285; Assembly Services, Inc., El Paso, TX: October 16, 1995.

NAFTA–TAA–01305; Borg-Warner Automotive Diversified Transmission Products Corp., Muncie, IN: October 24, 1995.

NAFTA–TAA–01291; Otari Manufacturing Corp. Hauppauge, NY: September 25, 1995.

NAFTA–TAA–01274; Seams Right Manufacturing, St. Mary's MO: October 16, 1995.

NAFTA–TAA–01292; Haddon Craftsmen, Inc., AN R.R. Donnelley & Sons Co., Scranton, PA: September 25, 1996.

NAFTA–TAA–01307; WTTC, Inc., El Paso, TX: October 23, 1995.

NAFTA–TAA–01363; Professional Manufacturing, Inc., Paris, ID: November 22, 1995.

NAFTA–TAA–01326; Ferraz Corp., Parsipanny, NJ: October 29, 1995.

NAFTA–TAA–01339; Procter & Gamble Manufacturing Co., Hatboro, PA: November 8, 1995.

NAFTA–TAA–01343; Sunbeam Household Products, Coushatta, LA: November 14, 1995.

NAFTA–TAA–01355; The Jay Garment Co., Portland, IN: November 22, 1995.

I hereby certify that the aforementioned determinations were issued during the month of November and December, 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 12, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–3260 Filed 12–23–96; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Licensing Support System Advisory Review Panel (LSSARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose is to provide advice to (1) the Department of Energy (DOE) on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system is known as the Licensing Support System (LSS).

Membership on the Panel is drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, and the nuclear industry. Federal agencies with expertise and experience in electronic information management systems also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSSARP until December 19, 1998 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: December 19, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–32633 Filed 12–23–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents will hold a joint meeting on January 9, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 9, 1997—1:00 p.m. until the conclusion of business

The Subcommittees will hold discussions with the NRC staff regarding the November 20, 1996, ACRS letter to the NRC Executive Director for Operations on the proposed Steam Generator Integrity rule and an associated regulatory guide, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named

individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 18, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–32632 Filed 12–23–96; 8:45 am]

BILLING CODE 7590–01–P

Federal Sunshine Meeting

DATE: Weeks of December 23, 30, 1996 and January 6 and 13, 1997.

PLACE: Commissioners' Conference Room 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 23—Tentative

There are no meetings scheduled for the Week of December 23.

Week of December 30—Tentative

There are no meetings scheduled for the Week of December 30.

Week of January 6—Tentative

Tuesday, January 7

9:30 a.m.
Briefing on Investigative Matters (Closed—Ex. 5&7)
2:00 p.m.
Discussion of Procedures for NRC Strategic Assessment (Closed—Ex. 2)

Thursday, January 9

10:00 a.m.
Briefing by Maine Yankee, NRR, and Region I (Public Meeting)
(Contact: Daniel Dorman, 301–415–1429)
12:00 m.
Affirmation Session (Public Meeting) (if needed)

Week of January 13—Tentative

Monday, January 13

10:00 a.m.
Briefing on NRC Strategic Assessment (Public Meeting) (Contact: John Craig, 301–415–3812)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

*The Schedule for Commission Meetings is Subject to Change on Short Notice. To Verify the Status of Meetings Call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 20, 1996.

William M. Hill, Jr.

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–32857 Filed 12–20–96; 3:22 pm]

BILLING CODE 7590–01–M

Correction to the Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) issued the Biweekly Notice Report, which was published in the Federal Register on December 18, 1996 (61 FR 66702).

On page 66702, second column, second full paragraph, the 30-day notice period ending date should read ''By January 17, 1997, * * *.'' instead of ''By January 17, 1996, * * *.''

Dated at Rockville, Maryland, this 19th day of December 1996.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–32634 Filed 12–23–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1148; Docket No. MC97–1]

Experimental Nonletter-Size Business Reply Mail Categories and Fees, 1996; Notice and Order on Filing of Request for Establishment of Experimental Nonletter-Size Business Reply Mail Categories and Fees

Issued December 18, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Notice is hereby given that on December 13, 1996, the U.S. Postal Service filed a Request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*, for a recommended decision on proposed changes in the Domestic Mail Classification Schedule (DMCS). The proposed revisions also include proposed new fees. The Request includes attachments and is supported by the testimony of three witnesses and three library references. It is on file in the Commission Docket Room and is available for inspection during the Commission's regular business hours. [1]

Experimental Nature of the Proposed Change: The Postal Service indicates that it is requesting new classifications and fees for nonletter-size Business Reply Mail (BRM) on an experimental basis. The Service proposes that these experimental BRM categories be put into effect for two years, in order to assess the costs associated with providing them and their administrative feasibility.

Description of request: The Postal Service proposes a revised schedule of fees for nonletter-size Business Reply Mail processed under two alternative accounting procedures known as the ''reverse manifest'' method and the ''weight averaging'' method. Generally, the Postal Service expects that the alternative methods of accounting for nonletter-size BRM pieces will reduce postal workhours that would otherwise be attributable to this mail, permit more expeditious rating and billing, allow the recipient earlier access to the mail, and increase customer satisfaction with BRM service. On these grounds, the Postal Service proposes per-piece fees for active business reply mail advance deposit accounts of 2 cents for nonletter-size pieces using reverse manifest procedures, and 3 cents for such pieces using weight averaging procedures.

However, in addition to the apparently lower per-piece accounting costs of employing the two methods, the Service anticipates that establishing a ''reverse manifest'' or ''weight averaging'' BRM account for a recipient, as well as the required periodic sampling, auditing, and monitoring of such an account, will generate extraordinary postal costs in excess of the current BRM annual permit fee ($85.00) and annual advance deposit accounting fee ($205.00). To recover these extraordinary costs, the Service proposes adoption of application/qualification fees for each BRM account seeking to employ an alternative

[1] In a separate notice filed simultaneously with its Request, the Postal Service states that interested persons who intervene in this proceeding may arrange to obtain copies of the request by contacting Postal Service counsel by telephone at (202)268–2998, or Ms. Bonnie D'Alessandro at (202)268–2988, and that intervenors will be provided with two copies of the Request upon showing that they have filed notices of intervention with the Postal Rate Commission.

accounting method: ($1000) for the reverse manifest method and ($3000) for the weight averaging method. Finally, the Postal Service proposes additional monthly fees of ($1000) for accounts using the reverse manifest method and ($3000) for accounts using the weight averaging method. These new fees would be in addition to the current permit fees.

The Request also states that the Postal Service intends to select 20 or fewer applicants to participate in the proposed experiment: as many as 10 BRM recipients for use of the reverse manifest method, and up to 10 recipients for use of the weight averaging method. The Service proposes a two-year duration for the experiment to allow interested mailers sufficient time to gauge the potential costs and benefits of the alternative methods in light of their mailing practices, and to provide the Postal Service time to select a cross-section of participating users, set up the required administrative procedures, and to collect and analyze operational, cost and market research data.

Motion for waiver of certain filing requirements The Postal Service's request was also accompanied by a motion for waiver of compliance with certain requirements of section 64(h) of the rules of practice (39 CFR 3001.64(h)), which specify rate-related information to be included in classification requests that would affect rates and fees. Specifically, the Postal Service seeks waiver of compliance with subsections (d) (in part), (f)(2), (f)(3), (h), (j), (l)(1) (in part), and (l)(2) of section 54 of the rules (39 CFR 3001.54(d), (f)(2), (f)(3), (h), (j), (l)(1), and (l)(2)), which would otherwise be required under section 64(h)(2)(i) (39 CFR 3001.64(h)(2)(i)]) The Postal Service states that the requested waiver is justified by the extremely limited scope of the proposed experiment, the irrelevance of some of the rules' requirements to Business Reply Mail, and its anticipation that the consequent effects on costs, revenues, and volumes will be insignificant.

Motion for application of protective conditions to a workpaper: The Postal Service's Request was also accompanied by a motion requesting that the Commission apply protective conditions which would restrict participants' access to, and prohibit public disclosure of, Workpaper I to the Direct Testimony of Witness Leslie Schenk, which the Postal Service has filed in camera. In support of its motion, the Service states that witness Schenk's cost estimates for nonletter-size Business Reply Mail are based upon data that include the incoming BRM piece volumes received by Nashua Photo, Mystic Color Lab, and Seattle Filmworks, three film processors which compete among themselves and against other firms in the film processing industry. The Service represents that each firm considers its incoming BRM volume to be commercially sensitive, privileged and confidential information, and that access to such data was granted to witness Schenk with the explicit understanding that it would not be publicly disclosed or provided to any competing firm. The Service proposes a list of protective conditions that would limit access to the workpaper, its permissible use, and duration of access by authorized individuals.

Motion to expedite the proceeding: Section 67d of the rules of practice (39 CFR 3001.67d) states that the Commission will treat cases falling under the experimental rules as subject to the maximum expedition consistent with procedural fairness, and prescribes adoption of a schedule that will allow issuance of a decision not more than 150 days from a determination that experimental treatment of the request is appropriate. Notwithstanding this provision, the Postal Service has submitted a motion requesting that the Commission establish procedures allowing for issuance of a recommended decision on its request within 120 days of the date of its filing. In support of its motion, the Postal Service states that it has provided sufficient information to allow such expedited consideration, and notes the Commission's ability to consider and issue a recommended decision concerning the experiment proposed in Docket No. MC96–1 in less than 90 days. In connection with its motion, the Postal Service proposes adoption of special rules of procedure, which it provided in draft form. The Service also provides a proposed procedural schedule.

Anyone wishing to be heard in this matter is directed to file a written notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, NW, Washington, D.C. 20268–0001, on or before January 17, 1997. Intervenors should indicate whether they want full or limited participation status. See rules 39 CFR 3001.20 and 3001.20a.

Those interested in participating in this docket are given notice that the Commission will evaluate whether it is appropriate to use rules 67–67d for considering the Postal Service Request. In determining whether the procedures for experimental cases are appropriate, the Commission will consider: (1) The novelty of the proposed change; (2) the magnitude of the proposed change; (3) the ease or difficulty of collecting data on the proposed change; and (4) the duration of the proposed change. Participants are invited to comment on whether the Postal Service request should be evaluated under rules 67–67d. Such comments are to be filed on or before January 17, 1997. Prior to a Commission decision on this question, participants should act on the assumption that the Postal Service request that the case be considered pursuant to these rules will be approved.

Rule 67a provides a procedure for limiting issues in experimental cases. In order to enable participants to evaluate whether genuine issues of fact exist, the Postal Service shall respond to discovery requests within 10 days. Written discovery pursuant to rules 25–28 may be undertaken immediately upon intervention.

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings has not been made yet. Participants wishing to comment on this question should file a statement of issues raised by the Postal Service request by January 17, 1997. At the same time, participants should designate those issues involving questions of material fact which they believe require trial type hearings. The Postal Service and any interested participant may file responses to these statements on or before January 24, 1997.

If it is determined to schedule trial type hearings to consider topics involving issues of material fact, hearings to evaluate the supporting evidence presented by the Postal Service may be scheduled to begin as soon as February 10, 1997. The Presiding Officer will establish subsequent procedural dates.

Representation of the general public: In conformance with § 3624(a) of title 39, the Commission designates W. Gail Willette, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice (39 CFR 3001.10(c)).

It is ordered:

1. The Commission will sit en banc in this proceeding.

2. Notice of intervention will be filed no later than January 17, 1997.

3. Participants wishing to comment on whether it is appropriate to consider this request under Commission rules 67–67d shall submit such comments no later than January 17, 1997.

4. Participants are directed to file statements of issues and designations of issues requiring trial type hearings no later than January 17, 1997; responses may be submitted no later than January 24, 1997.

5. Answers to the Postal Service motions: to Expedite the Proceeding, for Waiver of Certain Filing Requirements, and Requesting Protective Conditions are to be submitted no later than January 22, 1997.

6. W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the general public.

7. The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–32616 Filed 12–23–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26630]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 17, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–8963)

National Gas Fuel Company ("NFG"), a registered holding company, and its wholly-owned subsidiary companies, National Fuel Gas Distribution Corporation, National Fuel Gas Supply Corporation ("Supply), Seneca Resources Corporation, Highland Land & Minerals, Inc., Leidy Hub, Inc., Horizon Energy Development Inc., and Data-Track Account Services, Inc., all located at 10 Lafayette Square, Buffalo, New York 14203, and National Fuel Resources, Inc. 478 Main Street, Buffalo, New York 14202, and Utility Constructors, Inc., East Erie Extension, Linesville, Pennsylvania 16424 (collectively "Subsidiary Companies"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 16, 45, 54, 87, 90 and 91 thereunder.[1]

NFG seeks authority to acquire, directly or indirectly through Supply, a wholly-owned subsidiary ("Affiliate").[2] Affiliate will participate in a joint venture ("Joint Venture" or "Special Purpose Entity") with one or more subsidiaries of Tennessee Pipeline Company ("Tennessee Affiliate"), a non-affiliate, to develop, construct, finance, own and operate (i) natural gas gathering facilities commencing at locations offshore to gather gas produced in Green Canyon, Ewing Bank, Mississippi Canyon, Ship Shoal, Grand Isle and South Timbalier areas located in the Outer Continental Shelf and terminating onshore in Louisiana ("Gathering Facilities"), and (ii) natural gas processing facilities to be located at or near the terminus of the Gathering Facilities ("Processing Facilities"), and to engage in certain related transactions (collectively, the "Project").

I. Structure of the Joint Venture

It is contemplated that the Project activities would be conducted through one or more Special Purpose Entities, which will be formed for the sole purpose of engaging in Project activities, and which will be 50% owned by Affiliate, and 50% owned by Tennessee Affiliate.

II. Project Cost and Financing

a. Aggregate Cost

The aggregate cost of the Project is estimated to be approximately $250 million, including development, construction and related costs until commercial operation, currently scheduled to commence in the fourth quarter of 1997 ("Commercial Operations Commencement Date").

b. Initial Financing by Supply

Supply may initially pay certain costs for Project materials and land, which shall be reimbursed by the Special Purpose Entities at cost plus and amount equal to the actual annual interest rate ("Money Pool Interest Rate") charged on outstanding borrowings from the money pool arrangement between NFG and its subsidiary companies (HCAR No. 26443, December 28, 1995) ("Money Pool Arrangement"). Supply may also initially pay one-half of certain Project development costs, which shall be reimbursed by Affiliate at cost. Supply and/or Affiliate will pay a development fee to Tennessee Affiliate or one of its designated subsidiaries. All of the costs enumerated above shall be collectively referred to as the "Initial Development Cost Obligations." Supply proposes to pay for the Initial Development Cost Obligations through borrowings from the Money Pool Arrangement.

c. Construction Financing From the Money Pool Arrangement

NFG proposes to provide, or arrange for, short-term loans, through borrowings from the Money Pool Arrangement, for construction financing ("Construction Financing"). Interest will accrue at the Money Pool Interest Rate. The Construction Financing will be with recourse to the Special Purpose Entities and the Affiliate and Tennessee Affiliate. Each of the Affiliate and Tennessee Affiliate will provide, in a form acceptable to the other, a guarantee regarding repayment of the Construction Financing.

The Construction Financing and the Initial Development Cost Obligations will be repaid by the Special Purpose Entities in full on the Commercial Operations Commencement Date by a

[1] The Subsidiary Companies, except for Supply, are joining in this Application for the sole purpose of requesting that Affiliate (as described herein) be added to the Money Pool Arrangement (as described herein).

[2] It is contemplated that Affiliate will be a new corporation formed by Tennessee. All of Affiliate's outstanding stock will be purchased for a nominal price.

combination of debt and equity financing in one of the following ways: Affiliate and the Tennessee Affiliate (i) will each contribute 15% of the total Project costs as a capital contribution to the Special Purposes Entities, which shall be used to pay down the debt, and (ii) will attempt to seek non-recourse project financing for the remaining 70% of the Project costs.

d. Interim Financing by NFG or Affiliate

To the extent that additional financing is required for the Project costs (''Interim Financing''), National or Affiliate proposes to (i) provide, or cause to be provided, under the same terms, conditions and limitations described in the system's long-term financing authorization (HCAR No. 26537, June 26, 1996) (''Long-Term Financing Arrangement''), non-recourse loans secured by the project assets, due on the second anniversary of the Commercial Operations Commencement Date (''Second Anniversary''), or (ii) provide guarantees or make arrangements for recourse to National or Affiliate (collectively, ''Guarantees''), which shall terminate on the Second Anniversary, at which time the Affiliate and the Tennessee Affiliate will be required to make substitute recourse arrangements with lenders, or, alternatively, make additional equity contributions on a 50/50 basis for repayment of such obligations.

III. Requests for Authorizations to Allow Proposed Construction and Permanent Financing

The following requests for approval are made to implement the foregoing construction and permanent financing arrangements:

(a) For the Construction Financing and Initial Development Cost Obligations, NFG and the Other Applicants request approval to add Affiliate to the Money Pool Arrangement, for short-term loans not to exceed $250 million in principal amount at any one time outstanding; [3]

(b) From and after the Commencement of Commercial Operations Date, for the Interim Financing, NFG requests approval to add Affiliate to the group of NFG's subsidiary companies to which NFG can make long-term loans pursuant to the terms, conditions, and limitations contained in the Long-Term Financing Arrangement, for long-term loans not to exceed $210 million in principal amount at any one time not outstanding; provided, however, that all loans by NFG to Affiliate, whether pursuant to the Money Pool Arrangement and/or the Long-Term Financing Arrangement, shall not in the aggregate exceed $250 million in principal at any one time outstanding.[4]

IV. Guarantees for Construction and Interim Financing, and Future Business Operations

NFG proposes to enter into guarantee arrangements, obtain letters of credit, and otherwise provide credit support for Affiliate and the Special Purpose Entities, to third parties to enable Affiliate and the Special Purpose Entities to carry on in the ordinary course of their respective businesses, including as necessary for the Construction Financing and Interim Financing.[5] In order to implement this proposal, NFG requests that Affiliate and the Special Purpose Entities be added to the group of NFG's subsidiary companies to which National may give such credit support pursuant to the terms, conditions and limitations contained in the authorization in HCAR No. 25922, November 12, 1993; and for Affiliate, either by itself or together with NFG, to provide such credit support to the Special Purpose Entities, not to exceed $175 million at any one time outstanding.[6]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32653 Filed 12–23–96; 8:45 am]

BILLING CODE 8010–01–M

[3] The $250 million maximum amount includes all loans made to Supply or Affiliate or both in connection with any of the Initial Development Cost Obligations and/or Construction Financing.

[4] As appropriate, various financings and extensions of credit, by and among, National, Supply, Affiliate and the subsidiary companies, and affiliates, of Affiliate, in the future may be exempt from Commission authorization pursuant to various exemptions under the Act, as in effect, or as they may be amended from time to time.

[5] Tennessee will be responsible for one-half of all such credit support needed.

[6] *See* footnote 3.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2907 Amendment #2]

Florida; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated December 9, 1996, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to January 13, 1997.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is July 15, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–32623 Filed 12–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2913]

New Jersey; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 19, 1996, I find that Hudson, Middlesex, Morris, Somerset, and Union Counties in the State of New Jersey constitute a disaster area due to damages caused by severe storms and flooding which occurred October 18–23, 1996. Applications for loans for physical damages may be filed until the close of business on January 18, 1997, and for loans for economic injury until the close of business on August 19, 1997 at the address listed below: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bergen, Essex, Hunterdon, Mercer, Monmouth, Passaic, Sussex, and Warren in the State of New Jersey may be filed until the specified date at the above location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 291311 and for economic injury the number is 925400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 12, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–32624 Filed 12–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2914]

New York; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 19, 1996, I find that New York City and Nassau and Suffolk Counties in the State of New York constitute a disaster area due to damages caused by severe storms and flooding which occurred October 19 and 20, 1996. Applications for loans for physical damages may be filed until the close of business on January 18, 1997, and for loans for economic injury until the close of business on August 19, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous county of Westchester in the State of New York may be filed until the specified date at the above location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 291411 and for economic injury the number is 925500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 12, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–32625 Filed 12–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2918]

New York; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 9, 1996, I find that Clinton, Essex, Fulton, Montgomery, Schuyler, and Steuben Counties in the State of New York constitute a disaster area due to damages caused by severe thunderstorms, high winds, rain and flooding which occurred November 8–15, 1996. Applications for loans for physical damages may be filed until the close of business on February 7, 1997, and for loans for economic injury until the close of business on September 9, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allegany, Chemung, Franklin, Hamilton, Herkimer, Livingston, Ontario, Otsego, Saratoga, Schenectady, Schohoarie, Seneca, Tompkins, Warren, Washington, and Yates Counties in New York; Addison, Chittenden, and Grand Isle Counties in Vermont; and Potter and Tioga Counties in Pennsylvania. Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 291806. For economic injury the numbers are 932200 for New York; 932300 for Vermont; and 932400 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 12, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–32626 Filed 12–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2919]

Oregon; Declaration of Disaster Loan Area

Coos and Douglas Counties and the contiguous counties of Curry, Jackson, Josephine, Klamath, and Lane in the State of Oregon constitute a disaster area as a result of damages caused by severe wind and rainstorms beginning on November 17, 1996 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 10, 1997 and for economic injury until the close of business on September 12, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, 1825 Bell Street, Suite 208, Sacramento, CA 95825 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 291911 and for economic injury the number is 932500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 12, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96–32627 Filed 12–23–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below require(s) extension of the current OMB approval(s):

1. Letter to Employer Requesting Wage Information—0960–0138

The information collected on form SSA–L4201 is used by the Social Security Administration to determine eligibility and proper payment for Supplemental Security Income (SSI) applicants/recipients. The respondents are employers of applicants for and recipients of SSI payments.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 Minutes.

Estimated Annual Burden: 66,500 hours.

2. Request for SSI Benefit Estimate—0960–0492

The information collected on form SSA–3716 will be used by the Social Security Administration to comply with a request form an estimated of the impact of work on an SSI recipient's benefit. The respondents are SSI recipients who want to know how a job opportunity could affect the SSI benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 4,167 hours.

3. Claimant's Medications—0960–0289

The information on form HA–4632 is used by the Social Security Administration to compile a current list of medications used by a claimant. The list is provided to an Administrative Law Judge (ALJ), who is considering the disability aspects of the claim. The affected public consists of claimants for disability benefits, who have requested a hearing before an ALJ.

Number of Respondents: 227,107.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 56,777 hours.

Social Security Administration

To receive a copy of the form(s) or clearance package(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM; Attn: Judith T. Hasche, 1–A–21 Operations Building, 6401 Security Blvd. Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: December 7, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–32553 Filed 12–23–96; 8:45 am]

BILLING CODE 4190–23–P

DEPARTMENT OF STATE

[Public Notice No. 2491]

United States International Telecommunications Advisory Committee; Standardization Sector (ITAC–T); Study Group D and CITEL Ad Hoc; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Section (ITAC–T), Study Group D and CITEL Ad Hoc will meet on Tuesday, January 21, 1997, Room 1912, at 9:00 a.m. and Wednesday February 19, 1997 at 9:00 a.m. in the same room at the Department of State, 2201 C Street NW, Washington, DC, 20520.

The agenda for study group D will include consideration of contributions for upcoming meetings of Study Group 8, 7 and 16. The CITEL Ad Hoc Group will consider the Preparatory process for future CITEL meetings, review possible contributions for the meeting of PCC–1 in March 1997, and the tasks assigned under CITEL Restructure proposals. Any other matters within the competence of Study Group D or the CITEL Ad Hoc Group may be raised at either of these meetings. The February 19 meeting will concentrate primarily on preparation for the ITU–T meetings of Study Group 7, 10–21 March, 1997 and the ITU–T Study Group 16 meeting, 17–27 March 1997.

Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting.

Please Note: Persons intending to attend these meetings must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: December 13, 1996.

Gary M. Fereno,

Chairman, U.S. ITAC for CITEL and Study Group D.

[FR Doc. 96–32572 Filed 12–23–96; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2490]

United States International Telecommunications Advisory Committee (ITAC); Standardization Sector (ITAC–T); National Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) National Study Group will meet on January 16, 1997, from 9:00 a.m. to 1:00 p.m. in Room 1406 at the Department of State, Washington, D.C.

The U.S. National group, ITAC–T, will meet to discuss preparations for the upcoming Geneva meetings of TSAG March 3–7, 1997 and the Joint TSAG/RAG Refinement group, March 7–10, 1997. The issues will include ITU Code of Practice on Intellectual Property, clarification of ITU–T A.1 Recommendation, review of ITU–T strategic policy, development of criteria for focus group participation, an examination of certain ITU–R and T Study Questions for possible refining and realignment of the work activity, and other issues related to improving the development of international Telecommunications Standards.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public

members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Questions regarding the meeting may be addressed to Mr. Earl Barbely at 202–647–0197. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: December 13, 1996.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 96–32573 Filed 12–23–96; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Revise Currently Approved Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a revision to the currently approved public report, Application for Employment with the Federal Aviation Administration, FAA Form 3330.76, OMB approval number 2120–0597.

DATES: Comments must be received on or before February 24, 1997.

ADDRESSES: Comments on this collection may be mailed or delivered in duplicate to the FAA at the following address: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Title: Application for Employment with the Federal Aviation Administration, FAA Form 3330.76.

Abstract: The collection of information is an application for employment with the Federal Aviation Administration. Applicants will have to complete a number of background questions to determine their basic eligibility for Federal Employment and also answer specific occupation-related questions to determine their qualification. In keeping with the reengineered business processes under the National Performance Review, the FAA is attempting to centralize and automate some of our application, evaluation, and hiring processes. This application is a part of that effort. We are seeking to amend our OMB clearance to revise the form and incorporate it into a complete Federal Aviation employment system, utilizing a single system of collecting information. We propose to utilize the information to make determinations on applicants' eligibility for Federal employment, determining their qualifications for employment, and certifying the names of qualified applicants to line managers who will make hiring decisions.

Authority: Public Law 104–50 authorized the Federal Aviation Administration to establish its own personnel system outside most of the requirements of Title 5, U.S.C. The only provisions related to hiring that will continue to apply are those dealing with veterans' preferences.

Respondents: The likely respondents will be the general public who are interested in employment with the FAA. We estimate that the average number of respondents on an annual basis will be approximately 75,000 people. Submission of this information is completely voluntary on the part of the applicant.

Frequency: The frequency is based on the respondent, however, we estimate one time per respondent on an annual basis.

Burden: The estimated reporting burden is 112,500 hours annually. This is based on an estimated average time to complete of 1.5 hours, although the range could be as little as .5 hours to 3 hours per response.

Issued in Washington, DC on December 19, 1996.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–32693 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum percentage rates for drug and alcohol testing for the period January 1, 1997, through December 31, 1997, will remain at 25 percent of covered aviation employees.

FOR FURTHER INFORMATION CONTACT: Mr. William R. McAndrew, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1997 Random Drug and Alcohol Testing Rates

In final rules published in the Federal Register on February 15, and December 2, 1994 (59 FR 7380 and 62218, respectively), the FAA announced that it will set future minimum annual percentage rates for random alcohol and drug testing for aviation industry employers according to the results which the employers experience conducting random alcohol and drug testing during each calendar year. The rules set forth the formula for calculating an annual aviation industry ''violation rate'' for random alcohol testing and an annual aviation industry ''positive rate'' for random drug testing. The ''violation rate'' for random alcohol tests means the number of covered employees found during random tests given under 14 CFR appendix J to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random alcohol test, divided by the total reported number of employees given random alcohol tests plus the total reported number of employees who refused a random test. The ''positive rate'' means the number of positive results for random drug tests conducted under 14 CFR appendix I plus the number of refusals to take random drug tests, divided by the total number of random drug tests plus the number of refusals to take random drug tests. The violation rate and the positive rate are calculated using information required to be submitted to the FAA by specified aviation industry employers as part of an FAA Management Information System (MIS) and form the basis for maintaining or adjusting the minimum annual percentage rates for random alcohol and drug testing as indicated in the following paragraphs.

When the annual percentage rate for random alcohol testing is 25 percent or more, the FAA Administrator may lower the rate to 10 percent if data received under the MIS reporting requirements for two consecutive calendar years

indicate that the violation rate is less than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 25 percent.

When the minimum annual percentage rate for random alcohol testing is 25 percent or less, ant the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 50 percent.

When the minimum annual percentage rate for random drug testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the MIS reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

There is a one year lag in the adjustment in the minimum annual percentage rates for random drug and alcohol testing because MIS data for a given calendar year is not reported to the FAA until the following calendar year. For example, MIS data for 1995 is not reported to the FAA until March 15, 1996, and any rate adjustments resulting from the 1995 data are not effective until January 1, 1997, following publication by the FAA of a notice in the Federal Register.

The minimum annual percentage rate for random alcohol testing was 25 percent for calendar year 1995. In this notice, the FAA announces that it has determined that the violation rate for calendar year 1995 is less than one-half of one percent positive, at approximately 0.06 percent. Since the violation rate is less than one-half of one percent, and it is the first year for which alcohol testing data were required to be reported under the MIS reporting requirements, the minimum annual percentage rate for random alcohol testing for aviation industry employers for calendar year 1997 will remain at 25 percent.

The minimum annual percentage rate for random drug testing was also 25 percent in calendar year 1995. Therefore, the FAA is also announcing that it has determined that the positive rate for calendar year 1995 is less than 1 percent, at approximately 0.69 percent, and that the minimum annual percentage rate for random drug testing for aviation industry employers for calendar year 1997 will remain at 25 percent.

Dated: December 18, 1996.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 96–32695 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–60]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. 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 January 13, 1997.

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. _____, 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: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 19, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28648.

Petitioner: R–22/R–44 Operators and Pilots Association.

Sections of the FAR Affected: 14 CFR part 91, SFAR 73, para. 2(b)(5)(ii).

Description of Relief Sought: To permit flight instructors who have satisfactorily complete a Federal Aviation Administration-approved 14 CFR part 14 141 flight instructor certification course to provide instruction in a Robinson R–22 or R–44 helicopter after having logged a minimum of 150 flight hours in an R–22 or R–44 helicopter, as appropriate.

Docket No.: 28664.

Petitioner: Doug Myers.

Sections of the FAR Affected: 14 CFR91.205(b)(12).

Description of Relief Sought: To permit the operation of an aircraft for hire over water and beyond power-off gliding distance from shore without at least one pyrotechnic signaling devise on board.

Docket No.: 28705.

Petitioner: Atlantic Aero, Inc.

Sections of the FAR Affected: 14 CFR 61.51(c)(3).

Description of Relief Sought: To allow Atlantic Aero and Mid-Atlantic Freight pilots to log, as second-in-command flight time, certain flight experience during which more than one pilot is not required either under the type certificate

of the aircraft, or the regulations under which the flight is conducted.

[FR Doc. 96–32688 Filed 12–23–96; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–96–61]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. 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 January 13, 1997.

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. _____, 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: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 19, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28687
Petitioner: Aerospace Industry Association
Sections of the FAR Affected: 14 CFR 25.1397(a)
Description of Relief Sought: Petitioners request permanent exemption from the color (chromaticity) requirements of Section 25.1397(a) for red position lights and, by reference within Section 25.1401(d), the color requirements for red anticollision lights for inservice aircraft and those in production or being certificate. Petitioners propose the use of color chromaticity boundaries for red anticollision lights so that anticollision red—'y' is not greater than 0.350, and 'z' is not greater than 0.020, as opposed to the current requirement of 'y'=0.335 and 'z'=0.002.

Docket No.: 28695
Petitioner: Airbus Industrie
Sections of the FAR Affected: 14 CFR 25.1397(a)
Description of Relief Sought: Petitioner requests permanent exemption from the color (chromaticity) requirements of Section 25.1397(a) for red position lights and, by reference within Section 25.1401(d), the color requirements for red anticollision lights for inservice aircraft and those in production or being certificate. Petitioner proposes the use of color chromaticity boundaries for red anticollision lights so that anticollision red − 'y' is not greater than 0.350, and 'z' is not greater than 0.020, as opposed to the current requirement of 'y'=0.335 and 'z'=0.002.

Docket No.: 28720
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.785(b) and 25.562
Description of Relief Sought: It is requested that a stowable hospital berth installation, for non-ambulatory persons, be exempt from compliance with all dynamic testing and personal injury requirements defined in §§ 25.785(b) and 25.562, for the Boeing Model 777–200 and − 300 airplanes.

Docket No.: 28744
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.562
Description of Relief Sought: The petitioner requests relief from the flight deck floor warpage testing requirements of § 25.562 flight deck seats on the Boeing Model 757–300 airplane.

[FR Doc. 96–32696 Filed 12–23–96; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: On June 18, November 22, and November 29, 1996, the Federal Railroad Administration (FRA) published final rules amending the railroad accident reporting regulations at 49 CFR part 225. 61 FR 30940, 61 FR 59368, 61 FR 60632, respectively. In response to the final rule published June 18, 1996, several railroads and railroad associations filed petitions for reconsideration raising various concerns with its contents and its implementation date of January 1, 1997. Some of those concerns were addressed by FRA in the November 22, 1996 Federal Register document (61 FR 59368). The other issues were addressed in a document issued December 16, 1996 (FRA Docket No. RAR–4, Notice No. 16), which will be published in the Federal Register on December 23, 1996.

Four of the several rules to amend 49 CFR part 225 that were issued on December 16, 1996, contain amendments to the approved information collection activities, while one adds a new information collection requirement. In accordance with the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, the Federal Railroad Administration (FRA) is announcing a 60-day comment period on these amendments. The information collection requirements contained in the June 18, 1996, final rule were approved by the Office of Management and Budget (OMB) under the PRA under OMB control number 2130–0500. This approval expires on August 31, 1999.

Below are brief summaries of the five amendments to 49 CFR part 225 that constitute information collection activities that FRA will submit for clearance by OMB as required by the PRA:

1. FRA is excepting from the requirements regarding an Internal

Control Plan delineated in § 225.33(a)(3) through (a)(10) the following: (i) Railroads that operate or own track on the general railroad system of transportation (general system) that have 15 or fewer employees covered by the hours of service laws (49 U.S.C. 21101–21107) and (ii) railroads that operate or own track exclusively off the general system. However, these excepted railroads must adopt and comply with the intimidation and harassment policies outlined in § 225.33(a)(1) and (2). FRA has developed model statements of policy on intimidation and harassment to be posted by these excepted railroads. FRA estimates that this requirement will affect approximately 433 railroads. The only burden to be encountered by these excepted railroads will be filling in certain information on the FRA-prepared model policy statement and posting the completed statement. It is estimated that this will take each railroad approximately one-half hour to perform. This amendment will reduce the first year burden from 4,351 to 2,487 hours. In subsequent years the burden will be reduced from 350 to 14 burden hours annually.

2. FRA is also excepting from the recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through (g) the following railroads: (i) railroads that operate or own track on the general system that have 15 or fewer employees covered by the hours of service laws (49 U.S.C. 21101—21107) and (ii) railroads that operate or own track exclusively off the general system. FRA estimates that this amendment will affect approximately 433 railroads. This amendment will reduce the annual burden for this information collection requirement from 15,554 to 15,054 hours.

3. Further, FRA is excepting railroads that operate or own track exclusively off the general system from all the requirements of Part 225 to record or report injuries and illnesses incurred by all classifications of persons that result from most non-train incidents. (A small subcategory of non-train incidents involving in-service on-track equipment must continue to be reported and recorded.) FRA estimates that this amendment will affect approximately 115 railroads. This amendment will reduce the annual burden for this information collection requirement from 2,592 to 2,575 hours annually.

4. In order to minimize the burden of requiring the preparer's signature on each and every monthly list of reportable injuries and illnesses to be posted for each railroad's establishments, FRA is amending § 225.25(h)(12) so as to provide railroads with an alternative to signing each establishment's monthly list. Specifically, the preparer of the monthly list of reportable injuries and illnesses for the railroad may instead sign a cover sheet or memorandum attaching the monthly lists for each establishment for that railroad. The cover sheet memorandum must list all the establishments that post the monthly list of reportable injuries and illnesses and must be signed by the preparer. This change will have minimal affect on the annual burden associated with this information collection requirement and will not reduce the time per monthly report or annual burden.

5. Finally, FRA is amending § 225.25(h), by adding § 225.25(h)(15), to address any possible concerns with privacy rights of the employee by providing that the railroad is permitted not to post information on an injury or illness reported to FRA, if the employee who incurred the injury or illness makes a request in writing to the railroad's reporting officer that his or her particular injury or illness not be posted. It is estimated that approximately 25 employees will make this request annually. FRA estimates that it will take a combined total of 30 minutes for the employee to prepare and forward the letter to the reporting officer and an additional 30 minutes will be required for administrative purposes by the reporting officer to make sure the injury or illness in question does not get posted. The total burden for this requirement per case is one hour. The annual burden for this information collection requirement is 25 hours.

DATES: Comments must be received no later than February 24, 1997.

ADDRESSES: Submit written comments on any or all of the foregoing proposed activities by mail to either: Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, or Ms. MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2150–0500.'' Alternatively, comments may be transmitted via facsimile to (202) 632–3843 or (202) 632–3876 or by E-mail to Ms. Swanson at gloria.swanson@fra.dot.gov or to Ms. Johnson at maryann.johnson@fra.dot.gov. Please refer to the assigned OMB control number 2130–0500 in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Swanson, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3318) or Ms. MaryAnn Johnson, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 632–3226). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 and its implementing regulations require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the foregoing summary of proposed information collection activities regarding the following issues: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A) (i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations and that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that the agency organizes information

collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on December 18, 1996.

Al Duncan,

Director, Office of Information Technology and Productivity Improvement, Federal Railroad Administration.

[FR Doc. 96–32666 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

[Notice Number 96–1]

Announcement of Availability of the Surface Transportation Research and Development Plan, Third Edition; Request for Comments

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

ACTION: Notice of Report Availability; Request for Comments.

SUMMARY: The Department of Transportation (DOT) announces the publication of the third edition of the Surface Transportation Research and Development Plan (R&D Plan), copies of which are available from the contact listed below or on the World Wide Web at the INTERNET address listed below. In addition, the Department invites comments to assist it in the preparation of the fourth edition of this report.

Under the Intermodal Surface Transportation Efficiency Act (ISTEA), DOT is required to prepare the R&D Plan for its near- and long-term surface transportation research and development (R&D) activities. The Department has begun preparation of the fourth edition, which will be the last required under ISTEA.

DATES: Comments on the report should be postmarked no later than January 23, 1997.

ADDRESSES: Comments on changes, suggestions for improvement, or specific issues to include in the fourth edition of the report should be sent to: Norm Paulhus, Senior Technical Advisor (DRT–1), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW Room 8417, Washington, DC 20590. Comments must be signed, and should include the name, address, and telephone number of the point of contact. One additional copy of the comments should be sent to Kevin Green at the address listed below.

FOR FURTHER INFORMATION CONTACT: Kevin Green, Volpe National Transportation Systems Center, Kendall Square, DTS–24, Cambridge, MA 02142. Telephone: (617)-494–2106. Internet: green@volpe1.dot.gov. Copies of the third edition may be obtained from Mr. Green. The complete text of the third edition of the R&D Plan is also available on the World Wide Web at http://www.volpe.dot.gov/pblctns.htm.

SUPPLEMENTARY INFORMATION:

Background

This notice announces the publication of, and solicits comments on, the third edition of the R&D Plan. The report presents details of the Department's near-term surface transportation R&D programs, and presents a strategic long-term outlook for surface transportation R&D. The report is prepared under authority provided in Section 6009(b) of the ISTEA, which expires in 1997. In preparing the fourth edition of the R&D Plan, the Department will consider public comments and suggested changes raised during review of the third edition.

Purpose

DOT is committed to promoting a safe and efficient transportation system that enhances the U.S. economy and contributes to a secure and healthy environment. In January 1994, the Department issued its Strategic Plan, which established the Department's mission and core responsibilities, and identified several strategic goals for implementing that mission in an era of limited resources.

The R&D Plan is directed at the development of the technologies needed to produce convenient, safe, and affordable modes of transportation. Many of these technologies are also mentioned in the DOT Strategic Plan, and as such the document is a first step towards a science and technology strategy to support the transportation industry. The R&D Plan also establishes sixteen longer-term R&D emphasis areas to provide for the next generation of surface transportation systems.

The general requirement for the R&D Plan is set forth in ISTEA. It describes the time periods which must be addressed, the issues to be covered, and the level of detail to be included, at a minimum, in the R&D Plan.

The Department has begun preparing the fourth edition of the R&D Plan, which will be the last called for by ISTEA. As such, the fourth edition could provide an important point of reference for decision making related to R&D provisions of any subsequent legislation. The Department, therefore, encourages public review and comment on the third edition of the R&D Plan, and will consider those comments in preparing the fourth edition.

The Department is particularly interested in receiving public comment on the following issues:

- The Department seeks comment on the strategic vision presented in the second section of the third edition of the R&D Plan. Does it ask the right questions about key trends and challenges for the future? Does it extend far enough into the future? Does it establish a reasonable set of expectations? Does it propose long-term R&D efforts that provide a strategic response to long-term challenges?
- The Department also seeks comment regarding potential measures of performance that could be used to assess the quality of surface transportation R&D programs, the extent to which they achieve their objectives, and the extent to which they ultimately shape the surface transportation system.

Issued this 18th day of December 1996, in Washington, D.C. by:

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 96–32701 Filed 12–23–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Finance Docket No. 33314]

Nebraska, Kansas & Colorado Railnet, Inc.—Acquisition and Operation Exemption—Lines of the Burlington Northern Railroad Company

Nebraska, Kansas & Colorado Railnet, Inc. (NKCR), a noncarrier newly-created to become a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate five rail lines which are currently owned and operated by the Burlington Northern Railroad Company (BN) as follows: (1) between Flynn, NE (milepost 3.3), and Almena Junction, KS (milepost 29.6), a distance of approximately 26.3 miles; (2) between Oronoque Junction, KS (milepost 47.3), and Oberlin, KS (milepost 78.0), a distance of approximately 30.7 miles; (3) between west of Orleans Junction,

NE (milepost 0.2), and St. Francis, KS (milepost 133.9); a distance of approximately 133.7 miles; (4) between Holdrege, NE (milepost 0.8), and east of Sterling, CO (milepost 225.9),[1] a distance of approximately 225.1 miles; and (5) Norton, KS area trackage between milepost 315.1 and milepost 319.2, a distance of approximately 4.1 miles.

In addition, to the above-described line acquisitions, NKCR will also acquire, by assignment from BN, certain overhead trackage rights currently exercised by BN between Almena Junction, KS (milepost 29.6), and Oronoque Junction, KS (milepost 47.3), a distance of approximately 17.7 miles. The overhead trackage rights run over a line of railroad owned by the Kyle Railroad and currently dispatched by BN. The trackage rights effectively link the lines to be acquired by NKCR between Flynn, NE, and Almena Junction, KS, and between Oronoque Junction, KS, and Oberlin, KS. The trackage rights will also enable NKCR to access and serve customers located on the Norton, KS area trackage.

The subject trackage, including the overhead trackage rights, is approximately 437.6 route miles in length.[2]

The transaction was expected to be consummated on or about December 16, 1996.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33314, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: December 17, 1996.

[1] BN will retain overhead trackage rights to provide rail freight service between milepost 225.9, east of Sterling, CO, and a connection with the current or any future industry track at or near Wallace, NE, at or about milepost 114.0, for the sole purpose of serving the Gentleman Power Plant, or any successor.

[2] NKCR will serve as the operator of the lines, except that BN shall have the right to operate over the retained BN overhead trackage rights.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32657 Filed 12–23–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33306]

Wabash & Western Railway Co.; Lease and Operation Exemption; Morris Leasing Co., Ltd., and Michigan Southern Railroad, Inc.

Wabash & Western Railway Co., Ltd. (WAB), a Class III shortline rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 49.6 route miles of rail lines (the Lines) owned and/or operated by Morris Leasing Co., Ltd. (MLSC) and Michigan Southern Railroad, Inc. (MSR), Class III rail carriers, as follows: (1) Between milepost 119.0 and milepost 120.1, at or near Kendallville, Noble County, IN, (a portion of the GR&I Industrial Track); (2) between milepost 0.0 and milepost 9.8, at or near Elkhart, Elkhart and St. Joseph Counties, IN, (a portion of the E&W Secondary Track); and (3) between milepost 382.5, at or near Coldwater, MI, and milepost 421.2, at or near White Pigeon, MI, (the Quincy Secondary Track). Michigan Southern will be the operator of the lines.[1]

The transaction was expected to be consummated on or after December 4, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33306, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: December 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 96–32658 Filed 12–23–96; 8:45 am]

BILLING CODE 4915–00–P

[1] For purposes of this lease transaction, WAB will enter into an agreement with MLSC and MSR whereby WAB will be permitted to do business under the trade name ''Michigan Southern Railroad.''

DEPARTMENT OF THE TREASURY

Customs Service

Public Meeting on the Meaning of ''Customs Business''

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting will be held in Hearing Room B of the Interstate Commerce Commission Building in Washington, D.C., commencing at 10:00 a.m. on Tuesday, January 28, 1997. The purpose of this meeting is to (1) provide the public with a briefing on Customs interpretation of the meaning of ''customs business'' as provided in section 641(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1641 (a)(2)), as amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182); (2) surface and discuss differing public interpretations of this definition and related issues; and, (3) explore options for clarifying the differing interpretations. Due to limitations on available seating, those planning to attend are requested to notify Customs in advance.

DATES: January 28, 1997, from 10:00 a.m. to 2:00 p.m.

ADDRESSES: Interstate Commerce Commission Building, Hearing Room B, 12th Street & Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dale Snell, ''Mod Act'' Task Force, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Phone: (202) 482–6987; FAX: (202) 482–6994.

SUPPLEMENTARY INFORMATION: On December 8, 1993, the President signed the ''North American Free Trade Agreement Implementation Act.'' The Customs modernization portion of this Act (Title VI of Public Law 103–182), popularly known as the Customs Modernization Act or ''Mod Act,'' amended the definition of ''customs business'' as contained in 19 U.S.C. 1641(a)(2) to provide, among other things, that such business includes the preparation of documents but does not include the mere transmission of data received for transmission to Customs. The amended definition in 19 U.S.C. 1641 (a)(2)now reads:

The term ''customs business'' means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges, assessed or collected by the Customs Service upon

merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

As Customs has focussed on the development of regulations to implement the Customs broker provisions of the ''Mod Act,'' it has become clear that there are different opinions on how the definition of ''customs business'' in 19 U.S.C. 1641, should be interpreted. Based on the language of the statute, discussion in the legislative history of the ''Mod Act,'' and input received from the trade community, Customs set forth its understanding of the term in a draft proposed regulatory document that was posted on the Customs Electronic Bulletin Board (CEBB) on October 7, 1996, and subsequently, on the Customs Web site.

To share its understanding of ''customs business'' with interested parties and give those parties an opportunity to ask questions and express their reactions and interpretations in an environment conducive to meaningful dialogue, Customs has decided to hold a public meeting. It is anticipated that different trade interests (including, but not limited to brokers, consultants, attorneys, accountants, carriers, drawback preparers, and foreign trade zone operators) will come prepared to discuss perceived rights and obligations of licensed Customs brokerage businesses and individual brokers and perceived limitations on activities that unlicensed individuals can perform on behalf of clients. Because seating is limited, reservations will be required. Persons planning to attend are requested to notify Mr. Dale Snell by FAX at (202) 482–6994 or by phone at (202) 482–6987.

Dated: December 17, 1996.

John Durant,

Director, ''Mod Act'' Task Force.

[FR Doc. 96–32586 Filed 12–23–96; 8:45 am]

BILLING CODE 4820–02–P

Review of Interim List of Records Required to be Maintained and Produced Under 19 U.S.C. 1509 (a)(1)(a)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice of plan to review Interim ''(a)(1)(A) list''.

SUMMARY: An interim list of entry records or entry information required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)), as amended by title VI of the North American Free Trade Agreement Implementation Act, was published in the Customs Bulletin on January 3, 1996, and subsequently reproduced in the Federal Register on July 15, 1996. Since publication of the list, the Customs Service has received numerous comments suggesting that the content of its Interim (a)(1)(A) list is excessive. In response to these comments, Customs has initiated a project intended to remove from the list any and all entry records and information requirements that are clearly unnecessary in today's environment. To assist it in achieving this objective, Customs is soliciting input from businesses impacted by the (a)(1)(A) list, trade associations, and other agencies.

DATES: Comments must be received on or before January 23, 1997.

ADDRESSES: Comments in triplicate should be addressed to the Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW (Franklin Court), Washington, D.C. 20229, Attention: (a)(1)(A) List Review Project. Comments may be inspected at the Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW, Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482–6920 or Jerry Laderberg, Chief, Entry Procedures & Carriers Branch, Office of Regulations and Rulings at (202) 482–6940.

SUPPLEMENTARY INFORMATION:

Background

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) as amended by section 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the ''Customs Modernization Act'') requires the maintenance and production of a record if ''such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry).'' Section 509 contains a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A)—commonly referred to as ''the (a)(1)(A) list.'' On September 12, 1994, Customs invited comments on a ''proposed'' (a)(1)(A) list that it posted on the Customs Electronic Bulletin Board. Subsequently, on September 21, 1994, Customs published a Customs Bulletin containing this same list and invitation for comments. Eleven comments were received. After reviewing these comments and modifying its ''proposed'' (a)(1)(A) list, the Customs Service published an Interim (a)(1)(A) list in the Customs Bulletin on January 3, 1996. This same list was posted on the Customs Electronic Bulletin Board on January 4, 1996, and it was reproduced in the Federal Register on July 15, 1996.

Recognizing that almost one year has passed since publication of its Interim (a)(1)(A) list and in response to a significant number of comments suggesting that the list contains too many records, Customs is undertaking a complete review of the list and the underlying regulations. Customs objective is to remove from the list any and all records and information requirements that are clearly unnecessary in today's environment. To assist it in achieving this objective, Customs is soliciting input from businesses impacted by the (a)(1)(A) list, trade associations, and other agencies.

Customs interest is not in receiving general comments recommending that particular record or information requirements be eliminated from the list. Customs interest is in receiving comments that specifically identify why a particular record or information requirement can be eliminated from the (a)(1)(A) list without modification of existing statutes. In the conduct of its review, the Customs Service intends to reconsider comments previously submitted. Accordingly, resubmission of such comments will be unnecessary.

Dated: December 18, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–32585 Filed 12–23–96; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

Proposed Collection of Information: Focus Groups of Individual Federal Government Program Check Recipients (Socioeconomic and Demographic Study)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the study ''Focus Groups of Individual Federal Government Program Check Recipients (Socioeconomic and Demographic Study).

DATES: Written comments should be received on or before February 24, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Eleanor Kelly, Agency Services, Room 1311, 1411 K Street, N.W., Washington, D.C. 20227, (202) 874–9536.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Focus Groups of Individual Federal Government Program Check Recipients (Socioeconomic and Demographic Study).

OMB Number: 1510–0068.

Form Number: None.

Abstract: The legislative language accompanying Public Law 104–134, Debt Collection and Improvement Act of 1996, ''* * * directs the disbursing official (the Secretary of the Treasury) to study the socioeconomic and demographic characteristics of those who currently do not have Direct Deposit and determine how best to increase usage among all groups.'' 142 Cong. Rec. H4091 (daily ed. April 25, 1996). The Financial Management Service (FMS) and its contractor, Booz, Allen and Hamilton and Shugoll Research, plan to conduct a two-stage study: a quantitative telephone survey preceded by focus groups to aid in the design of the telephone survey instrument. Six focus groups of approximately 8–10 individuals each will be conducted in three areas—Philadelphia, PA, Tampa, FL, and Kansas City, MO. Focus group participants will be pre-screened to fit into one of the following categories: Retirees, disabled, and Supplemental Security Income (SSI) check recipients. Participation in the focus groups will be used by FMS and its contractor to guide the design of the telephone survey instrument. The telephone survey phase of the study will provide quantitative research information from approximately 1,000 Federal benefit check recipients. FMS and its contractor estimate that the telephone survey questions will be asked in a fifteen (15) minute telephone call with each respondent. Respondent participation in the telephone survey is voluntary. The results of the telephone survey and information obtained through secondary research by the contractor will be used to develop a marketing (media) plan, which will serve as the basis for a marketing campaign to persuade Federal program check recipients to enroll in Direct Deposit for their benefit payments prior to the January 1, 1999, deadline for mandatory electronic payments under Public Law 101–104.

Current Actions: New collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 250 hours.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 11, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–32629 Filed 12–23–96; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (§ 1.613A–3(l)).

DATES: Written comments should be received on or before February 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75 (final).

Abstract: Section 1.613A–3(l) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32672 Filed 12–23–96; 8:45 am]

BILLING CODE 4830–01–U

[EE–35–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–35–85 (TD 8219), Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984 (§ 1.402(a)-20).

DATES: Written comments should be received on or before February 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

OMB Number: 1545–0928.

Regulation Project Number: EE–35–85.

Abstract: The notices referred to in this Treasury Decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their right under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Current Actions: Internal Revenue Code section 402(f) was substantially amended by the Unemployment Compensation Amendments Act of 1992. As a result, new regulations were issued amending section 1.402(f)-1.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organization, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 385,000.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 18, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 96–32672 Filed 12–23–96; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Tuesday
December 24, 1996

Part II

Department of Transportation

Surface Transportation Board

49 CFR Parts 1105 and 1152

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903; Final Rule

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1105 and 1152

[STB Ex Parte No. 537]

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 revised the law governing applications by rail carriers to abandon or discontinue service over lines of railroad and related offers of financial assistance that would continue rail service after approval of abandonment or discontinuance by the Surface Transportation Board (Board). The Board now revises part 1152 to implement the changes and update the pertinent regulations, and to streamline the abandonment and discontinuance processes consistent with the new law. While making a number of changes, both substantive and conforming, the Board has not undertaken a comprehensive revision or rewrite of all of the existing regulations at part 1152 in this proceeding. The Board also is making conforming changes to the environmental rules at part 1105.

EFFECTIVE DATE: The rules are effective January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides that proceedings and applications pending before the ICC on January 1, 1996, insofar as they involve functions retained by the ICCTA, including abandonment proceedings and applications, shall be decided under the law in effect prior to January 1, 1996. Abandonment applications and proceedings filed on or after January 1, 1996, shall be decided under the law as revised in the ICCTA. Under section 204(a), regulations, including those at 49 CFR part 1152, issued by the ICC and effective as of January 1, 1996, shall remain in effect ''until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * *.''

On March 15, 1996, we served a Notice of Proposed Rulemaking (NPR) in this proceeding, published at 61 FR 11174 (March 19, 1996). In that notice, we proposed to revise part 1152 to implement the changes brought about by the ICCTA and to streamline and update the regulations. Included in the proposed revisions were deletions of obsolete references. We stated that, while we were not proposing major revisions at this time to our environmental rules at 49 CFR part 1105, or our National Trails System Act (Trails Act) rules at 49 CFR 1152.29, we were proposing some notice and timing changes to those regulations in this proceeding, because the changes were directly related to our efforts to streamline and improve the abandonment process. For the same reason, we proposed some conforming changes to our procedures for handling abandonments exempted as a class, and petitions for individual abandonment exemptions, to reflect statutory changes resulting from the ICCTA.

Comments in response to the NPR were received from various categories of entities. The Association of American Railroads (AAR) filed on behalf of its member railroads. The Rails to Trails Conservancy (RTC) filed as an advocate of trail use/rail banking. Comments were filed by the National Association of Reversionary Property Owners (NARPO), which is a nationwide organization with members interested in reversionary and other property rights. In addition, comments were filed by: (1) Numerous Federal, state, and local government agencies and entities; (2) labor unions; (3) trade associations; and (4) a large number of individual landowners and institutions representing landowners. Basically, the commenters, while expressing certain reservations and having questions concerning certain sections, embrace the changes and revisions to the abandonment regulations that we have proposed.

Before addressing the specific comments, some matters bear repeating from the NPR. We continue to view the ICCTA as reform legislation and thus our effort has been to reform and streamline the existing rules and process. As we stated in the NPR, our goal has been to revise part 1152 to meet the letter and spirit of the ICCTA and to update the regulations to improve notice to the public and ensure ample opportunity for full public participation early in our proceedings. We continue to believe that this will result in a timely, expeditious resolution of abandonment cases and allow all interested parties to participate fully. We emphasize, however, that the purpose of this rulemaking proceeding is to implement the changes mandated by the ICCTA along with conforming amendments; we have not attempted to conduct a comprehensive revision or rewrite of all of the existing regulations at part 1152. Also, we note that the parties themselves in their comments have not suggested a wholesale ''cleanup'' of these regulations.

We now turn to the major issues raised by the commenting parties.[1]

1. *Uniform schedule.* In the NPR, we proposed a new time schedule for processing abandonment applications:

Day 0—Application filed, including applicant's case in chief.
Day 10—Due date for oral hearing requests.
Day 15—Due date for Board decision on oral hearing requests.
Day 20—Due date for Notice of Application to be published in the Federal Register.
Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.
Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
Day 110—Due date for service of decision on the merits.
Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

We also stated that we viewed the notice of intent requirement as an important early warning of proposed abandonments and intended to retain its use. Accordingly, an applicant would be required to file with the Board a notice of intent to abandon a line no more than 30 days and no less than 15 days before the application is filed. In addition, we proposed to update the list of entities due to receive the notice, including the addition of RTC and NARPO, to provide the earliest possible notice that a particular right-of-way might be used as a trail.

Although several parties raised concerns about the time frames in their comments, we find no reason to alter the proposed time frames. We continue to believe that the schedule we had

[1] All comments have been carefully considered. Due to the large number of filings, however, not every specific issue raised by the commenters will be discussed here.

proposed will allow for full public participation and timely resolution, thus benefiting all interested parties. For instance, some commenters urged that the notice of intent be submitted up to 120 days before the filing of the application. While that would obviously allow additional time for parties to gather information and formulate strategy for offers of financial assistance (OFAs), trail use, etc., it would also unnecessarily delay many proceedings and has no statutory basis.[2] Moreover, the shorter time frame we proposed is in keeping with the spirit of the ICCTA, which (in section 10904) establishes a 4-month deadline after an application is filed for the submission of OFAs. Also, as stated in the NPR, the 110-day outer limit for the Board to issue a final decision is just that—a maximum time frame. In some instances, the Board will be able to render a final decision well before the 110th day.

NARPO and RTC both oppose our proposal to include them in the list of entities due to receive the notice of intent. Since notice to these organizations apparently would not further our goal of achieving the earliest possible notice that a particular right-of-way might be used as a trail (and neither expresses willingness or ability to take on notification responsibilities to persons interested in, or potentially interested in, trails), we will not include this requirement in our final rules.

Contrary to the position of RTC and NARPO, the Transportation Trades Department of the AFL–CIO requests that carriers provide this advance notice to the duly certified labor organizations that represent employees on the affected rail line. The request is reasonable and we will include these organizations on the list of entities to receive the notice of intent.

A number of individuals, presumably adjoining property owners or their supporters, argue that applicants should be required to provide actual notice to each adjoining landowner when filing for abandonment or when a trail condition is requested. However, actual notice has not been shown to be feasible or necessary to ensure that affected landowners and other interested parties receive adequate notice. Our current procedures ensure extensive notice to the public of proposed abandonments and the possibility that the right-of-way may be used as a trail. A notice of every abandonment proposal is published in the Federal Register. A local newspaper notice also must be published in every abandonment case in each county affected. Furthermore, local public hearings on trail use proposals typically are held and there is usually widespread local publicity. Also, landowners can contact the Board, the railroad, or the trail group for information on particular abandonment or trail use plans.

Moreover, it would be difficult to identify, locate and individually identify each landowner along a line proposed for abandonment and/or trail use. Hundreds if not thousands of landowners could potentially be interested in a single line. More importantly, no available source provides readily ascertainable information on the chain of title, the names and addresses of current landowners, the nature of their property interests, and the circumstances, if any, that might trigger a reversion in a particular state. Thus, there simply is no practical way to name and locate all of the landowners that might have a reversionary interest in a railroad right-of-way, as the ICC concluded in *Rail Abandonments—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures*, Ex Parte No. 274 (Sub-No. 13) (ICC served May 26, 1989, Feb. 21, 1990, and July 28, 1994), 1994 decision *aff'd mem.* 70 F.3d 638 (D.C. Cir. 1995), *cert. denied*, 116 U.S. 1323 (1996).

While we will not require actual notice to landowners, we will make other changes to facilitate and improve notice to the public. For example, RTC recommends that the newspaper and Federal Register notices we require should specifically alert the public of the possibility that, following the abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use, and advise how the public may participate in the Board proceeding (pro or con). We agree with RTC. As RTC states, newspaper notice and Federal Register notice containing this information will give adequate notice to the public of the Board's abandonment proceedings and ensure that interested parties can take such action as they deem appropriate, if they wish to participate.

In the NPR, we also proposed to change the environmental rules by amending 49 CFR 1105.7 and 1105.8 to require railroads to serve their environmental and/or historic reports on the required agencies at least 20 days prior to filing their case in chief with the Board. Also, we proposed that railroads, in order to facilitate identification of lines proposed for abandonment, be required to identify those lines by United States Postal Service Zip Codes. We will adopt both changes. The earlier distribution of environmental and historic reports will expedite the environmental review process (by giving participating agencies additional lead time to conduct their analysis) without being unduly burdensome on the railroads. While comments on the use of Zip Codes were mixed, the use of Zip Codes is a means to provide notice to the public that a line near them has been proposed to be abandoned. Therefore, we will require use of Zip Codes in the final rules.

Finally, the Department of the Army has requested that the Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) continue to receive a copy of abandonment notices. It states that MTMCTEA is responsible for maintaining a rail network for national defense purposes and that MTMCTEA must receive notice to determine if the line designated for abandonment is an essential element in the rail network.

We have retained MTMCTEA on the list of agencies on which notices must be served. See §§ 1152.20(a)(2) (requiring service of notice of intent on MTMCTEA) and 1152.50(d)(1). We have also assured that MTMCTEA will receive copies of petitions for exemption in new § 1152.60(d).

2. Federal Register *Publication.* Commenters overwhelmingly supported our proposal to publish a notice of an abandonment application or a petition for an individual exemption in the Federal Register 20 days after the application or petition is filed.[3] Accordingly, we will adopt that proposal in our final rules. The Federal Register notice will describe the proposal, advise the public about the due dates for offers of financial assistance and requests for public use and trail use conditions, and explain how to participate (pro or con) in the Board's proceeding. Abandonment applicants and petitioners will be required to file draft Federal Register notices that can be used to announce the filing.

RTC argues that, in addition, we should continue our current practice of publishing another Federal Register notice when, and if, the abandonment authority is granted. We disagree. Because there will be Federal Register notice and newspaper notice at the beginning of the process specifically advising the public as to how to

[2] Rather, section 10903(a)(3)(E) requires merely that a rail carrier certify to the Board with its application that the carrier has satisfied the notice requirements of section 10903(a)(3) (A)—(D) within the most recent 30-day period prior to the filing date of the application.

[3] We proposed no changes for the publication of Federal Register notices for the procedural timing of abandonments covered by the class exemption embraced in subpart F.

participate (pro or con), any interested person can become a party or can ask to be put on the service list of a proceeding and thus receive copies of all subsequent decisions in the case.[4] Moreover, Federal Register notice is extremely costly; we lack the financial and staff resources to publish multiple Federal Register notices in abandonment cases.

Also RTC suggests that we not use the term ''must'' in the portion of the draft Federal Register notice informing requesters of a public use condition or trail use condition that such requests are due within 45 days of the filing of the application, 40 days of the filing of a petition, or 10 days after the publication of a notice of exemption. RTC argues that the use of ''must'' will lead to claims by anti-trail groups that no late-filed requests should ever be granted. We have not made the suggested change. Trail use requests, like all other requests, need to be timely filed if at all possible so our uniform schedule can be met.[5] Moreover, we will specifically retain our current policy of accepting filings after the due date when good cause is shown.

Finally, the comments received regarding changes to our rules for abandonments covered by the class exemption embraced in subpart F raise issues that are inappropriate for resolution on the current record. Accordingly, we will not attempt to change or modify our regulations concerning the class exemption at this time but reserve the right to address these issues further in a separate proceeding at a later date.

3. *System Diagram Maps.* The ICCTA retains the requirement that rail carriers prepare, file, and amend, as appropriate, system diagram maps (SDMs) that identify lines that are, or soon will be, the subject of an abandonment application. In the NPR we proposed several changes to part 1152 regarding SDMs to eliminate unnecessary regulatory and paperwork burdens. These changes include the following:

(1) Because of the potential burden on small carriers, we proposed to require only Class I and Class II railroads to prepare and file SDMs.

(2) In lieu of an annual filing of these maps, we proposed a one-time filing of a complete and current set of maps within 60 days of the effective date of these regulations. The carrier would decide when changes have been extensive enough to warrant the filing of a new, updated SDM, but the Board would retain the discretion to require an updated SDM if that became necessary.

(3) We proposed to require only 3 (instead of 6) copies whenever an SDM or an update is filed.

(4) We proposed to reject an abandonment application of a Class I or Class II railroad for a line that has not been identified on a SDM in category 1 for at least 30 days.

Many commenters expressed views on this subject. First, there was strong opposition to our excusing Class III carriers from filing SDMs. Commenters pointed out that Class III carriers now comprise a substantial portion of the rail network, both in numbers of carriers and length of track operated.[6] Commenters (including several state agencies) argued that to excuse such a large portion of the rail network from these filing requirements would work a severe hardship upon parties opposing abandonments. Moreover, commenters argued that, because rail lines by statute may qualify for feeder line applications under 49 U.S.C. 10907 if they have been identified on an SDM, our proposal would in effect limit the use of the feeder line provisions for lines owned by Class III carriers.

Based on the comments, we have decided to continue to require Class III carriers to file the information normally found in an SDM. Because we recognize, however, that the extensive SDM filing requirements under our current rules could be unnecessarily burdensome on smaller entities, we will give Class III carriers the option of filing a map or filing only a narrative description of its lines as provided under § 1152.11.

A number of commenters also opposed our proposal to shorten the period of time that a carrier must identify a line in category 1 of its SDM before filing an application to abandon the line. Because the ICCTA deleted the 4-month requirement under the prior law, we proposed requiring that a carrier identify a line in category 1 at least 30 days prior to filing an abandonment application, believing that period to be adequate to meet the various parties' planning needs. A significant number of parties maintained that 30 days was too short a period of time to properly notify persons who might wish to file statements in opposition to an abandonment or for public agencies and shippers to prepare an OFA for the line or otherwise plan for alternative transportation. Many commenters supported retention of the 4-month period provided under prior law and implementing regulations.

We are persuaded by the comments that 30 days may be insufficient time for parties to properly oppose an abandonment or to make alternative service plans. At the same time, we continue to believe that 4 months is too long and unduly delays the overall process. Therefore, our final rules provide for rejection of any abandonment application for a line that has not been identified on an SDM[7] in category 1 for at least 60 days. The additional time should be adequate to meet the planning needs of shippers and state and local governments while avoiding unnecessary delay.

Some commenters, including AAR, recommend that we eliminate categories (2), (3), and (4) from the SDM. We see no need to do so. By adopting a one-time filing requirement (unless extensive changes occur), we have already eliminated much of the extensive work and burdensome procedures required under our prior rules.

A number of parties have also argued that we should retain the prior requirement concerning the annual filing of updated maps or at least require updates on a specific, periodic basis. We believe these requirements would result in more burdens on the carriers than benefits to the shipping public. We emphasize that carriers must continue to file revisions when changing the category of a line, and must file updated SDMs as appropriate or when ordered by us.

MTMCTEA asks that it continue to receive updated copies of SDMs. We have provided copies of SDMs and updates to MTMCTEA in the past on an informal basis. As this procedure apparently has worked well, we will continue to provide the information to MTMCTEA as before.

4. *Summary application.* Absent meaningful opposition, we will finalize our intention to delete the ''Summary Application'' provisions. By doing so, we will have a uniform, streamlined process for all applications.

[4] We note that the timing for Federal Register notices we are adopting for applications and petitions for exemption is similar to what has been done under the class exemption at subpart F for many years. Under the class exemption, as here, the only Federal Register notice is at the beginning of the process.

[5] We see no reason why trail use requests cannot typically be filed on time. Filing a trail use request is not onerous. Moreover, a party can request a trail condition before there is an arrangement for interim trail use; the condition simply provides time to negotiate.

[6] According to the National Grain and Feed Association, as of 1994, there were 487 Class III carriers operating 25,999 miles of track. This was approximately 21 percent of the total track operated by Class I railroads (123,355 miles in 1994).

[7] For Class III carriers, the term SDM shall include the filing of a narrative description without an actual map.

5. *Abandonment procedures for bankrupt railroads.* As part of our proposal to adopt a streamlined process appropriate for all applications, we preliminarily indicated in the NPR that no need existed to continue to have separate procedures in subpart E for bankrupt railroads. However, we did propose to include as special provisions for bankrupt railroads in the general abandonment procedures the requirements that abandonment applications filed by bankrupt railroads, and protests or other public responses to the applications, be filed with the bankruptcy court; that Board decisions or reports on abandonment applications by bankrupt railroads be filed with the bankruptcy court; and that special processing schedules would be established to meet court deadlines, so long as a reasonable period of time is allowed to obtain public responses and build a record in an abandonment application by a bankrupt railroad. The commenters either support, or fail to show harm from, these proposals, and we will adopt them as part of our final regulations.

6. *Due date for filing public use requests and trail use requests.* In the NPR, we proposed changes in due dates for these filings to further our goal of compiling a full record for disposition as early as possible. In abandonment applications, we proposed that trail use requests and public use requests be filed at the same time as protests and other written comments (within 45 days after the application is filed). An applicant would then be required to respond regarding willingness to negotiate for trail use within 15 days (or within 60 days after the application is filed). For abandonments covered by the class exemption at subpart F, we proposed to continue to require trail use/rail banking requests to be filed within 10 days after Federal Register publication of the exemption and public use requests to be filed within 20 days after Federal Register publication. For petitions for individual exemption, we proposed to require that trail use/rail banking requests and public use requests be filed within 20 days after Federal Register publication of the notice of the filing of the petition (40 days from the filing of the petition). For both class exemptions and petitions for exemption, we proposed to require the rail carrier to respond to trail use/rail banking requests within 10 days after the request is filed.

Commenters have for the most part agreed with our proposed rules, which we will adopt. Some have sought additional or more comprehensive changes to the regulations governing public use and trail use conditions. We will not, however, address those requests here, because we did not set out in this proceeding to undertake a detailed re-examination of all aspects of our handling of public use and trail use requests. In short, our purpose in proposing to modify these due dates was to find a way to complete a full record as early as practicable to expedite and streamline the abandonment process.

Finally, several commenters suggest that we should undertake a ''takings implication assessment'' whenever we issue a trail condition, pursuant to Executive Order 12630, Governmental Actions And Interference With Constitutionally Protected Property Rights. See 53 FR 8859 (March 18, 1988). But, as the ICC had explained, the Executive Order applies only to executive agencies, and not to independent agencies like the ICC.[8] The Executive Order does not apply to the Board, which was created as the successor agency to the ICC.[9]

7. *Notice of consummation.* To arrive at more definitive standards to be used in resolving the issue of when an abandonment has been consummated, or fully exercised, we proposed in the NPR to require that carriers file with the Board a notice of consummation, and to give conclusive effect to the filing of such notice.[10] We did not propose a deadline for filing, or a penalty for failure to file. We indicated that, if no notice of consummation of abandonment had been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.

After considering the comments, we continue to believe that a notice of consummation requirement would help clarify the consummation issue and prevent consummation disputes from arising in the future. Several commenters, however, criticize our failure to include a filing deadline in our proposal, on grounds that it would leave the railroad free never to consummate an abandonment and thus would be unfair to adjoining landowners with a reversionary interest in the right-of-way. Based on the comments, we have decided to set a 1-year time limit by which time a railroad must exercise the authority to abandon and inform us that it has done so by sending us a consummation notice.[11] Accordingly, our final rules provide that, if after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation—and there are no legal or regulatory barriers to consummation (i.e., outstanding conditions, including Trails Act conditions)—the authority to abandon will automatically expire. That means that a new proceeding would have to be instituted if the railroad wanted to abandon the line.[12]

We reject the suggestion of some commenters that we should not adopt a notice of consummation requirement because the issue of when abandonment has been consummated has been settled by *Fritsch* v. *ICC*, 59 F.3d 248 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1262 (1996). In *Fritsch*, the court held that a public use condition imposed under former section 10906 (now 49 U.S.C. 10905) did not prevent consummation of the abandonment and the vesting of reversionary interests in the right-of-way in the circumstances of that case. The courts, however, have expressly declined to read *Fritsch* as holding that abandonment is necessarily triggered upon a showing of any single piece of

[8] *Burlington Northern Railroad Company—Aband. Exemption—In Skagit County, WA*, Docket No. AB–6 (Sub. No. 299X) (ICC served June 23, 1989).

[9] While the Board is lodged within the Department of Transportation, just as the Federal Energy Regulatory Commission is lodged within the Department of Energy, the Board was created as an independent establishment of the United States Government. See 49 U.S.C. 703(a).

[10] Until 1984, the ICC required a railroad to send the agency a letter confirming that it had consummated an abandonment within 1 year after the abandonment was authorized. Since then, some carriers have continued to send in these letters. Moreover, the courts have considered these letters in determining whether the line is still part of the interstate rail network, and thus available for interim trail use under 16 U.S.C. 1247(d), or public use under 49 U.S.C. 10905.

[11] Several parties suggest shorter time periods ranging from 30 to 180 days. AAR supports our initial decision to have no time period at all, noting that a railroad may have reason to delay consummation of an abandonment for a substantial period of time. We believe that a 1-year time period is appropriate. That time period ensures that the consummation issue will not be left open indefinitely. At the same time, it is long enough to give carriers that do not want to exercise their abandonment authority immediately time to hold open the possibility that new shippers will seek rail service or that the right-of-way could be used for interim recreational or conservation purposes under 16 U.S.C. 1247(d), or public use under 49 U.S.C. 10905.

[12] There is nothing inconsistent about this approach and our rules that permit states to acquire lines that have not been fully abandoned upon the mere filing of a notice. See 49 CFR 1150.22. If the line is acquired during the first year after we authorize abandonment, and before a notice of consummation is filed, the line has not been fully abandoned and can be acquired under our rules. After a year has passed, if there is no notice of consummation, the railroad's abandonment authority lapses, and the line cannot be abandoned (or acquired by a state or any one else) without further authority from us.

evidence indicative of an intent to abandon. See *Conrail* v. *STB*, 93 F.3d 793, 799 (D.C. Cir. 1996); *Birt* v. *STB*, 90 F.3d 580, 588 n.15 (D.C. Cir. 1996); *Grantwood Village* v. *Missouri Pacific RR*, 95 F.3d 654, 659 n.6 (8th Cir. 1996). Moreover, the court in *Fritsch* essentially viewed the railroad's letters to the ICC declaring that it had abandoned the line as conclusive evidence that abandonment had been consummated, therefore depriving the ICC of jurisdiction to impose a trail condition. See 59 F.3d at 253. Thus, our adoption of a notice of consummation requirement here will codify that portion of the court's ruling in *Fritsch* and prevent similar disputes from arising in the future.

Finally, the Oregon and Montana Departments of Transportation suggest that we require notices of consummation to be filed with the appropriate state agencies (DOT, Public Service Commission) as well as with us. We will grant that request, and require that the railroads file notices of consummation with the State Public Service Commission (or equivalent agency) in each state through which the line passes, because it will help keep the states apprised of the status of lines authorized to be abandoned and is not unduly burdensome.

8. *Certificate of abandonment.* Since the ICCTA does not specifically require that ''certificates'' be issued when abandonment applications are granted, in the NPR we proposed to dispense with the issuance of certificates and instead simply issue ''decisions granting'' an application. However, we proposed to continue to refer to ''Certificates of Interim Trail Use or Abandonment'' in the trail use context in part to distinguish an application proceeding from an exemption proceeding. We received a few comments regarding this issue but no commenter presents strong objections to our proposal. Because the term ''certificate'' is widely known in the trail use context, we will continue to use it for trail use purposes alone.

9. *Contents of the application.* In the NPR, we initially determined that applicants should be required to submit their entire case as part of the application. We then indicated that applicants must include all relevant workpapers and supporting documents with each application. AAR, in its comments, objects to the necessity of supplying all workpapers and supporting documents. It argues that this would be a step backward in our effort to streamline the application process. AAR explains that differences of opinion would arise concerning what constitutes ''workpapers'' and that the gathering of all materials would be an unnecessary burden on applicants and produce copious documents with little practical use. We agree with the comments and emphasize that we did not intend to create a more burdensome process than exists today. We clarify that what we meant by the use of the word ''all'' was that we expect each applicant to submit sufficient (or all that the applicant believes is necessary) workpapers and supporting documents to present a complete or prima facie case. We will modify the regulations accordingly, but we emphasize that the burden is on the applicant to show that the proposed abandonment or discontinuance is in the public interest.

a. *Service data.* In the NPR we proposed to streamline the requirements for abandonment applications by excluding all branch line (line proposed for abandonment) service data for time periods prior to the Base Year period, with the exception of data on changes in train service. The current regulations require data for the 2 preceding calendar years and that portion of the current calendar year for which data are available.[13]

We also proposed changes to the service and traffic data required to be provided in three specific areas. First, we proposed that the carload data on the line would have to show only the total carloads for each commodity group. Second, we proposed that data pertaining to overhead or bridge traffic would have to be included only if the serving carrier would not retain this traffic after approval of the abandonment. Finally, we proposed that only changes in train service in the last 2 years (instead of the last 5 years) would need to be discussed.

A number of commenters raised concerns about the proposed exclusion of historic operational data in the application. Reasons for their concern vary but include: (1) Base Year data could be intentionally distorted; (2) historical calendar year evidence reflects trends in rail line profitability; (3) 1 or 2 years of data are inadequate to make a determination on the viability of a rail line; and (4) without the data from past periods, it will be difficult to determine if intentional downgrading has occurred.

We do not entirely agree with the commenters that urge that there is a need for more historical data. Under our proposed rules, applicants would have to include and discuss changes in train service for the last 2 years. In addition, applicants would also be required to supply, under proposed § 1152.22(e)(2), a list of significant shippers and their tonnage and/or carload data for the last 2 calendar years and, under proposed § 1152.22(c)(4), total carloads by each commodity group on the line during the Base Year. This information should give protestants sufficient data to address alleged downgrading and the other concerns outlined above.

Nevertheless, in response to commenters and their concerns, we have decided to expand our traffic data requirements somewhat. Specifically, the data required for significant users under § 1152.22(e)(2) of our final rules will include the tonnage and carloads for each commodity group for the last 2 calendar years, any part of the current calendar year for which data are available, and the Base Year. In addition, we will require that the total tonnages and carloads for each commodity group originating and/or terminating on the line segment (not limited to significant users) be shown for the same time periods as those for the significant users. Consistent with these changes, we also will expand proposed § 1152.22(c)(4) to require inclusion of total tons and carloads by each commodity group on the line. With these changes, we believe that an application will contain sufficient service and traffic data to allow appropriate analysis of all issues relevant to service on the subject line.

b. *Financial data.* In the NPR, we proposed to exclude computations for the revenue and cost data developed for the branch line for the prior 2 calendar years and any portion of the current year. Revenue and cost data would be computed only for the Base Year, Forecast Year, and Subsidy Year.[14]

We also proposed to delete the requirements that the impact of the abandonment on the carrier's net railway operating income (NROI) for the past 2 calendar years be developed and that the impact on the NROI of other carriers operated under common control of the abandoning railroad be submitted. In addition, we proposed to delete the requirement that the railroad's balance sheet and income statements be filed.

Commenters voice concern regarding the absence of financial operating results in prior years and object to the

[13] As we stated in the NPR, this change had been proposed by the ICC in a notice of proposed rulemaking in *Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period*, Ex Parte No. 274 (Sub-No. 26) (ICC served Nov. 9, 1992), to reduce the reporting burden on the carriers. Comments were received but a final rule was never issued.

[14] These changes also had been proposed in the ICC's rulemaking in Ex Parte No. 274 (Sub-No. 26).

proposal to delete the requirements concerning NROI and the filing of balance sheets and income statements. They make the same arguments against the elimination of these data as they make regarding the elimination of historic service data. Regarding common control, some commenters argue that the financial effect of abandonment by one ''family'' member affects another. Also, they argue that financial statements are needed because they show the overall financial condition of the applicant, which can be important in the Board's weighing of the evidence under its public convenience and necessity standard.

We do not believe that the benefits of requiring a carrier to submit all of these data justify the very real burden on the applicant of preparing the data. Profits or losses on a line segment in prior years typically do not provide a proper basis on which to judge the line's current and future financial viability. The Board's primary measures of financial condition are the operations in the Base Year and Forecast Year, which recognize the current and future financial viability of the line segment. Moreover, changes in traffic are in most instances the main cause of changes in operating results from a profit to a loss, and necessary traffic information is included in the data applicant is required to file. For these reasons, we will not make the requested changes to our proposal.

c. *Other application changes.* In the NPR, we proposed to delete the requirements that the carrier identify in detail the sources of alternate transportation available and describe its efforts to solicit traffic on the line. Instead, we proposed to require only a general description of alternative transportation sources. We also proposed that the carrier no longer be required to describe its efforts to solicit traffic on the branch line in every case, but that we would permit the carrier instead to provide a description of its efforts if it believes that the information would aid its case regarding protestants' claims of either potential increases in traffic or deliberate downgrading. Comments specifically addressing these points were unpersuasive. Accordingly, we will incorporate these changes in our final rules.

d. *Summary.* We will adopt in our final rules the modifications discussed in subparts a-c above. We believe that the information required to be provided in the application, along with information that the parties already have, or may readily obtain, will afford all interested parties a fair opportunity to analyze and present argument on every issue relevant to the abandonment process that is related to the above data. Moreover, we remind applicants that the burden of proof in these proceedings remains on them, and that they may wish to provide additional data with their applications where doing so would help assure that they have met their burden regarding anticipated challenges such as, for example, challenges claiming deliberate downgrading of the line.

10. *Offers of financial assistance.* As discussed in the NPR, in addition to the time limits explained above, new 49 U.S.C. 10904 contains other changes in the way OFAs are handled. Initially, the Board need only find that the offeror is a financially responsible person before the negotiating process can begin. We proposed to revise the rules accordingly. Under new section 10904, the Board has 30 days, rather than 60 as before, from the date requested to issue a decision establishing the conditions and amount of compensation for the purchase or subsidy of the line. To meet the new deadline, we proposed to require the requesting party to submit its case in chief at the time it makes its request and to serve the other party(ies) with a copy by overnight mail. The other party(ies) would have 5 days from the date of filing to file a reply. As before, we proposed that our new rules would automatically stay the effective date of (or revoke as necessary for a class exemption) the underlying abandonment decision. We will adopt these changes in our final rules. The final rules also continue to provide that, if a request to set terms and conditions is not made to the Board, a decision making the underlying abandonment approval (or exemption) effective would be served within 10 days of the due date for making the request.

The statute now places a 1-year limit on operating subsidies imposed by the Board, unless otherwise mutually agreed by the parties. As a result, we proposed in the NPR that: (1) Subsidy agreements imposed by the Board would end after 1 year, and (2) beyond this period any subsidy would be strictly a contractual agreement between the carrier and the subsidizer without the involvement of the Board.

Also regarding subsidies, we proposed that the new rules continue to provide for interim financial status reports, as presently included in the abandonment regulations. However, with certain exceptions, the subsidizer's final responsibility would be limited to a maximum of 15% over the agreed-to amount of the operating subsidy. The exceptions would be: (1) If the subsidizer is notified of a higher amount within the first 10 months of the agreement; and (2) the increase results from an expense that has been preapproved by the subsidizer. We explained in the NPR that we believed that the limitation is needed to provide a degree of certainty to a party that seeks to subsidize operation of a line approved for abandonment. Our final rules include all of these provisions.

We have considered the concern of some commenters regarding the shortening of the 120-day statutory period for submission of OFAs when an abandonment is granted by decision issued sooner than 110 days after the application is filed. (Our uniform schedule provides that in such cases the OFA will be due 10 days after service of the decision granting the application, which could be sooner than 4 months after the application is filed.) However, given our goal of expediting the process where possible, we have decided not to change our proposed Uniform Schedule. We recognize that 49 U.S.C. 10904(c) sets 4 months as the outer limit for the filing of OFAs. At the same time, we believe that the expanded notice that will be provided at the outset of abandonment proceedings under our new rules typically will allow adequate time for parties to consider filing an OFA, and marshal the funds necessary to do so, within the Uniform Time Frames, even if in some cases this results in something less than the full 120 day period to file an OFA. Accordingly, we do not read the statute to require that we delay in all cases abandonment proceedings that can be decided in less time than the full 110 days. However, in light of the time frames in 49 U.S.C. 10904(c), parties that can show that they would be materially prejudiced by having less than the full 4 months may petition the Board for the full time provided by the statute for application proceedings.[15]

In addition, RTC contends that we should retain the requirement that, in addition to being made by a financially responsible person, the offer must be ''bona fide.'' RTC requests that we include such language in the regulations. We find no merit in RTC's request. New 49 U.S.C. 10904 clearly does not retain that aspect of the prior statute. Accordingly, we will not add such a requirement in our regulations. Our final rules adopt the changes proposed in the NPR.

11. *Return on investment.* In the NPR, we stated that we believed several problem areas existed with the rules for establishing return on investment. To address these issues, we proposed

[15] Parties may seek relief under 49 CFR part 1117.

various changes regarding the determination of the net liquidation value (NLV) of road properties on the branch line, a component used in calculating return on investment. These proposed changes involved the inclusion of assets with negative net salvage values, adjustments to right-of-way land values, and the bases used to value right-of-way land.

Very few comments were received regarding these proposed changes. However, AAR has raised concerns about the proposed inclusion of negative salvage values for those assets where the cost of dismantling exceeds the value of the materials salvaged. There are three situations where this value has implications. These situations are: (1) Calculation of the operating and economic loss on the line, i.e., the merits of the application; (2) the continuation subsidy payment calculation; and (3) selling price in OFA purchase determinations.

Regarding the merits of the application, a negative return on value would distort the loss from operations being borne by the serving railroad. This could, according to AAR, result in the application being denied.

AAR also is concerned that inclusion of a negative NLV and a negative return on properties would reduce the subsidy amount below the operating loss being incurred by the serving carrier. Additionally, AAR states that in OFA proceedings a negative value for the properties could result in an artificially low value being placed on the assets that are to be purchased. This situation, it claims, would also reverse the burden of proof from the offeror to the railroad in proving the value of the line's assets.

In light of the concerns of AAR as to the potential implications of including both a negative NLV and calculating a negative return on value, we have made appropriate changes to our proposed regulations regarding the calculation of subsidy payments or purchase price in OFA proceedings.

First, to amplify what we said in the NPR, no asset on the branch line will have a negative value unless the railroad intends to remove the structure, or it is proven by protestants, that the structure must be dismantled to comply with a Federal law, state law, or a local ordinance.

Moreover, in assessing the merits of the application, if a negative value results for the composite NLV of all branch line properties, the negative value will be inserted in the submission of the Forecast Year revenue and cost data, Exhibit 1 to the application. However, the return on value will be calculated at zero. This will allow the Board to compare the loss from operations with the negative opportunity cost of the railroad. The cost to the railroad for dismantling the structure(s) is recognized by the Board as a one time expense whereas the operating loss will reoccur each year, if nothing changes.

We will amend § 1152.34 of the proposed regulations to include changes in developing the NLV of road property and the return on value requested by AAR. Under our final rules, in calculating a continuation subsidy payment, assets with negative value will be handled in the following manner. Any individual asset with a negative value will be valued at zero. The balance of the assets will have their NLV calculated in the normal manner. A continuation subsidy must recognize the line segment as a going concern and a return should be earned by the railroad on those assets with value. Under no circumstances will the subsidy payment be less than the loss from operations incurred by the railroad from providing service on the line.

With regard to OFAs to purchase a line segment, the NLV of the line's assets will be determined in the same manner as that used in calculating continuation subsidy payments.

Finally, AAR favors the use of the comparable sales method for valuing real estate. We reject that approach, as the ICC did in the past. Accordingly, the proposed rules will be adopted concerning this issue.

12. *Holding gains and losses.* In the NPR, we proposed the use of the Gross Domestic Product as a replacement for the Gross National Product used in estimating holding gains and losses (computed for freight cars, locomotives, and road property accounts). We suggested this change to bring our rules in line with the current measures used at the U.S. Department of Commerce, Bureau of Economic Analysis. Commenters generally approve of this modification, and we will include it in our final regulations.

13. *Appendix listing of carriers and AB numbers.* In the NPR, we proposed to delete the Appendix to part 1152 that lists carriers and their assigned AB numbers. We preliminarily concluded that the list serves no useful purpose, noting that interested persons could instead contact the Board's Office of the Secretary if they have a need to ascertain a particular carrier's assigned AB number.

The lack of comments regarding this change confirms our preliminary conclusion that the listing does not continue to serve a useful purpose. Accordingly, it will be deleted from part 1152 as proposed.

14. *Filing fees.* Several commenters address the issue of filing fees. However, we will not address those comments here as fees issues were considered and resolved by the Board in *Regulations Governing Fees for Service*, 1 S.T.B. 179 (1996).

Small Entities

In the NPR, we sought comments on our preliminary conclusion that these regulations, if adopted, would not have effects on small entities that should be considered in a regulatory flexibility analysis. No comments provided information showing that there would be significant effects on small entities. Accordingly, the Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. They should result in streamlining, improving, and updating the abandonment process while ensuring the opportunity for full public participation in our proceedings.

Environmental Finding

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, Public lands-grants, Public lands rights-of-way, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

Decided: December 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1105 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and

6362(b); and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, and 10903–10905.

2. Section 1105.7 is amended as follows:

a. In paragraph (a), after the words ''must submit'' add the words ''to the Board'';

b. In paragraph (a), after the words ''notice of exemption'' add the words '', except as provided in paragraph (b) for abandonments and discontinuances'';

c. Paragraph (b), introductory text is revised;

d. In paragraph (b)(11) the last sentence is removed;

e. Paragraph (c), first sentence, after the words ''to the agencies listed'' add the words ''and within the time period specified'';

f. In paragraph (c) the third sentence is removed.

The revision to the introductory text in paragraph (b) reads as follows:

§ 1105.7 Environmental reports.

* * * * *

(b) At least 20 days prior to the filing with the Board of a notice of exemption, petition for exemption, or an application for abandonment or discontinuance, the applicant must serve copies of the Environmental Report on:

* * * * *

3. In § 1105.8, paragraph (c) is revised to read as follows:

§ 1105.8 Historic Reports.

* * * * *

(c) *Distribution.* The applicant must send the Historic Report to the appropriate State Historic Preservation Officer(s), preferably at least 60 days in advance of filing the application, petition, or notice, but not later than 20 days prior to filing with the Board.

* * * * *

§ 1105.12 [Amended]

4. Section 1105.12, the appendix, is amended as follows:

a. In the first paragraph of the sample newspaper notice for out-of-service abandonment exemptions after the words ''(station name),'' add the following words: ''which traverses through United States Postal Service ZIP Codes (ZIP Codes).''

b. In the first paragraph of the sample newspaper notice for petitions for abandonment exemptions, after the words ''(station name),'' add the following words: ''which traverses through United States Postal Service ZIP Codes (ZIP Codes).''

5. Part 1152 is revised to read as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

Subpart A—General

Sec.
1152.1 Purpose and scope.
1152.2 Definitions.

Subpart B—System Diagram

1152.10 System diagram map.
1152.11 Description of lines to accompany the system diagram map or information to be contained in the narrative.
1152.12 Filing and publication.
1152.13 Amendment of the system diagram map or narrative.
1152.14 Availability of data.
1152.15 Reservation of jurisdiction.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use

1152.20 Notice of intent to abandon or discontinue service.
1152.21 Form of notice.
1152.22 Contents of application.
1152.23 [Reserved]
1152.24 Filing and service of application.
1152.25 Participation in abandonment or discontinuance proceedings.
1152.26 Board determination under 49 U.S.C. 10903.
1152.27 Financial assistance procedures.
1152.28 Public use procedures.
1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

1152.30 General.
1152.31 Revenue and income attributable to branch lines.
1152.32 Calculation of avoidable costs.
1152.33 Apportionment rules for the assignment of expenses to on-branch costs.
1152.34 Return on investment.
1152.35 [Reserved]
1152.36 Submission of revenue and cost data.
1152.37 Financial status reports.

Subpart E—[Reserved]

Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

1152.50 Exempt abandonments and discontinuances of service and trackage rights.

Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10502 Exemption Procedure

1152.60 Special rules.

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

Subpart A—General

§ 1152.1 Purpose and scope.

(a) 49 U.S.C. 10903 *et seq.* governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(d) provides that no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

(b) Part 1152 contains regulations governing abandonment of, and discontinuance of service over, rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service under 49 U.S.C. 10904, for acquiring rail lines for alternate public use under 49 U.S.C. 10905, and for acquiring or using a rail right-of-way for interim trail use and rail banking.

§ 1152.2 Definitions.

Unless otherwise provided in the text of the regulations, the following definitions apply in this part:

(a) *Account* means an account in the Board's Uniform System of Accounts for Railroad Companies (49 CFR part 1201).

(b) *Act* means the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803), as amended.

(c) *Base Year* means the latest 12-month period, ending no earlier than 6 months prior to the filing of the abandonment or discontinuance application, for which data have been collected at the branch level as prescribed in § 1152.30(b).

(d) *Board* means the Surface Transportation Board.

(e) *Branch* means a segment of line for which an application for abandonment or discontinuance, pursuant to 49 U.S.C. 10903, has been filed.

(f) *Carrier* means a railroad company or the trustee or trustees of a railroad company subject to regulation under 49 U.S.C., Subtitle IV, chapter 105.

(g) *Designated state agency* means the instrumentality created by a state or designated by appropriate authority to administer or coordinate its state rail plan.

(h) *Forecast Year* means the 12-month period, beginning with the first day of the month in which the application is filed with the Board, for which future revenues and costs are estimated.

(i) *Form R–1* means the railroad's annual report filed with the Board in accordance with the requirements of 49 U.S.C. 11145.

(j) *Offeror* means a shipper, a state, the United States, a local or regional transportation authority, or any

financially responsible person offering rail service continuation assistance under 49 U.S.C. 10904.

(k) *URCS* means the Uniform Railroad Costing System.

(l) *Significant user* means: (1) Each of the 10 rail patrons which originated and/or received the largest number of carloads (or each patron if there are less than 10); and

(2) Any other rail patron which originated and/or received 50 or more carloads, on the line proposed for abandonment or discontinuance, during the 12-month period preceding the month in which notice is given of the abandonment or discontinuance application.

(m) *Subsidy year* means any 12-month period for which a subsidy agreement has been negotiated and is in operation.

Subpart B—System Diagram

§ 1152.10 System diagram map.

(a) Each carrier shall prepare a diagram of its rail system on a map, designating all lines in its system by the categories established in paragraph (b) of this section. A Class III carrier shall either prepare the aforementioned map of its rail system or file only a narrative description of its lines that provides all of the information required in this subpart.

(b) All lines in each carrier's rail system shall be separated into the following categories:

(1) All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board;

(2) All lines or portions of lines which are potentially subject to abandonment, defined as those which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues;

(3) All lines or portions of lines for which an abandonment or discontinuance application is pending before the Board on the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board;

(4) All lines or portions of lines which are being operated under the rail service continuation provisions of 49 U.S.C. 10904 (and former 49 U.S.C. 10905) on the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board; and

(5) All other lines or portions of lines which the carrier owns and operates, directly or indirectly.

(c) The system diagram map shall be color-coded to show the 5 categories of lines as follows:

(1) Red shall designate those lines described in § 1152.10(b)(1);

(2) Green shall designate those lines described in § 1152.10(b)(2);

(3) Yellow shall designate those lines described in § 1152.10(b)(3);

(4) Brown shall designate those lines described in § 1152.10(b)(4); and

(5) Black or dark blue shall designate those lines described in § 1152.10(b)(5).

(d) The system diagram map shall also identify, and shall be drawn to a scale sufficient to depict clearly, the location of:

(1) All state boundary lines;

(2) Boundaries of every county in which is situated a rail line owned or operated by the carrier which is listed in categories 1 thru 4 (§ 1152.10(b)(1) thru (4));

(3) Every Standard Metropolitan Statistical Area (SMSA) any portion of which is located within 5 air miles of a rail line owned or operated by the carrier; and

(4) Every city outside an SMSA which has a population of 5,000 or more persons (according to the latest published United States census reports) and which has any portion located within 5 air miles of a rail line owned or operated by the carrier. A series of interrelated maps may be used where the system serves a very large or congested area. An explanation of the interrelationship must be furnished.

§ 1152.11 Description of lines to accompany the system diagram map or information to be contained in the narrative.

Each carrier required to file a system diagram map or narrative shall list and describe, separately by category and within each category by state, all lines or portions of lines identified on its system diagram map or to be included in its narrative as falling within categories 1 thru 3 (§ 1152.10(b)(1) thru (3)) as follows:

(a) Carrier's designation for each line (for example, the Zanesville Secondary Track);

(b) State or states in which each line is located;

(c) County or counties in which each line is located;

(d) Mileposts delineating each line or portion of line; and

(e) Agency or terminal stations located on each line or portion of line with milepost designations.

§ 1152.12 Filing and publication.

(a) Each carrier required to file a system diagram map or a narrative shall file with the Board three copies of a complete and up-dated color-coded system diagram map or narrative (identified by its ''AB number'') and the accompanying line descriptions in conformance with the filing and publication requirements of this section. If a revised map or narrative is filed, the line descriptions for the lines which were revised must be filed.

(b) The color-coded system diagram map or narrative, any amendments, and accompanying line descriptions shall be served upon the Governor, the public service commission (or equivalent agency) and the designated state agency of each state within which the carrier operates or owns a line of railroad.

(c) The carrier shall: (1) Publish in a newspaper of general circulation in each county containing category 1 through 3 lines or lines being revised, a notice containing:

(i) A black-and-white copy of the system diagram map (or a portion of the map clearly depicting its lines in that county); and

(ii) A description of each line (in the case of Class III carriers only the line description is required);

(2) Post a copy of the newspaper notice:

(i) In each agency station or terminal on each line in categories 1 through 3 and on each line which has been revised; or

(ii) If there is no agency station on the line, at any station through which business for the line is received or forwarded;

(3) Furnish, at reasonable cost, upon request of any interested person, a copy of its system diagram map (either color-coded or black-and-white) or narrative; and

(4) Notify interested persons of this availability through its publication in the appropriate county newspaper.

(d) Each carrier required to file a system diagram map or narrative shall file with the Board an affidavit of service and publication stating the date each was accomplished. A copy of each newspaper notice published shall be attached to the affidavit. The effective date of the filing of the initial system diagram map or narrative and each amended system diagram map or narrative as required in paragraph (a) of this section shall be deemed to be the date upon which the Board receives the affidavit required in this paragraph.

(e) The Board shall require republication of the notice if it is found to be inadequate.

§ 1152.13 Amendment of the system diagram map or narrative.

(a) Each carrier shall be responsible for maintaining the continuing accuracy of its system diagram map and the accompanying line descriptions or narrative. Amendments may be filed at any time and will be subject to all carrier filing and publication requirements of § 1152.12.

(b) By March 24, 1997, each carrier shall file with the Board a revised and updated color-coded system diagram map and line descriptions or narrative which shall be subject to the filing and publication requirements of § 1152.12. Thereafter, each carrier shall file amendments as line designations change and update its map or narrative, as appropriate. Also, each carrier shall file an updated or amended map or narrative upon order of the Board. Each new rail carrier shall comply with the requirements of this subsection within 60 days after it becomes a carrier.

(c) The Board will reject an abandonment or discontinuance application filed by a rail carrier if any part of the application includes a line that has not been identified and described, by amendment or otherwise, on the carrier's system diagram map or narrative, as appropriate, as a line in category 1 (§ 1152.10(b)(1)) for at least 60 days.

§ 1152.14 Availability of data.

Each carrier shall provide to the designated state agency, upon request, information concerning the net liquidation value (as defined in § 1152.34(c)) of any line placed in category 1 (§ 1152.10(b)(1)) on its system diagram map or narrative together with a description of such a line and any appurtenant facilities and of their condition.

§ 1152.15 Reservation of jurisdiction.

49 U.S.C. 10903(c)(1) authorizes the Board, at its discretion, to provide for designation of lines as ''potentially subject to abandonment'' under standards which vary by region of the United States, by railroad, or by group of railroads. The Board expressly reserves the right to adopt such varying standards in the future.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) *Filing and publication requirements.* An applicant shall give Notice of Intent to file an abandonment or discontinuance application by complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board, by certified letter, in the format prescribed in § 1152.21. The Notice shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) Significant users of the line;

(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance;

(iii) The Public Service Commission (or equivalent agency) in these states;

(iv) The designated state agency in these states;

(v) The State Cooperative Extension Service in these states;

(vi) The U.S. Department of Transportation (Federal Railroad Administration);

(vii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

(viii) The U.S. Department of Interior (Recreation Resources Assistance Division, National Park Service);

(ix) The U.S. Railroad Retirement Board;

(x) The National Railroad Passenger Corporation (''Amtrak'') (if Amtrak operates over the involved line);

(xi) The headquarters of the Railroad Labor Executives' Association;

(xii) The U.S. Department of Agriculture, Chief of the Forest Service; and

(xiii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line. For purposes of this subsection ''directly affected states'' are those in which any part of a line sought to be abandoned is located.

(3) *Posting.* Applicant must post a copy of its Notice of Intent at each agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.)

(4) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.

(b) *Time limits.* (1) The Notice of Intent must be served at least 15 days, but not more than 30 days, prior to the filing of the abandonment application;

(2) The Notice must be posted and fully published within the 30-day period prior to the filing of the application; and

(3) The Notice must be filed with the Board either concurrently with service or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant must also submit the Environmental and Historic Reports described at §§ 1105.7 and 1105.8 at least 20 days prior to filing an application.

§ 1152.21 Form of notice.

The Notice of Intent to abandon or to discontinue service shall be in the following form:

STB No. AB _____(Sub-No. _____)
Notice of Intent to Abandon or to Discontinue Service

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the abandonment of (the discontinuance of service on), a line of railroad known as _____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes), a distance of _____ miles, in [County(ies), State(s)]. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The reason(s) for the proposed abandonment (or discontinuance) is (are) _____ (explain briefly and clearly why the proposed action is being undertaken by the applicant). Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

The application will include the applicant's entire case for abandonment (or discontinuance) (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance but who

do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB _____ (Sub-No. _____) and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Board) at each agency station or terminal on the line proposed to be abandoned or discontinued [if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded (insert name, address, location, and business hours)]. The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

§ 1152.22 Contents of application.

Applications for the abandonment of railroad lines or the discontinuance of rail service shall contain the following information, including workpapers and supporting documents, and each paragraph (a) through (j) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Relief sought (abandonment of line or discontinuance of service).

(4) Detailed map of the subject line on a sheet not larger than 8×10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(5) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative, in compliance with §§ 1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map or included in the narrative in category 1 in accordance with § 1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

(6) Detailed statement of reasons for filing application.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent.

(8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

(b) *Condition of properties.* The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed,

and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be filed with the application.

(c) *Service provided.* Description of the service performed on the line during the Base Year (as defined by § 1152.2(c)), including the actual:

(1) Number of trains operated and their frequency.

(2) Miles of track operated (include main line and all railroad-owned sidings).

(3) Average number of locomotive units operated.

(4) Total tonnage and carloads by each commodity group on the line.

(5) Overhead or bridge traffic by carload commodity group that will not be retained by the carrier.

(6) Average crew size.

(7) Level of maintenance.

(8) Any important changes in train service undertaken in the 2 calendar years immediately preceding the filing of the application.

(9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable and avoidable costs for the line to be abandoned for the Base Year (as defined by § 1152.2(c) and to the extent such branch level data are available), in accordance with the methodology prescribed in §§ 1152.31 through 1152.33, as applicable, and submitted in the form called for in § 1152.36, as Exhibit 1.

(2) The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the Forecast Year (as defined in § 1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast Year column including an explanation of the rationale and key assumptions used to determine the Forecast Year amounts.

(3) The carrier shall also compute an ''Estimated Subsidy Payment'' for the Base Year in the form called for in Exhibit 1 and an alternate payment to reflect:

(i) Increases or decreases in attributable revenues and avoidable costs projected for the subsidy year; and

(ii) An estimate, in reasonable detail, of the cash income tax reductions, Federal and state, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance to comply with minimum Federal Railroad Administration class 1 safety standards, shall be stated with particularity.

(e) *Rural and community impact.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1152.2(l), by name, address, principal commodity, and by tonnage and carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application, for that part of the current year for which information is available, and for the Base Year. In addition, the total tonnage and carloads for each commodity group originating and/or terminating on the line segment shall also be shown for the same time periods as those of the significant users.

(3) General description of the alternate sources of transportation service (rail, motor, water, air) available, and the highway network in the proximate area.

(4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

(f) *Environmental impact.* The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with §§ 1105.7 and 1105.8. If certain information required by the environmental regulations duplicates information required elsewhere in the application, the environmental information requirements may be met by a specific reference to the location of the information elsewhere in the application.

(g) *Passenger service.* If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to the Rail Passenger Service Act. (45 U.S.C. 501 *et seq.*)

(h) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(i) *Draft Federal Register Notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the Federal Register within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth below:

STB No. AB–_____ (Sub-No. _____)
Notice of Application to Abandon or to Discontinue Service

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the abandonment of (the discontinuance of service on) a line of railroad known as _____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), a distance of _____ miles, in [County(ies), State(s)]. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location) and traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes.

The line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (or discontinuance) (case in chief) was filed with the application.

This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests (including the protestant's entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB–____ (Sub-No. ____) and should be filed with the Secretary, Surface Transportation Board (Board), Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

(j) *Verification*. The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

Verification

State of _____ ss.
County of _____

_____ (Name of affiant) makes oath and says that (s)he is the _____ (title of affiant) of the _____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in STB AB–____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his(her) knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me _____ in and for the State and County above named, this ____ day of ____, 19__.

My commission expires

§ 1152.23 [Reserved]

§ 1152.24 Filing and service of application.

(a) An original and 10 copies of applications, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin, shall be filed with the Secretary of the Surface Transportation Board, Washington, DC 20423. The original shall bear the date and signature and shall be complete in itself; the signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Surface Transportation Board must also be submitted to cover the applicable filing fee. If the applicant carrier is in bankruptcy, the application shall also be filed on the bankruptcy court.

(b) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirement of § 1152.20. The affidavit shall include the dates of service, posting, and publication of the notice.

(c) When the application is filed with the Board, the applicant shall serve, by first class mail, a copy on the Governor, the Public Service Commission (or equivalent agency), and the designated state agency of each state in which any part of the line of railroad sought to be abandoned or discontinued is situated. A copy of the application will be available for public inspection, on or after the date the abandonment application is filed with the Board, at each agency station or terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded). A certificate of service shall be promptly filed with the Board.

(d) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment or protest upon request. A certificate of service shall promptly be filed with the Board.

(e)(1) The Board shall reject any abandonment or discontinuance application which does not substantially conform to the regulations in this subpart C regarding notice, form, and content, or which applies to a line which has not properly been published on the carrier's system diagram map (or included in a narrative in the case of a Class III carrier), in conformance with the regulations of subpart B of this part.

(2) Upon the filing of an abandonment or discontinuance application, the Board will review the application and determine whether it conforms with all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the Federal Register by the Board within 20 days of the filing of the application.

(3) If the application is rejected, a revised application may be submitted, and the Board will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted within 60 days of the order rejecting the incomplete or improper application need not be subjected to new notice and publication under § 1152.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(4) The resubmission of an abandonment or discontinuance application shall be considered a de novo filing for the purposes of computation of the time period for filing an offer of financial assistance under 49

U.S.C. 10904, and for other time periods prescribed in the regulations contained in this part (49 CFR part 1152), provided, that a resubmitted application is deemed complete and proper.

(5) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection under paragraphs (e)(1) and (2) of this section.

(f) As provided in § 1152.29(e)(2), rail carriers authorized to abandon a line under 49 U.S.C. 10903 must file with the Board a notice that abandonment has been consummated.

§ 1152.25 Participation in abandonment or discontinuance proceedings.

(a) *Public participation.* (1) *Protests and comments.* Interested persons may become parties to an abandonment or discontinuance proceeding by filing written comments or protests with the Board. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be included in these filings. Persons who may oppose the abandonment or discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest. Protests shall include all evidence and argument in support of protestant's position (protestant's case in chief). Protests must contain the following information:

(i) Protestant's name, address and business.

(ii) A statement describing protestant's interest in the proceeding including:

(A) A description of protestant's use of the line;

(B) If protestant does not use the line, information concerning the group or public interest it represents; and

(C) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(iii) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)).

(iv) Any rebuttal of material submitted by applicant.

(v) Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules).

(2) *Additional information.* In addition to the information required in paragraph (a)(1) of this section, a commenting party or protestant may provide a statement of position and a summary of evidence regarding:

(i) Intent to offer financial assistance under 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) A request for a public use condition under 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

(3) *Feeder line application for all or part of the line subject to the abandonment application.* In addition to the information required in paragraphs (a)(1) and (2) of this section, a commenting party or protestant must provide information that:

(i) The protestant filed a feeder line application under 49 U.S.C. 10907 (or former 49 U.S.C. 10910);

(ii) The feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application;

(iii) The feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and

(iv) The feeder line application is pending before the Board.

(b) *Employee or employee representative participation.* Employees or their representatives may file protests or comments to an application. However, because the Board will impose employee protective conditions under 49 U.S.C. 10903(b)(2) if an application is granted, employees and their representatives need not file comments or protests seeking this protection.

(c) *Filing and service of written comments, protests, along with evidence and argument, and replies.* (1) Written comments and protests, as well as public use and trail use requests, shall be filed with the Board (the Secretary, Surface Transportation Board, Washington, DC 20423) within 45 days of the filing with the Board of an abandonment or discontinuance application.

(2) An original and 10 copies of each written comment or protest shall be filed with the Board.

(3) A copy of each written comment or protest shall be served on applicant or its representative at the time of filing with the Board. If the applicant carrier is in bankruptcy, each comment or protest shall also be filed on the Bankruptcy Court. Each filing shall contain a certificate of service.

(4) Replies or rebuttal to written comments and protests shall be filed and served by applicants no later than 60 days after the filing of the application. An original and 10 copies of such replies shall be filed with the Board.

(d) *Time limits.* (1) Pleadings, requests or other papers or documents (including any comments or protests and any appeal from a Board decision) required or permitted to be filed under this part must be received for filing at the Board's Offices at Washington, DC within the time limits, if any, for such filing. The date of receipt at the Board and not the date of deposit in the mail is determinative, provided, however, that if such document is mailed by certified, registered, or express mail, postmarked at least 3 days prior to the due date, it will be accepted as timely filed.

(2) In computing any time period prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

(3) Any filing under this part which falls due on a Saturday, Sunday, or a legal holiday in the District of Columbia, may be filed at the Board by the end of the next day which is neither a Saturday, Sunday, nor a holiday, except as indicated in paragraph (d)(4) of this section. A half holiday shall not be considered as a holiday.

(4) Offers of financial assistance made pursuant to § 1152.27(c) must be filed on or before their statutory or regulatory due date as computed in paragraph (d)(2) of this section, regardless of whether that date is a Saturday, Sunday,

or a legal holiday in the District of Columbia.

(5) The Board will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.

(6) *Oral Hearings*: (i) If the Board decides to hold an oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements in the proceeding. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

(ii) In addition to that contained in the application, the submission of written evidence prior to the commencement of the hearing shall be established by the Board.

(iii) Post hearing legal briefs shall be due 10 days after the close of the oral hearing, or at an earlier date if established at the hearing by the hearing officer.

(e) *Appellate procedures*. (1) *Scope of rule*. Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining:

(i) Whether offers of financial assistance satisfy the standard of 49 U.S.C. 10904(d) for purposes of instituting negotiations or, in exemption proceedings, for purposes of partial revocation and instituting negotiations;

(ii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10502 and 49 CFR part 1152 subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iii) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903 (and abandonment exemption proceedings), issued pursuant to delegations of authority at 49 CFR 1011.8(c) (4) and (5), will be acted on by the entire Board as set forth at 49 CFR 1011.2(a)(7). An original and 10 copies of all appeals, and replies to appeals, under this section must be filed with the Board.

(2) *Appeals criteria*. Appeals to the Board's decision in abandonment or discontinuance proceedings will not be entertained. Those decisions are administratively final upon the date they are served.

(i) Parties seeking further administrative action may file a petition to reopen the proceeding under paragraph (e)(4) of this section. If an abandonment or discontinuance is granted and a party wishes the Board to have the opportunity to consider a petition to reopen before the abandonment or discontinuance authorization becomes effective, it must file its petition within 15 days after the administratively final decision is served together with a request for a stay of effectiveness under paragraph (e)(7) of this section. If such a petition to reopen and stay request is received within that 15-day period, any replies to the petition to reopen must be filed no later than 25 days after the date the decision is served, and any reply to the stay request must reach the Board no later than 5 days after the stay request is filed.

(ii) The Board will grant a petition to reopen only upon a showing that the action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Form*. A petition to reopen and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(4) *Petitions to reopen administratively final actions*. A person may file a petition to reopen any administratively final action of the Board. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. An original and 10 copies of such petitions must be filed with the Board.

(5) *Judicial review*: (i) Parties may seek judicial review of a Board action in an abandonment or discontinuance proceeding on the day the action of the Board becomes final.

(ii) If a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Board will act upon the petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(6) *Petitions to vacate*. In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.), the Board will entertain petitions to vacate the abandonment or discontinuance authorization. An original and 10 copies of these petitions to vacate must be filed with the Board.

(7) *Petitions to stay*. (i) The filing of a petition to reopen shall not stay the effect of a prior action. An original and 10 copies of any petitions to stay must be filed with the Board.

(ii) A petition to reopen an administratively final action may be accompanied by a petition for a stay of the effectiveness of the abandonment or discontinuance. As provided in paragraph (e)(2) of this section, a petition to reopen must be accompanied by a stay request if the party wishes the Board to have the opportunity to consider the petition to reopen before the abandonment or discontinuance authorization becomes final.

(iii) A party may petition for a stay of the effectiveness of abandonment or discontinuance authorization pending a request for judicial review. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 15 days prior to the effective date of the abandonment authorization. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

§ 1152.26 Board determination under 49 U.S.C. 10903.

(a) The following schedule shall govern the process for Board consideration and decisions in abandonment and discontinuance application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.
Day 10—Due date for oral hearing requests.
Day 15—Due date for Board decision on oral hearing requests.
Day 20—Due date for Notice of Application to be published in the Federal Register.
Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.
Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
Day 110—Due date for service of decision on the merits.
Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

(b) If an application for abandonment or discontinuance is filed by a bankrupt railroad, the Board shall base its decision (Report to the Bankruptcy Court) on the application and any responses to the application that are filed. In each such instance, the Board shall establish a reasonable period of

time for filing responses to the application so that public input can be included in the Board's decision (Report) and so that the Board will be able to meet a deadline imposed or requested by the Bankruptcy Court.

§ 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service, and concurrently to the Board, the following:

(1)(i) *In an application or petition for exemption proceeding,* an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(ii) *In a class exemption proceeding,* either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards (49 CFR part 213).

(b) *Federal Register notice.* (1) *Abandonment and discontinuance applications.* The Federal Register publication, which gives notice of the filing of the application 20 days after the application is filed, will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10904 and these regulations as they relate to abandonment and discontinuance applications. Offers of financial assistance will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner.

(2) *Exemption proceedings.* (i) If a petition for individual exemption from the prior approval requirements of 49 U.S.C. 10903 is filed with the Board for abandonment or discontinuance of a line of railroad, the Board will publish notice of the petition in the Federal Register within 20 days of the filing of the petition. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49 U.S.C. 10904 and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner.

(ii) If a notice of exemption is filed under the class exemption, the Board will publish notice of the exemption in the Federal Register within 20 days of filing. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49 U.S.C. 10904 and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due no later than 30 days after the date of the Federal Register publication giving notice of the exemption.

(c) *Submission of financial assistance offer.* (1) *Abandonment and discontinuance applications and petitions for exemption.* (i) *Service and filing.* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance application or exemption proceeding. The offer must be filed concurrently with the Secretary, Surface Transportation Board, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application or petition for exemption. Once a decision is served granting an application or petition for exemption, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after service of the Board decision granting the application or petition for exemption. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant or petitioner has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application or petition, the Board will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Board within 5 days after service of the decision granting the application or petition for exemption. Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after service of the decision granting the application or petition for exemption. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Board will issue a decision on petitions within 15 days after service of the decision granting the application or petition for exemption.

(ii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must:

(A) Identify the line, or the portion of the line, in question;

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations; governmental entities will be presumed to be financially responsible; and

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

(2) *Class exemption proceedings.* (i) *Expression of intent to file offer.* Persons with a potential interest in providing financial assistance must, no later than 10 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, submit to the carrier and the Board a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase). Such submissions are subject to the filing requirements of § 1152.25(d)(1) through (d)(3). Submission of a formal expression of intent under this subsection will automatically stay the effective date of the notice of exemption under the class exemption for 40 days (normally, this will be 10 days beyond the date stated in the Federal Register publication).

(ii) *Service and filing.* An offeror must serve its offer of assistance on the carrier that instituted the exempt filing as well

as all other parties to the proceeding. The offer must be filed concurrently with the Secretary, Surface Transportation Board, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the notice of exemption. Once a notice of exemption is published in the Federal Register, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the notice of exemption, the Board will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Board within 25 days after publication in the Federal Register (described in paragraph (b)(2)(ii) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Board will issue a decision on petitions to toll the offer period within 35 days after publication.

(D) Upon receipt of a formal expression of intent to file an offer under paragraph (c)(2)(i) of this section, the rail carrier applicant may advise the Board and the potential offeror that additional time is needed to develop the information required under paragraph (a) of this section. Applicant shall expressly indicate the amount of time it considers necessary (not to exceed 60 days) to develop and submit the required information to the potential offeror. For the duration of the time period so indicated by the applicant, the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Board action.

(iii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must meet the requirements of paragraph (c)(1)(ii) of this section.

(d) *Access to documents.* Upon receipt by the carrier of a written comment under § 1152.25 or a formal expression of intent under paragraph (c)(2)(i) of this section indicating an intent to offer financial assistance, or upon receipt by the carrier of an offer of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 (§ 1152.36) or, if an exemption proceeding, those documents that would have been used in preparing Exhibit 1 had an abandonment or discontinuance application been filed, or other records, reports, and data in the possession of the carrier seeking the exemption that provide comparable data. These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) *Review of offers.* (1) *Abandonment and discontinuance applications.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will issue a decision postponing the effective date of the authorization for abandonment or discontinuance. This decision will be issued within 15 days of the service of the decision granting the application (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section, or within 5 days after expiration of the 120 day (4 month) period described in 49 U.S.C. 10904, if that occurs first). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

(2) *Exemption proceedings.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will postpone the effective date either of the decision granting a petition for individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to 49 U.S.C. 10904. The decision to postpone and partially revoke will be issued within 15 days of the service date of a decision granting a petition for exemption, or within 35 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) or (c)(2)(ii) (C) or (D) of this section). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

(f) *Agreement on financial assistance.* (1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Board will postpone the effective date of the abandonment or discontinuance. If a decision granting a petition for individual exemption, or a notice of exemption, has been issued, the Board will postpone the effective date of the decision or notice of exemption. The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Board will approve the transaction and dismiss the application for abandonment or discontinuance, or the petition for exemption or notice of exemption. Board approval is not required under 49 U.S.C. 10901, 10902, or 11323 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(a).

(g) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of compensation. This request must be filed with the Board within 30 days after the offer is made and served concurrently by overnight mail on all parties to the proceeding. The request must be accompanied by the appropriate fee, codified at 49 CFR 1002.2(f)(26). Replies will be due 5 days later.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made

to the Board to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Board will serve a decision vacating the prior decision, which postponed the effective date of the decision granting the application, the decision granting the exemption, or the notice of exemption and, which, if applicable, partially revoked either the decision granting the exemption or (in the case of a class exemption) the notice of exemption. The Board will issue the decision to vacate within 10 days of the due date for requesting the Board to set the conditions and amount of compensation, and the Board will make the decision to vacate effective on its date of service.

(h) *Request to establish conditions and compensation for financial assistance.* (1) If the Board is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Board will issue a decision within 30 days after the request is due.

(2) If the applicant receives multiple offers of financial assistance, requests to establish conditions and compensation will not be permitted before the applicant selects the offeror with whom it wishes to transact business. (See paragraph (l)(1) of this section.)

(3) A party requesting the Board to establish conditions and compensation for financial assistance must, within the time period set forth in paragraph (h)(4) of this section, provide its case in chief, including reasons why its estimates are correct and the other negotiating party's estimates are incorrect, points of agreement and points of disagreement between the negotiating parties, and evidence substantiating these allegations. The offeror has the burden of proof as to all issues in dispute.

(4) The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 35 days after the offer is made. No rebuttal evidence will be permitted and evidence and information submitted after these dates will be rejected.

(5) If requested, the Board will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line. Under 49 U.S.C. 10904(f)(4)(B), no subsidy arrangement approved under section 10904 shall remain in effect for more than one year unless mutually agreed by the parties.

(6) If requested, the Board will determine the price and other terms of sale. The Board will not set a price below the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals constitutional minimum value which is the greater of the net liquidation value of the line or the going concern value of the line. The constitutional minimum value is computed without regard to labor protection costs.

(7) Within 10 days of the service date of the Board's decision, the offeror must accept or reject the Board's terms and conditions with a written notification to the Board and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Board, the Board's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Board with a timely written notification, the Board will serve, within 20 days after the service date of the Board decision setting the terms and conditions, a decision vacating the prior decision, which postponed the effective date of either the decision granting the application or exemption or the notice of exemption, and which, if applicable, partially revoked the exemption or (in the case of a class exemption) the notice of exemption (unless other offers are being considered under paragraph (l) of this section). The decision to vacate will be effective on its date of service.

(i) *Substitution of purchasers and disposition after sale.* (1) Prior to the consummation of a purchase under this section, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the Board has determined either:

(i) The original offeror has guaranteed the financial responsibility of its affiliate; or

(ii) The affiliate has demonstrated financial responsibility in its own right.

(2) Except as provided in paragraph (i)(3) of this section, a purchaser under this section may not:

(i) Transfer the line or discontinue service over the line prior to the end of the second year after consummation of the original sale under these provisions; or

(ii) Transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.

(3) Paragraph (i)(2) of this section does not preclude a purchaser under this section from transferring the line to a corporate affiliate following the consummation of the original sale. Prior Board approval of the affiliate's acquisition and operation, however, is required under 49 U.S.C. 10901, 10902, or 11323. A corporate affiliate acquiring a line under this section is prohibited from discontinuing service over the line or transferring the line to a party that is not a corporate affiliate during the time periods prescribed in paragraph (i)(2) of this section.

(j) *Discontinuance of subsidy.* A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement in a situation where the 1-year time limit of 49 U.S.C. 10904(f)(4)(B) has not yet run, the carrier may by filing a request with the Board and serving the request on all parties to the abandonment or exemption proceeding obtain a decision vacating the decision postponing the effective date of either the decision granting the application, or petition for individual exemption, or the notice of exemption. The Board will issue a decision to vacate within 10 days after the filing and service of the request. This decision to vacate will be effective on its service date.

(k) *Default on agreement.* If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Board of that default. Upon notification, the Board will take appropriate action.

(l) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line from offerors found to be financially responsible, the applicant must select the offeror from those with whom it wishes to transact business. In abandonment and discontinuance application and petition for exemption proceedings within 25 days after service of the decision granting the application or petition for exemption, and in class exemption proceedings within 45 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, the railroad must:

(i) File a written notification of its selection with the Board; and

(ii) Serve a copy of the notification on all parties to the proceeding.

(2)(i) *Abandonment and discontinuance applications and petitions for exemption.* If the applicant has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy

agreement or request the Board to establish the conditions and amount of compensation within 40 days after the service date of the decision granting the application or petition for exemption. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 50 days of the service date of the decision granting the application or petition for exemption and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision authorizing abandonment or discontinuance within 60 days of the service date of the decision granting the application or petition for exemption. This decision will be effective on the date of service.

(ii) *Class exemption proceedings.* If the carrier seeking the exemption has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Board to establish the conditions and amount of compensation within 60 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 60-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 70 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision vacating the decision postponing the effective date of the notice of exemption within 80 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section. The decision to vacate will be effective on the date of service.

(3) If the Board has established the conditions and amount of compensation, and the original offer is withdrawn under paragraph (h)(7) of this section, any other offeror found to be financially responsible may accept the Board's decision within 20 days after the service date of the Board's decision setting terms and conditions. If the decision is accepted by another such offeror, the Board will require the applicant to accept the terms incorporated in the Board's decision.

(m) *Additional time for filing.* Notwithstanding the deadlines previously set forth in part 1152 for filing an offer of financial assistance, parties that can show that they would be materially prejudiced by having less than the full 4 months for filing an offer of financial assistance provided in 49 U.S.C. 10904(c) for application proceedings may seek relief under 49 CFR part 1117.

§ 1152.28 Public use procedures.

(a)(1) If the Board finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Board will determine if the involved rail properties are appropriate for use for other public purposes.

(2) A request for a public use condition under 49 U.S.C. 10905 must be in writing and set forth:

(i) The condition sought;

(ii) The public importance of the condition;

(iii) The period of time for which the condition would be effective (up to the statutory maximum of 180 days); and

(iv) Justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(3) For applications filed under part 1152, subpart C, a request for a public use condition must be filed not more than 45 days after the application is filed. A decision on the public use request will be issued by the Board or the Director of the Office of Proceedings prior to the effective date of the abandonment. For abandonment exemptions under part 1152, subpart F or exemptions granted on the basis of an individual petition for exemption filed under 49 U.S.C. 10502, a request for a public use condition must be filed not more than 20 days from the date of publication of the notice of exemption in the Federal Register in the case of class exemptions under subpart F of this part, or not more than 20 days from the date of publication of notice of the filing of the petition for individual exemption in the Federal Register.

(b) If the Board finds that the rail properties are appropriate for use for other public purposes, the railroad may dispose of the rail properties only under the conditions described in the Board's decision. The conditions imposed by the Board may include a prohibition against the disposal of the rail assets for a period of not more than 180 days from the effective date of the decision authorizing the abandonment or discontinuance, unless the properties have first been offered, on reasonable terms, for sale for public purposes. This period will run concurrently with any other postponements. Jurisdiction to impose such conditions expires after 180 days from the effective date of the decision authorizing the abandonment or discontinuance.

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d), it must file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment/request or petition must include:

(1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used;

(2) A statement indicating the user's willingness to assume full responsibility: for managing the right-of-way; for any legal liability arising out of the use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and for the payment of all taxes assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, _____ (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by _____ (Railroad) and operated by _____ (Railroad). The property, known as _____ (Name of Branch Line), extends from railroad milepost _____ near _____ (Station Name), to railroad

milepost _____, near _____ (Station name), a distance of _____ miles in [County(ies), (State(s)]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-_____ (Sub-No. _____).

A map of the property depicting the right-of-way is attached.

_____ (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

(b)(1) In abandonment application proceedings under 49 U.S.C. 10903, interim trail use statements are due within the 45-day protest and comment period following the date the abandonment application is filed. See § 1152.25(c). The applicant carrier's response notifying the Board whether and with whom it intends to negotiate a trail use agreement is due within 15 days after the close of the protest and comment period (i.e., 60 days after the abandonment application is filed).

(i) In every proceeding where a Trails Act request is made, the Board will determine whether the Trails Act is applicable.

(ii) If the Trails Act is not applicable because of failure to comply with § 1152.29(a), or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Board of its intention to negotiate, a decision on the merits will be issued and no Certificate of Interim Trail Use or Abandonment will be issued. If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Board will issue a CITU.

(2) In exemption proceedings, a petition containing an interim trail use statement is due within 10 days after the date the notice of exemption is published in the Federal Register in the case of a class exemption and within 20 days after publication in the Federal Register of the notice of filing of a petition for exemption in the case of a petition for exemption. When an interim trail use comment(s) or petition(s) is filed in an exemption proceeding, the railroad's reply to the Board (indicating whether and with whom it intends to negotiate an agreement) is due within 10 days after the date a petition requesting interim trail use is filed.

(3) Late-filed trail use statements must be supported by a statement showing good cause for late filing.

(c) *Regular and NERSA abandonment proceedings.* (1) If continued rail service does not occur pursuant to 49 U.S.C. 10904 and § 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail user for that portion of the right-of-way to be covered by the agreement. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued (10 days after issuance in NERSA proceedings); and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The CITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the CITU and request that it be vacated on a specified date. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

(i) The abandonment applicant;

(ii) The owner of the right-of-way; and

(iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the CITU will be vacated accordingly.

(d) *Exempt abandonment proceedings.* (1) If continued rail service does not occur under 49 U.S.C. 10904 and § 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail user for the portion of the right-of-way to be covered by the agreement. The NITU will: permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The NITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the NITU and request that it be vacated on a specific date. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

(i) The abandonment exemption applicant;

(ii) The owner of the right-of-way; and

(iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the NITU will be vacated accordingly.

(e)(1) Where late-filed trail use statements are accepted, the Director (or designee) will telephone the railroad to determine whether abandonment has been consummated and, if not, whether the railroad is willing to negotiate an interim trail use agreement. The railroad shall confirm, in writing, its response, within 5 days. If abandonment has been consummated, the trail use request will be dismissed. If abandonment has not been consummated but the railroad refuses to negotiate, then trail use will be denied. If abandonment has not been consummated and the railroad is willing to negotiate, the abandonment proceeding will be reopened, the abandonment decision granting an application, petition for exemption or notice of exemption will be vacated, and an appropriate CITU or NITU will be issued. The effective date of the CITU or NITU will be the same date as the vacated decision or notice.

(2) A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the

service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. Copies of the railroad's notice of consummation shall be filed with the Secretary of the Board. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes.

(f)(1) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

(i) A copy of the extant CITU or NITU; and

(ii) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

(2) The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Board will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

(g) In proceedings where a timely trail use statement is filed, but due to either the railroad's indication of its unwillingness to negotiate interim trail use agreement, or its failure to timely notify the Board of its willingness to negotiate, a decision authorizing abandonment or an exemption notice or decision is issued instead of a CITU or NITU, and subsequently the railroad and trail use proponent nevertheless determine to negotiate an interim trail use agreement under the Trails Act, then the railroad and trail use proponent must file a joint pleading requesting that an appropriate CITU or NITU be issued. If the abandonment has not been consummated, the Board will reopen the proceeding, vacate the outstanding decision or notice (or portion thereof), and issue an appropriate CITU or NITU that will permit the parties to negotiate for a period agreed to by the parties in their joint filing, but not to exceed 180 days, at the end of which, the CITU or NITU will convert into a decision or notice permitting abandonment.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

§ 1152.30 General.

(a) *Contents of subpart.* (1) 49 U.S.C. 10904 directs the Board to determine the extent to which the avoidable costs of providing rail service plus a reasonable return on the value of the line exceed the revenues attributable to the line. This subpart contains the methodology for such determinations and the standards necessary for application of those terms in the context of a particular proceeding. Such data will be used in reaching the Board's findings on the merits of an abandonment or discontinuance proceeding and in making the necessary financial assistance determinations.

(2) This subpart also sets forth a method by which the carrier may establish its Forecast Year estimates and Estimated Subsidy Payment to be included in its application (§ 1152.22(d) of this part). Furthermore, an offeror of financial assistance may use this method to formulate a subsidy offer and/or Proposed Subsidy Payment under 49 U.S.C. 10904 and § 1152.27 of subpart C of this part.

(b) *Data collection.* The owning or operating carrier shall establish a system to collect at branch level the data necessary to compute the base year data and the final subsidy payment. The collection and compilation of such data shall be in accordance with the Branch Line Accounting System (49 CFR part 1201).

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement is concluded, the final payment will be adjusted to reflect the actual revenues derived, avoidable costs incurred, and value of the properties used in the subsidy year.

(2) Where an adjustment results in an increase in the Estimated Subsidy Payment upon which the financial assistance agreement is based, the amount of such increase is limited to 15 percent of the estimated payment. However, if the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent in one of the Financial Status Reports (§ 1152.37) issued during the first 10 months of the subsidy year or the increase results from an expense preapproved by the subsidizer, the adjusted amount shall be included in the final payment.

§ 1152.31 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101—Freight.* The revenue assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad, derived from waybills and other source documents, for all traffic that:

(1) Originates and terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier. All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic that will not be retained by the carrier shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental; Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debt; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Chart For Revenue Accounts.*

Revenue account title	Account No.
Freight	101
Switching	104
Water transfers	105
Demurrage	106
Incidental	110
Joint facility-credit	121
Joint facility-debt	122
Revenues from property used in other than carrier operations, less expenses.	506, 534
Miscellaneous rent income	510

Revenue account title	Account No.
Miscellaneous income	519

§ 1152.32 Calculation of avoidable costs.

This section defines: which cost elements are eligible for inclusion in the calculation of avoidable costs; the conditions under which certain cost elements become eligible for inclusion; and the basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis. The avoidable costs of providing freight service on a branch shall be the total of the costs assigned to the branch in accordance with this section. The avoidable costs of providing freight service on a branch shall be just and reasonable, and shall not exceed those necessary for an honest and efficient operation. Those expenses apportioned under this section shall be derived from the latest Form R–1 Annual Report for Class I railroads filed with the Board prior to the conclusion of the subsidy year, and company records for all non-Class I railroads, and assigned to the branch according to the procedures set forth in § 1152.33 of these regulations. When the term ''Actual'' is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch. The accounts in the following charts, which list only the ''freight-only'' account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
(a) Maintenance of way and structures:		
(1) Administration: Track:		
Salaries and wages	11–13–02	Actual.
Materials	21–13–02	Do.
Purchased services	41–13–02	Do.
Other expenses	61–13–02	Do.
Bridges and buildings		
Salaries and wages	11–13–03	Do.
Materials	21–13–03	Do.
Purchased services	41–13–03	Do.
Other expenses	61–13–03	Do.
Signals		
Salaries and wages	11–13–04	Do.
Materials	21–13–04	Do.
Purchased services	41–13–04	Do.
Other expenses	61–13–04	Do.
Communications		
Salaries and wages	11–13–05	Do.
Materials	21–13–05	Do.
Purchased services	41–13–05	Do.
Other expenses	61–13–05	Do.
Other		
Salaries and wages	11–13–06	Do.
Materials	21–13–06	Do.
Purchased services	41–13–06	Do.
Other expenses	61–13–06	Do.
(2) Repair maintenance and other roadway—running:		
Salaries and wages	11–11–10	Do.
Materials	21–11–10	Do.
Repairs by others—DR	39–11–10	Do.
Repairs for others—CR	40–11–10	Do.
Purchased services	41–11–10	Do.
Other expenses	61–11–10	Do.
Roadway—switching		
Salaries and wages	11–12–10	Do.
Materials	21–12–10	Do.
Repairs by others—DR	39–12–10	Do.
Repairs for others—CR	40–12–10	Do.
Purchased services	41–12–10	Do.
Other expenses	61–12–10	Do.
Tunnels and subways—running		
Salaries and wages	11–11–11	Do.
Materials	21–11–11	Do.
Repairs by others—DR	39–11–11	Do.
Repairs for others—CR	40–11–11	Do.
Purchased services	41–11–11	Do.
Other expenses	61–11–11	Do.
Tunnels and subways—switching		
Salaries and wages	11–12–11	Do.
Materials	21–12–11	Do.
Repairs by others—DR	39–12–11	Do.
Repairs for others—CR	40–12–11	Do.
Purchased services	41–12–11	Do.
Other expenses	61–12–11	Do.
Bridges and culverts—running		
Salaries and wages	11–11–12	Do.
Materials	21–11–12	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs by others—DR	39–11–12	Do.
Repairs for others—CR	40–11–12	Do.
Purchased services	41–11–12	Do.
Other expenses	61–11–12	Do.
Bridges and culverts—switching		
Salaries and wages	11–12–12	Do.
Materials	21–12–12	Do.
Repairs by others—DR	39–12–12	Do.
Repairs for others—CR	40–12–12	Do.
Purchased services	41–12–12	Do.
Other expenses	61–12–12	Do.
Ties—running—material	21–11–13	Do.
Ties—switching—material	21–12–13	Do.
Rails—running—material	21–11–14	Do.
Rails—switching—material	21–12–14	Do.
Other track material—running—material	21–11–15	Do.
Other track material—switching—material	21–12–15	Do.
Ballast—running—material	21–11–16	Do.
Ballast—switching—material	21–12–16	Do.
Track laying and surfacing—running		
Salaries and wages	11–11–17	Do.
Materials	21–11–17	Do.
Repairs by others—DR	39–11–17	Do.
Repairs for others—CR	40–11–17	Do.
Purchased services	41–11–17	Do.
Other expenses	61–11–17	Do.
Track laying and surfacing—switching		
Salaries and wages	11–12–17	Do.
Materials	21–12–17	Do.
Repairs by others—DR	39–12–17	Do.
Repairs for others—CR	40–12–17	Do.
Purchased services	41–12–17	Do.
Other expenses	61–12–17	Do.
Road property damaged—running		
Salaries and wages	11–11–48	Do.
Materials	21–11–48	Do.
Repairs by others—DR	39–11–48	Do.
Repairs for others—CR	40–11–48	Do.
Purchased services	41–11–48	Do.
Other expenses	61–11–48	Do.
Road property damaged—switching		
Salaries and wages	11–12–48	Do.
Materials	21–12–48	Do.
Repairs by others—DR	39–12–48	Do.
Repairs for others—CR	40–12–48	Do.
Purchased services	41–12–48	Do.
Other Expenses	61–12–48	Do.
Road property damaged—other		
Salaries and wages	1–13–48	Do.
Materials	21–13–48	Do.
Repairs by others—DR	39–13–48	Do.
Repairs for others—CR	40–13–48	Do.
Purchased services	41–13–48	Do.
Other expenses	61–13–48	Do.
Signals and interlockers—running		
Salaries and wages	11–11–19	Do.
Materials	21–11–19	Do.
Repairs by others—DR	39–11–19	Do.
Repairs for others—CR	40–11–19	Do.
Purchased services	41–11–19	Do.
Other expenses	61–11–19	Do.
Signals and interlockers—switching		
Salaries and wages	11–12–19	Do.
Materials	21–12–19	Do.
Repairs by others—DR	39–12–19	Do.
Repairs for others—CR	40–12–19	Do.
Purchased services	41–12–19	Do.
Other expenses	61–12–19	Do.
Communications systems		
Salaries and wages	11–13–20	Do.
Materials	21–13–20	Do.
Repairs by others—DR	39–13–20	Do.
Repairs for others—CR	40–13–20	Do.
Purchased services	41–13–20	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other expenses	61–13–20	Do.
Electric power systems		
Salaries and wages	11–13–21	Do.
Materials	21–13–21	Do.
Repairs by others—DR	39–13–21	Do.
Repairs for others—CR	40–13–21	Do.
Purchased services	41–13–21	Do.
Other expenses	61–13–21	Do.
Highway grade crossings—running		
Salaries and wages	11–11–22	Do.
Materials	21–11–22	Do.
Repairs by others—DR	39–11–22	Do.
Repairs for others—CR	40–11–22	Do.
Purchased services	41–11–22	Do.
Other expenses	61–11–22	Do.
Highway grade crossings—switching		
Salaries and wages	11–12–22	Do.
Materials	21–12–22	Do.
Repairs by others—DR	39–12–22	Do.
Repairs for others—CR	40–12–22	Do.
Purchased services	41–12–22	Do.
Other expenses	61–12–22	Do.
Station and office buildings		
Salaries and wages	11–13–23	Do.
Materials	21–13–23	Do.
Repairs by others—DR	39–13–23	Do.
Repairs for others—CR	40–13–23	Do.
Purchased services	41–13–23	Do.
Other expenses	61–13–23	Do.
Station buildings—locomotives		
Salaries and wages	11–13–24	Do.
Materials	21–13–24	Do.
Repairs by others—DR	39–13–24	Do.
Repairs for others—CR	40–13–24	Do.
Purchased services	41–13–24	Do.
Other expenses	61–13–24	Do.
Shop buildings—freight cars		
Salaries and wages	11–13–25	Do.
Materials	21–13–25	Do.
Repairs by others—DR	39–13–25	Do.
Repairs for others—CR	40–13–25	Do.
Purchased services	41–13–25	Do.
Other expenses	61–13–25	Do.
Shop buildings—other equipment		
Salaries and wages	11–13–26	Do.
Materials	21–13–26	Do.
Repairs by others—DR	39–13–26	Do.
Repairs for others—CR	40–13–26	Do.
Purchased services	41–13–26	Do.
Other expenses	61–13–26	Do.
Locomotive servicing facilities		
Salaries and wages	11–13–27	Do.
Materials	21–13–27	Do.
Repairs by others—DR	39–13–27	Do.
Repairs for others—CR	40–13–27	Do.
Purchased services	41–13–27	Do.
Other expenses	61–13–27	Do.
Miscellaneous buildings and structures		
Salaries and wages	11–13–28	Do.
Materials	21–13–28	Do.
Repairs by others—DR	39–13–28	Do.
Repairs for others—CR	40–13–28	Do.
Purchased services	41–13–28	Do.
Other expenses	61–13–28	Do.
Coal terminals		
Salaries and wages	11–13–29	Do.
Materials	21–13–29	Do.
Repairs by others—DR	39–13–29	Do.
Repairs for others—CR	40–13–29	Do.
Purchased services	41–13–29	Do.
Other expenses	61–13–29	Do.
Ore terminals		
Salaries and wages	11–13–30	Do.
Materials	21–13–30	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs by others—DR	39–13–30	Do.
Repairs for others—CR	40–13–30	Do.
Purchased services	41–13–30	Do.
Other expenses	61–13–30	Do.
TOFC/COFC terminals		
Salaries and wages	11–13–31	Do.
Materials	21–13–31	Do.
Repairs by others—DR	39–13–31	Do.
Repairs for others—CR	40–13–31	Do.
Purchased services	41–13–21	Do.
Other expenses	61–13–31	Do.
Other marine terminals		
Salaries and wages	11–13–32	Do.
Materials	21–13–32	Do.
Repairs by others—DR	39–13–32	Do.
Repairs for others—CR	40–13–32	Do.
Purchased services	41–13–32	Do.
Other expenses	61–13–32	Do.
Motor vehicle loading and distribution facilities		
Salaries and wages	11–13–33	Do.
Materials	21–13–33	Do.
Repairs by others—DR	39–13–33	Do.
Repairs for others—CR	40–13–33	Do.
Purchased services	41–13–33	Do.
Other expenses	61–13–33	Do.
Facilities for other specialized service operations		
Salaries and wages	11–13–35	Do.
Materials	21–13–35	Do.
Repairs by others—DR	39–13–35	Do.
Repairs for others—CR	40–13–35	Do.
Purchased services	41–13–35	Do.
Other expenses	61–13–35	Do.
Roadway machines		
Salaries and wages	11–13–36	Daily repair costs per GMA, for each type of machine used on the branch line sec. 1152.33(a)(1).
Materials	21–13–36	Do.
Repairs by others—DR	39–13–36	Do.
Repairs for others—CR	40–13–36	Do.
Purchased services	41–13–36	Do.
Other expenses	61–13–36	Do.
Small tools and supplies		
Other expenses	11–13–37	Assign supplies on the daily costs per GMA, for each type of machine used on the branch; small tool assign to maintenance of way 11- 11/12–10 through 17, and 48, sec. 1152.33(a)(2).
Materials	21–13–37	Do.
Repairs by others—DR	39–13–37	Do.
Repairs for others—CR	40–13–37	Do.
Purchased services	41–13–37	Do.
Other expenses	61–13–37	Do.
Snow removal		
Salaries and wages	11–13–38	Actual.
Materials	21–13–38	Do.
Repairs by others—DR	39–13–38	Do.
Repairs for others—CR	40–13–38	Do.
Purchased Services	41–13–38	Do.
Other expenses	61–13–38	Do.
Fringe benefits—running	12–11–00	11–11–XX, sec. 1152.33(a)(3)(i).
Fringe benefits—switching	12–12–00	11–12–XX, sec. 1152.33(a)(3)(ii).
Fringe benefits—other	12–13–00	11–13–XX, sec. 1152.33(a)(3)(iii).
Casualties and insurance—running		
Other casualties	52–11–00	Actual.
Insurance	53–11–00	Do.
Casualties and insurance—switching		
Other casualties	52–12–00	Do.
Insurance	53–12–00	Do.
Lease rentals—debit—running	31–11–00	Do.
Lease rentals—debit—switching	31–12–00	Do.
Lease rentals—debit—other	31–13–00	Do.
Lease rentals—credit—running	32–11–00	Do.
Lease rentals—credit—switching	32–12–00	Do.
Lease rentals—credit—other	32–13–00	Do.
Joint facility rent—debit—running	33–11–00	Do.
Joint facility rent—debit—switching	33–12–00	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Casualties and insurance—other		
Other casualties	52–13–00	Do.
Insurance	53–13–00	Do.
Joint facility—debit—other	33–13–00	Do.
Joint facility rent—credit—running	34–11–00	Do.
Joint facility rent—credit—switching	34–12–00	Do.
Joint facility rent—credit—other	34–13–00	Do.
Other rents—debit—running	35–11–00	Do.
Other rents—debit—switching	35–12–00	Do.
Other rents—debit—other	35–13–00	Do.
Other rents—credit—running	36–11–00	Do.
Other rents—credit—switching	36–12–00	Do.
Other rents—credit—other	36–13–00	Do.
Depreciation—running	62–11–00	Do.
Depreciation—switching	62–12–00	Do.
Depreciation—other	62–13–00	Do.
Joint facility—debit—running	37–11–00	Do.
Joint facility—debit—switching	37–12–00	Do.
Joint facility—debit—other	37–13–00	Do.
Joint facility—credit—running	38–11–00	Do.
Joint facility—credit—switching	38–12–00	Do.
Joint facility—credit—other	38–13–00	Do.
Dismantling retired road property—running		
Salaries and wages	11–11–39	Do.
Materials	21–11–39	Do.
Purchased services	41–11–39	Do.
Other expenses	61–11–39	Do.
Dismantling retired road property—switching		
Salaries and wages	11–12–39	Do.
Materials	21–12–39	Do.
Purchased services	41–12–39	Do.
Other expenses	61–12–39	Do.
Dismantling retired road property—other		
Salaries and wages	11–13–39	Do.
Materials	21–13–39	Do.
Purchased services	41–13–39	Do.
Other expenses	61–13–39	Do.
Other—running		
Salaries and wages	11–11–99	Do.
Materials	21–11–99	Do.
Purchased services	41–11–99	Do.
Other expenses	61–11–99	Do.
Other—switching		
Salaries and wages	11–12–99	Do.
Materials	21–12–99	Do.
Purchased Services	41–12–99	Do.
Other Expenses	61–12–99	Do.
Other—other		
Salaries and wages	11–13–99	Do.
Materials	21–13–99	Do.
Purchased services	41–13–99	Do.
Other expenses	61–13–99	Do.
(b) Maintenance of equipment:		
(1) Locomotives: Administration		
Salaries and wages	11–21–01	Do.
Materials	21–21–01	Do.
Purchased services	41–21–01	Do.
Other expenses	61–21–01	Do.
Repairs and maintenance		
Salaries and wages	11–21–41	Road diesel and road electric locomotive gross ton miles. Yard diesel and yard electric locomotive unit hours, § 1152.33(b)(1).
Materials	21–21–41	Do.
Repairs by others—DR	39–21–41	Do.
Repairs for others—CR	40–21–41	Do.
Purchased services	41–21–41	Do.
Other expenses	61–21–41	Do.
Machinery repair		
Salaries and wages	11–21–40	Actual.
Materials	21–21–40	Do.
Repairs by others—DR	39–21–40	Do.
Repairs for others—CR	40–21–40	Do.
Purchased services	41–21–40	Do.
Other expenses	61–21–40	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Equipment damaged		
Salaries and wages	11–21–48	Do.
Materials	21–21–48	Do.
Repairs by others—DR	39–21–48	Do.
Repairs for others—CR	40–21–48	Do.
Purchased services	41–21–48	Do.
Other expenses	61–21–48	Do.
Equipment damaged		
Fringe benefits	12–21–00	11–21–XX, sec. 1152.33(b)(3)(i).
Other casualties and insurance		
Other casualties	52–21–00	Actual.
Insurance	53–21–00	Do.
Lease rentals—debit	31–21–00	Do.
Lease rentals—credit	32–21–00	Do.
Joint facility rent—debit	33–21–00	Do.
Joint facility rent—credit	34–21–00	Do.
Other rents—debit	35–21–00	Do.
Other rents—credit	36–21–00	Do.
Joint facility—debit	37–21–00	Do.
Joint facility—credit	38–21–00	Do.
Depreciation	62–21–00	All locomotives, locomotive unit hours, sec. 1152.33(b)(2).
Dismantling retired property		
Salaries and wages	11–21–39	Actual.
Materials	21–21–39	Do.
Purchased services	41–21–39	Do.
Other expenses	61–21–39	Do.
Other		
Salaries and wages	11–21–99	Do.
Materials	21–21–99	Do.
Purchased services	41–21–99	Do.
Other expenses	61–21–99	Do.
(2) Freight cars: Administration:		
Salaries and wages	11–22–01	Do.
Materials	21–22–01	Do.
Purchased services	41–22–01	Do.
Other expenses	61–22–01	Do.
Machinery repair		
Salaries and wages	11–22–40	Do.
Materials	21–22–40	Do.
Repairs by others—DR	39–22–40	Do.
Repairs for others—CR	40–22–40	Do.
Purchased services	41–22–40	Do.
Other expenses	61–22–40	Do.
Equipment damage		
Salaries and wages	11–22–48	Do.
Materials	21–22–48	Do.
Repairs by others—DR	39–22–48	Do.
Repairs for others—CR	40–22–48	Do.
Purchased services	41–22–48	Do.
Other expenses	61–22–48	Do.
Fringe benefits	12–22–00	11–22–XX, sec. 1152.33–(b)(3)(iii).
Other casualties and insurance		
Other casualties	52–22–00	Actual.
Insurance	53–22–00	Do.
Joint facility rent—DR	33–22–00	Do.
Joint facility rent—CR	34–22–00	Do.
Joint facility—DR	37–22–00	Do.
Joint facility—CR	38–22–00	Do.
Dismantling retired property		
Salaries and wages	11–22–39	Do.
Materials	21–22–39	Do.
Purchased services	41–22–39	Do.
Other expenses	61–22–39	Do.
Other		
Salaries and wages	11–22–99	Do.
Materials	21–22–99	Do.
Purchased services	41–22–99	Do.
Other expenses	61–22–99	Do.
Freight car costs per day and per mile:		
Repair and maintenance		
Salaries and wages	11–22–42	These accounts are used to develop the cost per car day and per car mile for each type of car, sec. 1152.32(g).
Materials	21–22–42	Do.
Repairs by others—DR	39–22–42	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs for others—CR	40–22–42	Do.
Purchased services	41–22–42	Do.
Other expenses	61–22–42	Do.
Lease rentals—DR	31–22–00	
Lease rentals—CR	32–22–00	
Depreciation	62–22–00	
Other rents—DR	35–22–00	
Other rents—CR	36–22–00	
(3) Other equipment: Administration		
Salaries and wages	11–23–01	Actual.
Materials	21–23–01	Do.
Purchased services	41–23–01	Do.
Other expenses	61–23–01	Do.
Repair and maintenance: Trucks, trailers and containers—revenue service		
Salaries and wages	11–23–43	Do.
Materials	21–23–43	Do.
Repairs by others—DR	39–23–43	Do.
Repairs for others—CR	40–23–43	Do.
Purchased services	41–23–43	Do.
Other expenses	61–23–43	Do.
Floating equipment—revenue service		
Salaries and wages	11–23–44	Do.
Materials	21–23–44	Do.
Repairs by others—DR	39–23–44	Do.
Repairs for others—CR	40–23–44	Do.
Purchased services	41–23–44	Do.
Other expenses	61–23–44	Do.
Computer and data processing		
Salaries and wages	11–23–46	Do.
Materials	21–23–46	Do.
Repairs by others—DR	39–23–46	Do.
Repairs for others—CR	40–23–46	Do.
Purchased services	41–23–46	Do.
Other expenses	61–23–46	Do.
Machinery		
Salaries and wages	11–23–40	Do.
Materials	21–23–40	Do.
Repairs by others—DR	39–23–40	Do.
Repairs for others—CR	40–23–40	Do.
Purchased services	41–23–40	Do.
Other expenses	61–23–40	Do.
Work and other non revenue equipment		
Salaries and wages	11–23–47	Do.
Materials	21–23–47	Do.
Repairs by others—DR	39–23–47	Do.
Repairs for others—CR	40–23–47	Do.
Purchased services	41–23–47	Do.
Other expenses	61–23–47	Do.
Equipment damaged		
Salaries and wages	11–23–48	Do.
Materials	21–23–48	Do.
Repairs by others—DR	39–23–48	Do.
Repairs for others—CR	40–23–38	Do.
Purchased services	41–23–48	Do.
Other expenses	61–23–48	Do.
Equipment damaged		
Fringe benefits	12–23–00	11–23–XX, sec. 1152.33(b)(3)(ii).
Other casualties and insurance		
Other casualties	52–23–00	Actual.
Insurance	53–23–00	Do.
Lease rentals—DR	31–23–00	Do.
Lease rentals—CR	32–23–00	Do.
Joint facility rent—DR	33–23–00	Do.
Joint facility rent—CR	34–23–00	Do.
Other rents—DR	35–23–00	Do.
Other rents—CR	36–23–00	Do.
Depreciation	62–23–00	Do.
Joint facility—DR	37–23–00	Do.
Joint facility—CR	38–23–00	Do.
Dismantling retired property		
Salaries and wages	11–23–39	Do.
Materials	21–23–39	Do.
Purchased services	41–23–39	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other expenses	61–23–39	Do.
Other		
Salaries and wages	11–23–99	Do.
Materials	21–23–99	Do.
Purchased services	41–23–99	Do.
Other expenses	61–23–99	Do.
(c) Transportation:		
(1) Train operations: Administration:		
Salaries and wages	11–31–01	Do.
Materials	21–31–01	Do.
Purchased services	41–31–01	Do.
Other expenses	61–31–01	Do.
Engine crews		
Salaries and wages	11–31–56	Do.
Materials	21–31–56	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	41–31–56	Actual.
Other expenses	61–31–56	Do.
Train crews		
Salaries and wages	11–31–57	Do.
Materials	21–31–57	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	41–31–57	Actual.
Other expenses	61–31–57	Do.
Dispatching trains		
Salaries and wages	11–31–58	Do.
Materials	21–31–58	Do.
Purchased services	41–31–58	Do.
Other expenses	61–31–58	Do.
Operating signals and interlockers		
Salaries and wages	11–31–59	Do.
Materials	21–31–59	Do.
Purchased services	41–31–59	Do.
Other expenses	61–31–59	Do.
Operating drawbridges		
Salaries and wages	11–31–60	Do.
Materials	21–31–60	Do.
Purchased services	41–31–60	Do.
Other expenses	61–31–60	Do.
Highway crossing protection		
Salaries and wages	11–31–61	Do.
Materials	21–31–61	Do.
Purchased services	41–31–61	Do.
Other expenses	61–31–61	Do.
Train and inspection and lubrication		
Salaries and wages	11–31–62	Train hours, Sec. 1152.33(c)(1)(i).
Materials	21–31–62	Do.
Purchased services	41–31–62	Actual.
Other expenses	61–31–62	Do.
Locomotive fuel		
Salaries and wages	11–31–67	Diesel locomotive unit hours, Sec. 1152.33(c)(1)(ii).
Materials	21–31–67	Do.
Purchased services	41–31–67	Do.
Other expenses	61–31–67	Do.
Electric power purchased or produced for motive power		
Salaries and wages	11–31–68	Electric locomotive unit hours, sec. 1152.33(c)(1)(iii).
Materials	21–31–68	Do.
Purchased services	41–31–68	Do.
Other expenses	61–31–68	Do.
Servicing locomotives		
Salaries and wages	11–31–69	Locomotive unit miles, sec. 1152.33(c)(1)(iv).
Materials	21–31–69	Do.
Purchased services	41–31–69	Do.
Other expenses	61–31–69	Do.
Freight lost or damaged—solely related	51–31–00	Actual.
Clearing wrecks		
Salaries and wages	11–31–63	Do.
Materials	21–31–63	Do.
Purchased services	41–31–63	Do.
Other expenses	61–31–63	Do.
Fringe benefits	12–31–00	11–31–XX, sec. 1152.33 (c)(4)(i).
Other casualties and insurance		
Other casualties	52–31–00	Actual.
Insurance	53–31–00	Do.
Joint facility—DR	37–31–00	Do.
Joint facility—CR	38–31–00	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other		
Salaries and wages	11–31–99	Do.
Materials	21–31–99	Do.
Purchased services	41–31–99	Do.
Other expenses	61–31–99	Do.
(2) Yard operations: Administration:		
Salaries and wages	11–32–01	Do.
Materials	21–32–01	Do.
Purchased services	41–32–01	Do.
Other expenses	61–32–01	Do.
Switch crews		
Salaries and wages	11–32–64	Do.
Materials	21–32–64	Locomotive unit hours, sec. 1152.33(c)(2)(i)
Purchased services	41–32–64	Actual.
Other expenses	61–32–64	Do.
Controlling operations		
Salaries and wages	11–32–65	Do.
Materials	21–32–65	Do.
Purchased services	41–32–65	Do.
Other expenses	61–32–65	Do.
Yard and terminal clerical		
Salaries and wages	11–32–66	Do.
Materials	21–32–66	Do.
Purchased services	41–32–66	Do.
Other expenses	61–32–66	Do.
Operating switches, signals, retarders and humps		
Salaries and wages	11–32–59	Do.
Materials	21–32–59	Do.
Purchased services	41–32–59	Do.
Other expenses	61–32–59	Do.
Locomotive fuel		
Salaries and wages	11–32–67	Dieselloco motive unit hours, sec. 1152.33(c)(2)(ii)
Materials	21–32–67	Do.
Purchased services	41–32–67	Do.
Other expenses	61–32–67	Do.
Electric power purchased or produced for motive power		
Salaries and wages	11–32–68	Electric locomotive unit hours, sec. 1152.33(c)(2)(iii).
Materials	21–32–68	Do.
Purchased services	41–32–68	Do.
Other expenses	61–32–68	Do.
Servicing locomotives		
Salaries and wages	11–32–69	Locomotive unit hours, sec. 1152.33(c)(2)(i).
Materials	21–32–69	Do.
Purchased services	41–32–69	Do.
Other expenses	61–32–69	Do.
Freight lost or damaged—solely related	51–32–00	Actual.
Clearing wrecks		
Salaries and wages	11–32–63	Do.
Materials	21–32–63	Do.
Purchased services	41–32–63	Do.
Other expenses	61–32–63	Do.
Fringe benefits	12–32–00	11–32–XX, sec. 1152.33(c)(4)(ii).
Other casualties and insurance		
Other casualties	52–32–00	Actual.
Insurance	53–32–00	Do.
Joint facility—DR	37–32–00	Do.
Joint facility—CR	38–32–00	Do.
Other		
Salaries and wages	11–32–99	Do.
Materials	21–32–99	Do.
Purchased services	41–32–99	Do.
Other expenses	61–32–99	Do.
(3) Train and yard operations common:		
Cleaning car interiors		
Salaries and wages	11–33–70	Do.
Materials	21–33–70	Do.
Purchased services	41–33–70	Do.
Adjusting and transferring loads		
Salaries and wages	11–33–71	Do.
Materials	21–33–71	Do.
Purchased services	41–33–71	Do.
Carloading devices and grain doors		
Salaries and wages	11–33–72	Do.
Materials	21–33–72	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Purchased services	41–33–72	Do.
Freight lost or damaged—all other	51–33–00	Do.
Fringe benefits	12–33–00	11–33–XX, sec. 1152.33(c)(4)(iii).
(4) Specialized service operations: Administration:		
Salaries and wages	11–34–01	Actual.
Materials	21–34–01	Do.
Purchased services	41–34–01	Do.
Other expenses	61–34–01	Do.
Pick-up and delivery, marine line haul, and rail substitute service		
Salaries and wages	11–34–73	Do.
Materials	21–34–73	Do.
Purchased services	41–34–73	Do.
Other expenses	61–34–73	Do.
Loading and unloading and local marine		
Salaries and wages	11–34–74	Do.
Materials	21–34–74	Do.
Purchased services	41–34–74	Do.
Other expenses	61–34–74	Do.
Protective services		
Salaries and wages	11–34–75	Do.
Materials	21–34–75	Do.
Purchased services	41–34–75	Do.
Other expenses	61–34–75	Do.
Freight lost or damaged—Solely related	51–34–00	Do.
Fringe benefits	12–34–00	11–34–XX, sec. 1152.33(c)(4)(iv).
Casualties and insurance		
Other casualties	52–34–00	Actual.
Insurance	53–34–00	Do.
Joint facility—DR	37–34–00	Do.
Joint facility—CR	38–34–00	Do.
Other		
Salaries and wages	11–34–99	Do.
Materials	21–34–99	Do.
Purchased services	41–34–99	Do.
Other expenses	61–34–99	Do.
(5) Administrative support operations: Administration :		
Salaries and wages	11–35–01	Do.
Materials	21–35–01	Do.
Purchased services	41–35–01	Do.
Other expenses	61–35–01	Do.
Employees performing clerical and accounting functions		
Salaries and wages	11–35–76	Do.
Materials	21–35–76	Do.
Purchased services	41–35–76	Do.
Other expenses	61–35–76	Do.
Communication systems operation		
Salaries and wages	11–35–77	Do.
Materials	21–35–77	Do.
Purchased services	41–35–77	Do.
Other expenses	61–35–77	Do.
Loss and damage claims processing		
Salaries and wages	11–35–78	Number of claims, sec. 1152.33(c)(3)(i).
Materials	21–35–78	Do.
Purchased services	41–35–78	Do.
Other expenses	61–35–78	Do.
Fringe benefits	12–35–00	11–35–XX. sec. 1152.33(c)(4)(v).
Joint facility—DR	37–35–00	Actual.
Joint facility—CR	38–35–00	Do.
Casualties and insurance.		
Other casualties	52–35–00	Do.
Insurance	53–35–00	Do.
Other		
Salaries and wages	11–35–99	Do.
Materials	21–35–99	Do.
Purchased services	41–35–99	Do.
Other expenses	61–35–99	Do.
(d) General Administrative Officers—general administration:		
Salaries and wages	11–61–01	Do.
Materials	21–61–01	Do.
Purchased services	41–61–01	Do.
Other expenses	61–61–01	Do.
Accounting, auditing and finance		
Salaries and wages	11–61–86	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Materials	21–61–86	Do.
Purchased services	41–61–86	Do.
Other expenses	61–61–86	Do.
Management services and data processing		
Salaries and wages	11–61–87	Do.
Materials	21–61–87	Do.
Purchased services	41–61–87	Do.
Other expenses	61–61–87	Do.
Marketing:		
Salaries and wages	11–61–88	Do.
Materials	21–61–88	Do.
Purchased services	41–61–88	Do.
Other expenses	61–61–88	Do.
Sales		
Salaries and wages	11–61–89	Do.
Materials	21–61–89	Do.
Purchased services	41–61–89	Do.
Other expenses	61–61–89	Do.
Industrial development		
Salaries and wages	11–61–90	Do.
Materials	21–61–90	Do.
Purchased services	41–61–90	Do.
Other expenses	61–61–90	Do.
Personnel and labor relations		
Salaries and wages	11–61–91	Do.
Materials	21–61–91	Do.
Purchased services	41–61–91	Do.
Other expenses	61–61–91	Do.
Legal and secretarial		
Salaries and wages	11–61–92	Do.
Materials	21–61–92	Do.
Purchased services	41–61–92	Do.
Other expenses	61–61–92	Do.
Public relations and advertising		
Salaries and wages	11–61–93	Do.
Materials	21–61–93	Do.
Purchased services	41–61–93	Do.
Other expenses	61–61–93	Do.
Research and development		
Salaries and wages	11–61–94	Do.
Materials	21–61–94	Do.
Purchased services	41–61–94	Do.
Other expenses	61–61–94	Do.
Fringe benefits	12–61–00	11–61–XX, sec. 1152.33(d)(1).
Casualties and insurance		
Other casualties	52–61–00	Actual
Insurance	53–61–00	Do.
Writedown of uncollectible accounts	63–61–00	Do.
Other taxes except on corporate income or payroll	65–61–00	Do.
Joint facility—DR	37–61–00	Do.
Joint facility—CR	38–61–00	Do.
Other		
Salaries and wages	11–61–99	Do.
Materials	21–61–99	Do.
Purchased services	41–61–99	Do.
Other expenses	61–61–99	Do.

(e) *Deadheading, taxi, and hotel costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead movement costs.* The costs assigned under this subsection shall be the actual costs incurred in moving over any other rail line solely to reach and provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight car costs.* For Class I railroads, the on-segment costs for time-mileage freight cars shall be calculated on the basis of the carrier's average cost per day and per mile. Those freight cars that are rented on a straight mileage basis are to be costed on the carrier's average cost per mile for each type of car rented on this basis. No costs are to be included in the calculation for private line (shipper owned) or other cars for which the railroad does not make payments. The cost per day and per mile shall be calculated separately for each type of car specified in Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges*, 362 I.C.C. 884 (1980). The freight car costs shall be separated between ''return on value-freight cars'' and ''freight car costs other than return on freight cars''. The costs assigned to a line under this subsection

are to be derived from the accounts listed below.

Operating expense group—Repair and maintenance	Account No.
Salaries and wages	11–22–42
Materials	21–22–42
Repairs by others—DR	39–22–42
Repairs for others—CR	40–22–42
Purchased services	41–22–42
Other expenses	61–22–42
Lease rentals—DR	31–22–00
Lease rentals—CR	32–22–00
Depreciation	
Other rents—DR	35–22–00
Other rents—CR	36–22–00

The system total of the repair and maintenance accounts, all accounts designated XX–XX–42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation. Freight car costs shall not include depreciation as determined in Account No. 62–22–00. Freight car depreciation shall be calculated in the manner set forth in paragraph (g)(3)(i) of this section. The system total receipts and payments for the hire of time-mileage cars, and the basic data used in the development of the car-day and car-mile factors, shall be taken from the carrier's latest Form R–1 and company records. The specific steps to complete the calculation are as follows:

(1) The total system car days by car type shall be calculated by:

(i) Averaging the carrier's freight car ownership at the beginning and end of the year (Form R–1, schedule 710, columns (b) and (k);

(ii) Multiplying the average by the standard active number of car days (346) as developed in ICC Docket No. 31358;

(iii) Subtracting car days on foreign lines (source: Company records); and

(iv) Adding the foreign car days on home line (source: Company records). This procedure shall be followed for each car type specified in Ex Parte No. 334, *supra.*

(2) The total railroad car miles shall be calculated by adding the loaded car miles for the railroad owned and leased cars (R–1, Schedule 755) to empty car miles for the railroad owned or leased cars (R–1, Schedule 755). The total car miles, loaded and empty, shall be calculated for each car type specified in Ex Parte No. 334, *supra.*

(3) The cost per car day shall be calculated for each type of time-mileage car by adding 50 percent of total freight car repair costs for each type (Form R–1, schedule 415, column (b)), and 60 percent of the depreciation shall be developed as follows:

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car using the most recent purchase of this type by the railroad indexed to the midpoint of the year or a price quote from the manufacturer. This unit price shall be applied to the average number of this type of car owned by the carrier during the year. The current value developed for each car type is then multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Board or company records.

(ii) Add 100 percent of the return on investment. Return on investment shall be determined by multiplying the current value of each type of car, developed in paragraph (g)(3)(i) of this section, by 1 minus the ratio of accumulated depreciation to the total original cost investment. This will determine the net current value for each type of car. The net current value for each type of car shall then be multiplied by the nominal rate of return calculated in § 1152.34(d) to obtain nominal return on investment for each type of car. The total return on investment shall then be calculated by deducting the projected holding gain (loss) for the forecast and/or subsidy year from the nominal return on investment for each type of car. In any instance where the holding gain is not specifically determined for freight cars, the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used. The total return on investment for each type of car shall then be divided by total car-days for each car-type developed in paragraph (g)(1) of this section.

(iii) To the amounts for repairs and depreciation, add the time portion of the railroad's payment for hire of time-mileage freight cars (Form R–1, schedule 414, column (g)), and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (Form R–1, schedule 414, column (d)). The total of these costs is divided by the total car days for each type developed in paragraph (g)(1) of this section.

(4) The cost per mile shall be calculated for each type of time-mileage car as follows. First, add:

(i) 50 percent of the total freight train car repair cost for each car type (Form R–1, schedule 415, column (b));

(ii) 40 percent of the total depreciation costs for each car type developed in paragraph (g)(3)(i) of this section; and

(iii) The mileage portion of the carrier's payments for the hire of time-mileage freight cars (Form R–1, schedule 414, column (f)).

Second, subtract the mileage portion of the carrier's receipts for hire of time-mileage freight cars (Form R–1, schedule 414, column (c)). Finally, divide the result by the total car-miles for each car-type developed in paragraph (g)(2) of this section.

(5) The costs per car day and per car mile developed in paragraphs (g) (3) and (4) of this section shall be applied to the total car days and total car miles for each car type accumulated on the line segment for all traffic originated and/or terminated on the segment plus those freight cars that bridge the line segment which are attributed to time-mileage freight train cars. The on-segment costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (Form R–1, schedule 414, column (e)) for each car type divided by the total miles on which the charges were based.

(6) For Class II and III railroads, the on-segment costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Return on investment—locomotive (line).* The return on investment shall be calculated for each type of classification of locomotive that is actually used to provide service to the line segment. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line segment shall be based on the most recent purchase of that particular type and size locomotive by the carrier, indexed to the midpoint of the forecast and/or subsidy year, or on an amount quoted by the manufacturer. The amount must be substantiated. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by applicant-carrier, as shown by company records.

(2) The current nominal cost of capital shall be used in the calculation of return on investment for locomotives and shall be calculated as provided in § 1152.34(d).

(3) The return on investment for each category or type of locomotive shall be the nominal return less the holding gain (loss). The nominal return is calculated by multiplying the replacement cost determined in paragraph (h)(1) of this section by the nominal rate of return determined in paragraph (h)(2) of this section. The holding gain (loss) shall be the gain (loss) projected to occur during the forecast and/or subsidy year. In any instance where the holding gain is not specifically determined for locomotives,

the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used.

(4) The return on investment for each type of locomotive shall be assigned to the line segment on a ratio of the locomotive unit hours on the segment to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives; yard diesel; yard-other; road diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used to serve the segment, as developed in paragraph (h)(4)(i) of this section, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (h)(4)(ii) of this section.

(5) The cost assigned to the segment for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (h)(3) of this section by the ratio(s) developed in paragraph (h)(4) of this section.

(i) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those states that subject the railroad to a revenue tax.

(j) *Property taxes (Line).* (1) The assigned costs under this subsection shall be the net systemwide property tax savings resulting from the abandonment, calculated as set out below, if the applicant-carrier intends subsequently to sell or otherwise dispose of the abandoned properties. If the applicant-carrier expresses an intent to dispose of the properties, it will be presumed that the properties will ultimately be sold or otherwise disposed of after abandonment. Protestants may rebut this presumption by showing that it would be financially beneficial to retain ownership of the property for investment purposes.

(2) In states where a true *ad valorem* tax is levied on real property (such as track, land, buildings, and other facilities), applicant must affirm that the ad valorem method applies and must substantiate the amount of property taxes levied against the property on the line segment.

(3) In states where the *ad valorem* method is not employed, applicant must describe the applicable property tax methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual statewide tax savings attributable to the abandonment.

(4) Any property tax properly substantiated under paragraphs (f)(2) or (3) of this section shall be presumed to represent systemwide savings to the carrier. Protestants may rebut this presumption by presenting evidence:

(i) That property taxes in those states where the carrier operates that are not involved in the abandonment will increase significantly because of reassessments attributable to the abandonment; or

(ii) That a significantly higher property tax will be levied against a retained portion of the abandoned property. If applicant does not refute protestant's evidence, it may claim avoidable property taxes only if, and to the extent, it proves systemwide property tax savings.

(5) In states where real property taxes are assessed and levied against the owner of the property but the tax on rolling stock is assessed to the railroad operating the service on the basis of a formula of a statewide valuation of property, the tax on rolling stock attributable to each line segment shall be determined as follows:

(i) Using ratio of the cost of equipment (as used in the formula) to the total of all property costs (as used in formula);

(ii) Apply that ratio to the total state assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each line segment on the basis of car and locomotive unit miles on the segment to total car and locomotive unit miles in the state; and

(iv) Apply the appropriate tax rate or rates to the allocated assessment thus determined.

(k) *Administrative costs.* The costs assigned under this account shall be the actual costs directly attributable to the administration of the subsidy program or at the option of the carrier, one percent of the total annual revenues attributed to the branch shall be allowable to cover all costs of administering the subsidy program. Either method may be used, but not both.

(l) *Casualty reserve account.* The costs assigned under this account shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record any costs incurred by the railroad as a result of an accident.

(m) *Rehabilitation.* (1) For abandonment purposes the applicant carrier shall project the amounts necessary to permit efficient operations over the line segment. The carrier shall indicate the level of FRA class safety standard to be attained with the amount of expenditure. See 49 CFR part 213. Applicant, in making its projection of rehabilitation costs, shall give consideration to:

(i) The cost to attain the lowest operationally feasible track level;

(ii) The cost to attain the rehabilitation level resulting in the lowest operating and rehabilitation expenditures; or

(iii) The cost to attain the rehabilitation level resulting in the lowest loss, or highest profit, from operations.

(2) For subsidy purposes rehabilitation costs shall not be included unless:

(i) The track fails to meet minimum Federal Railroad Administrative class 1 safety standards (49 CFR part 213), in which case the railroad will furnish, with the abandonment application, a detailed estimate of the costs to rehabilitate the track to the minimum level; or

(ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(n) *Off-branch costs.* The off-branch costs developed in this section shall be separated between ''off-branch costs other than return on freight cars'' and ''return on value-freight cars''. The off-branch costs shall be developed in the following manner:

(1) Terminal costs, line-haul costs, interchange costs, and modified terminal costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying the variable unit costs to the service units attributed to the branch line's traffic for the time periods specified in § 1152.22(d) of this part.

(2) The procedure for determining the off-branch costs shall be based upon the URCS cost formula. This formula shall be applied to the latest Annual Report Form R–1 filed by the railroad, with two exceptions. First, the amount used in the formula for freight car depreciation shall be calculated using the procedure discussed in paragraph (g)(3)(iii) of this section applied to the average total car fleet of the railroad. Second, the return on investment in freight cars shall be computed using the procedure set forth

in paragraph (g)(3)(ii) of this section. In addition, the application of URCS shall include the use of the nominal cost of capital for all return on investment determinations.

(3) *The Class I Procedure:* A Class I railroad shall calculate its off-branch costs using the Class I procedure as set forth below in this paragraph.

(i) The unit costs developed by applying URCS in the manner specified in paragraph (n)(2) of this section shall be applied to the service characteristics of each movement of traffic that is attributed to the branch line. This application shall result in the total off-branch cost associated with this traffic for normal terminal handlings, line-haul mileage, and interchange events.

(ii) The modified terminal cost per carload shall be calculated separately for each type of freight car and applied to each car that is attributed to the branch line. The modified terminal cost shall consist of clerical costs, two days of freight car cost, and an inter-intra train switching cost (locomotive engine minute cost only). The clerical cost and inter-intra train switching cost shall be calculated from unit costs developed within the individual URCS application.

(A) The unit costs for the clerical cost per carload calculation are located in URCS Worktable E1, Part 1: Line 106, columns 1, 2, and 3; line 107, column 1; line 108, column 1; line 109, column 1; and line 110, column 1.

(B) The inter-intra train switching cost shall be calculated by multiplying the total switch engine minute cost from URCS Worktable E1, Part 1, line 111, columns 1, 2, and 3 by the total minutes specified in the next sentence. The total minutes specified in this sentence shall equal the sum of:

(*1*) The minutes per switch event from Worktable E2, Part 1, line 118, column 29; and

(*2*) The product of the minutes per switch event from Worktable E2, Part 1, line 118, column 29 and the ratio of loaded to total car miles for the particular type of freight car being costed.

(C) The freight car cost shall be the car ownership costs per car day for 2 days developed in accordance with the procedures set forth in paragraph (g)(3) of this section for the type of freight car being costed.

(iii) For a Class I railroad, the total costs calculated using the procedures set forth in paragraphs (n)(3)(i) and (n)(3)(ii) of this section shall constitute the off-branch costs attributable to the branch line's traffic.

(4) A Class II or Class III railroad shall calculate its off-branch costs using any one of three different procedures. *The Class I Procedure:* A Class II or Class III railroad may calculate its off-branch costs using the Class I procedure set forth in paragraph (n)(3) of this section, if the necessary data are available from the railroad's own records. If the data necessary to complete the Class I procedure set forth in paragraph (n)(3) of this section are not available from the railroad's own records, the Class II or Class III railroad shall calculate its off-branch costs using either one of the following procedures based on the latest regional URCS data and the railroad's own records. *The Class II/III Simplified Costing Procedure:* A Class II or Class III railroad may calculate its off-branch costs using the Class I procedure set forth in paragraph (n)(3) of this section, with regional URCS data of the Class I railroads used in lieu of individual URCS data of the Class II or Class III railroad. Costs developed through the use of the Class II/III simplified costing procedure shall enjoy a rebuttable presumption of correctness. *The Class II/III Standard Costing Procedure:* A Class II or Class III railroad may calculate its off-branch costs using the Class II/III standard costing procedure set forth in paragraphs (n)(4)(i) through (n)(4)(xiv) of this section. Costs developed through the use of the Class II/III standard costing procedure shall be given preference over costs developed through the use of the Class II/III simplified costing procedure. The Class II/III standard costing procedure is set forth in paragraphs (n)(4)(i) through (n)(4)(xiv) of this section.

(i) The Class II or Class III railroad shall first determine which URCS regional application will be used based on its geographical location. The railroad's total estimated system variable expenses are calculated by multiplying its total operating expenses by the ratio of variable expenses to total expenses; this ratio is located in Worktable D8, Part 6, line 615, column 1 of the URCS printout for the appropriate region. If a railroad has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses.

(ii) The total number of revenue carload terminal handlings, as determined from the railroad's records, shall be calculated as the sum of:

(A) Originated and terminated (local) revenue carloads multiplied by 2; plus

(B) Interchanged and either originated or terminated (interline) revenue carloads.

(iii) The total number of revenue carload interchange handlings, as determined from the railroad's records, shall be calculated as the sum of:

(A) Bridge (interchange to interchange) revenue carloads multiplied by 2; plus

(B) Revenue carloads that are interchanged and either originated or terminated (interline).

(iv) The system average shipment weight per car, as determined from the railroad's records, shall be calculated by dividing:

(A) Ton-miles-revenue freight by

(B) Loaded freight car miles.

(v) The system average loaded car miles per car, as determined from the railroad's records, shall be calculated by dividing:

(A) Revenue ton-miles by

(B) Revenue tons.

(vi) The railroad shall complete a URCS Phase III ''Movement Costing Program'' based on the application of URCS data for the appropriate region. The following data shall be inputs to the Phase III program application.

(A) The carrier code, either ''REG 4'' or ''REG 7'', shall correspond to the appropriate region.

(B) The type of shipment shall be designated as ''OD'' in order for the movement to be costed as an interline movement.

(C) The distance shall be the system average loaded car miles per car as developed in paragraph (n)(4)(v) of this section.

(D) The type of freight car shall be identified as a Box, General Service Equipped, which has an input user code of ''3''. If all of the traffic on the branch line is transported in a single type of car, and it is not a Box, General Service Equipped, the code for that type of car may be substituted.

(E) The number of freight cars shall be ''1''.

(F) The car ownership factor shall be designated as ''R'' for railroad owned cars unless all of the branch line traffic is moved in privately owned cars, in which case the code ''P'' for privately owned cars would be the input.

(G) The program requires a loss and damage input. The code ''48'', representing the average of all commodities, shall be used.

(H) The input for shipment weight shall be the system average shipment weight per car developed in paragraph (n)(4)(iv) of this section.

(I) The input for type of movement shall be ''1'', representing an individual car movement.

(vii) The ratios employed to separate the total estimated system variable expenses, as determined in paragraph

(n)(4)(i) of this section, among terminal, interchange, and line-haul operations shall be based on the procedures outlined in this paragraph (n)(4)(vii). This separation shall reflect the variable costs resulting from the application of the URCS Phase III program based on the input factors specified in paragraph (n)(4)(vi) of this section. The ratios shall be calculated in the following manner:

(A) The terminal expenses calculated by the application of the Phase III program shall consist of the following:

(*1*) ''Carload and Clerical Costs'' shall be calculated as the sum of lines 256, 258, 260, 262, 264, 266, and 268.

(*2*) Switching expenses based on ''Total SEM-Industry'' shall be calculated by multiplying:

(*i*) The sum of lines 315, 317, and 319, by

(*ii*) Line 311.

(*3*) Car mile yard cost ''CM(Y)-Industry'' shall be calculated by multiplying:

(*i*) The sum of lines 426, 428, and 430, by

(*ii*) Line 422.

(*4*) Car day yard cost ''CD(Y)-Industry'' and ''CD(Y)-L&UL'' shall be calculated by multiplying:

(*i*) The sum of lines 452, 454, and 456, by

(*ii*) The sum of lines 446 and 450.

(*5*) The expenses for accessorial services for railroad owned cars shall be calculated as the sum of:

(*i*) The product of line 422 and the sum of lines 464, 466, and 468; plus

(*ii*) The product of the sum of lines 446 and 450 and the sum of lines 476, 478, and 480.

(B) The interchange expenses calculated by the application of the Phase III program shall consist of the following:

(*1*) Switching expenses based on ''Total SEM-Interchange'' shall be calculated by multiplying

(*i*) The sum of lines 315, 317, and 319, by

(*ii*) Line 312.

(*2*) Car mile cost in interchange ''CM(Y)-Interchange'' shall be calculated by multiplying:

(*i*) The sum of lines 426, 428, and 430, by

(*ii*) Line 423.

(*3*) Car day cost in interchange ''CD(Y)-Interchange (L&E)'' shall be calculated by multiplying:

(*i*) The sum of lines 452, 454, and 456, by

(*ii*) Line 447.

(*4*) The expenses for accessorial services for railroad owned cars shall be calculated as the sum of:

(*i*) The product of line 423 and the sum of lines 464, 466, and 468; plus.

(*ii*) The product of line 447 and the sum of lines 476, 478, and 480.

(C) The line-haul expenses resulting from the application of the Phase III program shall be calculated by subtracting the sum of:

(*1*) The terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section, and

(*2*) The interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section, from

(*3*) The total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(D) The ratio for terminal expenses shall be calculated by dividing the terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(E) The ratio for interchange expenses shall be calculated by dividing the interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(F) The ratio for line-haul expenses shall be calculated by dividing the line-haul expenses as determined in paragraph (n)(4)(vii)(C) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(viii) The railroad's total estimated system variable expenses shall be separated as follows:

(A) The total terminal variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for terminal expenses as determined in paragraph (n)(4)(vii)(D) of this section.

(B) The total interchange variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for interchange expenses as determined in paragraph (n)(4)(vii)(E) of this section.

(C) The total line-haul variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for line-haul expenses as determined in paragraph (n)(4)(vii)(F) of this section.

(ix) The railroad's unit costs shall be determined for terminal, interchange, and line-haul operations as follows:

(A) The terminal cost per carload shall be calculated by dividing the total terminal variable expenses as determined in paragraph (n)(4)(viii)(A) of this section by the total number of revenue carload terminal handlings as determined in paragraph (n)(4)(ii) of this section.

(B) The interchange cost per carload shall be calculated by dividing the total interchange variable expenses as determined in paragraph (n)(4)(viii)(B) of this section by the total number of revenue carload interchange handlings as determined in paragraph (n)(4)(iii) of this section.

(C) The line-haul cost per car mile shall be calculated by dividing the total line-haul variable expenses as determined in paragraph (n)(4)(viii)(C) of this section by the total system freight car miles, loaded and empty, as determined from the railroad's records.

(x) The modified terminal cost per carload is a composite of costs developed in the Phase III program and costs determined in accordance with paragraph (g) of this section and this paragraph. The modified terminal cost per carload shall be calculated for each type of car as follows:

(A) The station clerical cost per carload shall be developed in the following manner:

(*1*) The station clerical expense ratio shall be calculated by dividing the total clerical cost (the sum of lines 256, 258, 260, 262, 264, 266, and 268) by the terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section.

(*2*) The station clerical cost per carload shall be calculated by multiplying the terminal cost per carload as determined in paragraph (n)(4)(ix)(A) of this section by the station clerical expense ratio.

(B) The interchange switching cost per carload shall be developed in the following manner:

(*1*) The total interchange switching expense shall be calculated by multiplying the sum of lines 315, 317, and 319 by line 312.

(*2*) The interchange switching ratio shall be calculated by dividing the total interchange switching expense by the interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section.

(*3*) The interchange switching cost per carload shall be calculated by multiplying the interchange cost per carload as determined in paragraph (n)(4)(ix)(B) of this section by the interchange switching ratio.

(C) The freight car cost element shall be the freight car cost per car day for 2 days as developed for each car type in paragraph (g)(3) of this section.

(D) The modified terminal cost per carload shall be the total of the costs developed in paragraphs (n)(4)(x)(A),

(n)(4)(x)(B), and (n)(4)(x)(C) of this section.

(xi) The terminal costs shall be calculated by multiplying the terminal cost per carload as determined in paragraph (n)(4)(ix)(A) of this section by the number of carloads that both:

(A) Originated or terminated on the branch, and

(B) Are local to the railroad serving the branch.

(xii) The interchange costs shall be calculated by multiplying the interchange cost per carload as determined in paragraph (n)(4)(ix)(B) of this section by the number of carloads that both:

(A) Originated or terminated on the branch; and

(B) Are received in or forwarded through interchange with other railroads.

(xiii) The line-haul costs shall be calculated by multiplying the line-haul cost per car mile as determined in paragraph (n)(4)(ix)(C) of this section by the total loaded and empty car miles generated on the railroad's system off the branch by cars that originated or terminated on the branch.

(xiv) The modified terminal costs shall be calculated by multiplying the modified terminal cost per carload as determined in paragraph (n)(4)(x)(D) of this section by the number of carloads that originated or terminated on the branch.

(o) *Locomotive depreciation.* The depreciation cost for locomotives used on the line shall be calculated using the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line will be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the year or on an amount quoted by the manufacturer.

(2) The depreciation rate that will be applied to the replacement cost shall be the carrier's component rate for each type of locomotive as reported in the latest Annual Report Form R–1 submitted to the Board or from the company records. Carriers using depreciation rates based on company records must explain why composite rates are inappropriate; provide a detailed explanation of the methodology used to compute the alternate depreciation rate; and demonstrate that these rates have been used consistently.

(3) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (o)(1) of this section by the rate from paragraph (o)(2) of this section.

(4) The depreciation expense for each type of locomotive shall be assigned to the line on the ratio of the hours incurred serving the line to the average system locomotive unit hours in service by each of the following categories of locomotives: yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the line shall be the same as that developed in paragraph (h)(4) of this section.

(5) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (o)(3) of this section by the ratio(s) developed in paragraph (o)(4) of this section.

(p) *Opportunity costs.* Applicant-carrier may, at its discretion, present evidence of its opportunity costs, if the assets engaged in the line proposed to be abandoned could be used more profitably in some other capacity.

Opportunity costs may be calculated in accordance with the methodology established in § 1152.34 of this part, or by using any other reasonable, fully explained method. Opportunity costs are not included as costs on Exhibit 1 described at § 1152.36. These costs should be submitted as a separate exhibit to the application.

(q) *Labor costs.* (1) The salaries, wages and fringe benefits of personnel exclusively assigned to the line segment shall be deemed attributable costs of the segment. The salaries, wages, and fringe benefits of personnel not exclusively assigned to the line segment shall be deemed attributable costs of the segment to the extent they are shown to be apportionable to the segment to be abandoned.

(2) These costs shall be deemed attributable notwithstanding any obligation of applicant to provide employee protection for employees after the abandonment.

§ 1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under § 1152.32 (a), (b), (c), and (d) as having an assignment basis other than ''Actual'' shall be apportioned according to the rules contained in this section.

(a) *Maintenance of way and structures*—(1) *Roadway machines.* All accounts designated XX–13–36 shall be assigned to the branch on the basis of the average repair costs, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on the actual number of days each type of machine is used on the branch.

(2) *Small tools and supplies.* All accounts designated XX–13–37 shall be assigned to the branch as follows:

(i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch;

(ii) The costs of small tools shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 11–11–10 through 11–11–17 and 11–11–48, plus 11–12–10 through 11–12–17 and 11–12–48, bear to the railroad's system total for the same accounts.

(3) *Fringe benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salary and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe benefits—Running, Account 12–11–00,* total of all 11–11–XX accounts branch to system;

(ii) *Fringe benefits—Switching, Account 12–12–00,* total of all 11–12–XX accounts branch to system; and

(iii) *Fringe benefits—Other, Account 12–13–00,* total of all 11–13–XX accounts branch to system.

(b) *Maintenance of equipment*—(1) *Locomotive repairs and maintenance.* All accounts designated XX–21–41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be theactual costs for the specific equipment used.

(2) *Locomotive depreciation.* Locomotive depreciation shall be calculated and assigned in accordance with the procedures set forth in § 1152.32(o).

(3) *Fringe Benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salary and wages bear to the system total salaries and wages for each type of equipment as follows:

(i) *Locomotives—Account 12–21–00,* total of all 11–21–XX accounts branch to system.

(ii) *Other Equipment—Account 12–23–00,* total of all 11–23–XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11–22–42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car-day and car-mile cost calculations in § 1152.32(g) of these regulations. To this amount is added the branch totals in the balance of all 11–22–XX accounts. The ratio of this total branch account to the system total for all 11–22–XX accounts is applied to Account 12–22–00, Fringe Benefits—Freight Cars.

(c) *Transportation*—(1) *Train operations*—(i) *Engine Crews-Materials. Account 21–31–56; Train Crews-Materials, Account 21–31–57; Train Inspection and Lubrication-Salaries and Wages, Account 11–31–62; and Train Inspection and Lubrication-Materials, Account 21–31–62.* If the branch is served by a local/way or through train, the costs in these accounts shall be assigned to the branch on the weighted ratio of the loaded freight train cars on the branch to the total system loaded freight train cars, and the loaded and empty car-miles on the branch to the total system loaded and empty car-miles. This shall be calculated as follows:

(A) To determine the car-mile portion of these accounts:

(*1*) Multiply the total amounts in these accounts (from the R–1 Annual Report, Schedule 410) by 69 percent, which is the ratio of train-mile and running expenses;

(*2*) Divide the amount in paragraph (c)(1)(i)(A)(*1*) of this section by the total system loaded and empty car-miles; and

(*3*) Multiply the car-mile unit cost factor from paragraph (c)(1)(i)(A)(*2*) of this section by the on-branch car-miles (loaded and empty).

(B) To determine the carload portion of these accounts:

(*1*) Multiply the total amounts in these accounts by 31 percent, which is the ratio of terminal expenses;

(*2*) Divide the amount in paragraph (c)(1)(i)(B)(1) of this section by the total system carloads; and

(*3*) Multiply the carload unit cost factor from paragraph (c)(1)(i)(B)(*2*) of this section by the on-branch carloads.

(C) To determine the total costs assignable to the branch for these accounts, add the amounts developed in paragraphs (c)(1)(i)(A)(*3*) and (c)(1)(i)(B)(*3*) of this section.

(ii) All accounts designated xx–31–67 shall be assigned to the branch in accordance with the following procedure. The dollar amounts used in the determination of locomotive fuel costs shall be based on data contained in the most recent publication issued by the General Managers Association (GMA) relating to the rental of locomotives. The total number of locomotive unit hours incurred by the locomotive(s) shall then be categorized according to the applicable GMA horsepower classification group. The fuel cost is derived from the Repairs and Supplies Expenses element of the locomotive rental rates published by the GMA. The fuel cost per locomotive unit hour shall be determined for each GMA horsepower classification group by multiplying the latest GMA fuel cost percentage by the Repairs and Supplies Expense per hour included in each group. The fuel cost update ratio is determined by using the indices for fuel from the Association of American Railroad's (AAR's) Railroad Cost Recovery Index (RCR). The indices shall be taken from the district to which the railroad is assigned by the Board. The index for the current period is divided by the index of the period representative of the GMA publication to develop the fuel update ratio. The fuel cost per locomotive unit hour developed for each GMA horsepower group shall be multiplied by the fuel update ratio to determine the fuel cost per locomotive hour for each horsepower group. The updated fuel cost per locomotive unit hour for each applicable GMA group shall be multiplied by the number of locomotive unit hours incurred in serving the branch by locomotives of that GMA horsepower classification group. The total cost developed under this procedure for each horsepower classification shall be the locomotive fuel cost assignable to the branch line.

(iii) *Electric power purchased or produced for motive power*—All accounts designated XX–31–68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing locomotives*—All accounts designated XX–31–69 shall be assigned to the branch on the ratio of road locomotive unit miles on the branch to the total system road locomotive unit miles.

(2) *Yard operations*—(i) *Switch Crews—Materials, Account 21–32–64, and Servicing Locomotives,* all accounts designated XX–32–69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive fuel*—All accounts designated XX–32–67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric power purchased or produced for motive power*—All accounts designated XX–32–68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations*—(i) *Loss and damage claims processing*—All accounts designated XX–35–78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(ii) [Reserved]

(4) *Transportation fringe benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salary and wages bear to the total system salary and wages for each activity shown below.

(i) *Train Operations, Account 12–31–00,* total of all 11–31–XX accounts branch to system.

(ii) *Yard Operations, Account 12–32–00,* total of all 11–32–XX accounts branch to system.

(iii) *Train and Yard Operations Common, Account 12–33–00,* total of all 11–33–XX accounts branch to system.

(iv) *Specialized Service Operations, Account 12–34–00,* total of all 11–34–XX accounts branch to system.

(v) *Administrative Support, Account 12–35–00,* total of all 11–35–XX accounts branch to system.

(d) *General administrative.* (1) *Fringe Benefits, Account 12–61–00,* shall be assigned to the branch on the ratio that the total branch salary and wages in all 11–61–XX accounts bear to the system total salary and wages in all 11–61–XX accounts.

(2) [Reserved]

§ 1152.34 Return on investment.

Return on investment for road property shall be computed according to the procedures set forth in this section.

(a) [Reserved]

(b) [Reserved]

(c) *Return on investment—road properties.* Return on investment—road properties shall be computed according to the following procedures:

(1) The investment base to which the nominal return element shall apply shall be the sum of:

(i) The allowable working capital computed at 15 days on-branch cash avoidable costs (on branch avoidable costs less depreciation).

(ii) The amount of current income tax benefits resulting from abandonment of the line which would have been applicable to the period of the subsidy agreement. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.) This information is to be furnished by the railroad and subject to audit by the person offering the subsidy.

(iii) The net liquidation value for the highest and best use for non-rail purposes of the rail properties on the line to be subsidized which are used and required for performance of the services requested by the persons offering the subsidy. This value shall be determined by computing the current appraised market value of such properties for other than rail transportation purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations. If rehabilitation has been performed along the line during a subsidy year and rehabilitation expenses have been paid by the subsidizer under 49 CFR 1152.32(m)(2), the investment base shall exclude the increment to the net liquidation value of the line caused by the rehabilitation project. For these purposes:

(A) In calculating the net liquidation values for the Forecast Year, no asset on the line shall be excluded from the determination of net liquidation value because it contributes negatively to that value, i.e., the removal costs exceed the market value after removal. All such assets shall be included in the net liquidation value determination if the carrier is required by law to remove them or if the carrier intends to remove them, even if it is not required to do so. The parties shall fully support and explain the exclusion for net liquidation purposes of all assets having a negative salvage value.

(*1*) In calculating the net liquidation value of railroad properties for the purpose of determining the operating subsidy under an offer of financial assistance, any asset with a negative salvage value shall be included at a value of zero (0).

(*2*) Determination of the net liquidation value of rail properties for the purpose of purchasing the rail properties under an offer of financial assistance shall include any asset with a negative salvage value at a value of zero (0).

(B) All adjustments to the appraised fair market value of right-of-way land, including a downward adjustment to reflect an imputed real estate commission or selling expense, shall be fully supported and explained.

(C) Parties shall fully support and explain their use of unadjusted across-the-fence (ATF) values as a surrogate for the value of railroad right-of-way land, given that the physical and economic characteristics (grading and elevation) usually are different from those of surrounding parcels. All adjustments to ATF values to arrive at the right-of-way values shall also be supported and explained.

(2) [Reserved]

(d) *Reasonable return.* A rail carrier shall furnish to the Board, and to any financially responsible person considering making an offer of a rail service continuation payment, a substantiated statement showing its current nominal cost of capital. The railroad's nominal cost of capital shall be the current before tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and state income tax rates. This rate of return expressed as a percent, shall be calculated as follows:

(1) The railroad shall determine its permanent capital structure ratio for debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Board's latest Determination of Adequate Railroad Revenues will be used. However, if the debt-equity ratio for the railroad industry is used then the industry average equity and debt rate from the Board's latest revenue adequacy finding must also be used in paragraphs (d)(2) and (d)(3) of this section.

(2) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangements, et cetera) issued by the carrier in the most recent 12-month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for inflation or income taxes.

(3) The current nominal after tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investment in the market place. The current after tax nominal cost of equity is divided by 1 minus the combined statutory Federal and state income tax rates. This will develop the nominal cost of equity on a before tax basis.

(4) The current nominal before-tax cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted before-tax nominal cost of current debt.

(5) The current nominal before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted nominal before-tax cost of current equity.

(6) The results of paragraphs (d)(4) and (d)(5) of this section are added together to determine the current nominal cost of capital.

(e) *Holding gain (loss)-road properties.* The railroad shall determine the holding gain (loss) that is projected to occur during the forecast and/or subsidy year. In any instance where the holding gain is not specifically determined for road properties, the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used.

§ 1152.35 [Reserved]

§ 1152.36 Submission of revenue and cost data.

The following information shall be submitted by applicant as Exhibit 1 to an abandonment or discontinuance application (§ 1152.22(d)) and shall be developed in accordance with the methodology established in §§ 1152.31 through 1152.35, as applicable. Such information, form and methodology shall also be used by an offeror of financial assistance to formulate a Proposed Subsidy Payment (§ 1152.27).

	Base year operations	Forecast year operations	Projected subsidy year operations
Revenues attributable for:			
1. Freight originated and/or terminated on branch			
2. Bridge traffic			
3. All other revenue and income			
4. Total revenues attributable (lines 1 through 3)			
Avoidable costs for:			
5. On-branch costs (lines 5a through 5k)			
a. Maintenance of way and structures			
b. Maintenance of equipment			
c. Transportation			
d. General administrative			
e. Deadheading, taxi, and hotel			
f. Overhead movement			
g. Freight car costs (other than return on freight cars)			
h. Return on value-locomotives			
i. Return on value-freight cars			
j. Revenue taxes			
k. Property taxes			
6. Off-branch costs			
a. Off-branch costs (other than return on freight cars)			
b. Return on value-freight cars			
7. Total avoidable costs (line 5 plus line 6)			
Subsidization costs for:			
8. Rehabilitation [1]			
9. Administration costs (subsidy year only) [2]			
10. Casualty reserve account [2]			
11. Total subsidization costs (lines 8 through 10)			
Return on value:			
12. Valuation of property (lines 12a through 12c)			
a. Working capital	XXXX.		
b. Income tax consequences	XXXX.		
c. Net liquidation value	XXXX.		
13. Nominal rate of return	XXXX.		
14. Nominal return on value (line 12 times line 13) [3]	XXXX.		
15. Holding gain (loss)	XXXX.		
16. Total return on value (line 14 minus 15) [3]	XXXX.		
17. Avoidable loss from operations (line 4 minus line 7)			
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16)			
19. Estimated subsidy (line 4 minus lines 7, 11 and 16)			

[1] This projection shall be computed in accordance with § 1152.32(m).
[2] Omit in applications pursuant to §§ 1152.22 and 1152.23.
[3] If the amount in line 12c is a negative for the ''Forecast Year operations'' insert ''0'' in this line.

§ 1152.37 Financial status reports.

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to the financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Significant deviations from the negotiated estimates must be explained. All data shall be developed in accordance with the methodology set forth in §§ 1152.31 through 1152.35. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues for:		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues (lines 1 through 3)		
Avoidable costs for:		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		

	Actual	Projected
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for:		
8. Rehabilitation		
9. Administrative costs		
10. Casualty		
11. Total subsidization costs (lines 8 through 10)		
Return on value:		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax consequences		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
Subsidy payment:		
15. Subsidy payment (line 4 minus lines 7, 11, and 14)		

Subpart E—[Reserved]

Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

(a)(1) A proposed abandonment or discontinuance of service or trackage rights over a railroad line is exempt from the provisions of 49 U.S.C. 10903 if the criteria in this section are satisfied.

(2) Whenever the Board determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. 10903, whether under this section or on the basis of the merits of an individual petition, the provisions of §§ 1152.27, 1152.28, and 1152.29 as they relate to exemption proceedings shall be applicable.

(b) An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending), or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.

(c) The Board has found:

(1) That its prior review and approval of these abandonments and discontinuances is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and

(2) That these transactions are of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power. 49 U.S.C. 10502. A notice must be filed to use this class exemption. The procedures are set out in § 1152.50(d). This class exemption does not relieve a carrier of its statutory obligation to protect the interests of employees. 49 U.S.C. 10502(g) and 10903(b)(2). This also does not preclude a carrier from seeking an exemption of a specific abandonment or discontinuance that does not fall within this class.

(d) *Notice of exemption.* (1) At least 10 days prior to filing a notice of exemption with the Board, the railroad seeking the exemption must notify in writing:

(i) The Public Service Commission (or equivalent agency) in the state(s) where the line will be abandoned or the service or trackage rights discontinued;

(ii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

(iii) The National Park Service, Recreation Resources Assistance Division; and

(iv) The U.S. Department of Agriculture, Chief of the Forest Service.

The notice shall name the railroad, describe the line involved, including United States Postal Service ZIP Codes, indicate that the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Board. The notice shall include the following statement ''Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.''

(2) The railroad must file a verified notice using its appropriate abandonment docket number and subnumber (followed by the letter ''X'') with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The notice shall include the proposed consummation date, the certification required in § 1152.50(b), the information required in §§ 1152.22(a) (1) through (4), (7) and (8), and (e)(5), the level of labor protection, and a certificate that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been complied with.

(3) The Board, through the Director of the Office of Proceedings, shall publish a notice in the Federal Register within 20 days after the filing of the notice of exemption. The notice shall include a statement to alert the public that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Petitions to stay the effective date of the notice on other than environmental or historic preservation grounds must be filed within 10 days of the publication. Petitions to stay the effective date of the notice on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the Board to consider and act on the petition before the notice becomes effective. Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions under 49 U.S.C. 10905 and 49 CFR 1152.28(a)(2) must be filed within 20 days after publication. Requests for a trail use condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be filed within 10 days after publication. The exemption will be effective 30 days after publication, unless stayed. If the notice of exemption contains false or misleading information, the use of the exemption is

void *ab initio* and the Board shall summarily reject the exemption notice.

(4) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Board, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

(5) A notice or decision to all parties will be issued if use of the exemption is made subject to environmental, energy, historic preservation, public use and/or interim trail use and rail banking conditions.

(6) To address whether the standard labor protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979), adequately protect affected employees, a petition for partial revocation of the exemption under 49 U.S.C. 10502(d) must be filed.

(e) *Consummation notice.* As provided in § 1152.29(e)(2), rail carriers that receive authority to abandon a line under § 1152.50 must file with the Board a notice that abandonment has been consummated.

Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10502 Exemption Procedure

§ 1152.60 Special rules.

(a) This section contains special rules applicable to any proceeding instituted under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line. General rules applicable to any proceeding filed under the 49 U.S.C. 10502 exemption procedure may be found at 49 CFR part 1121, but the rules in part 1152 control in case of any conflict with the general exemption rules. In the case of petitions for exemption for abandonment, notice of the filing of the petition will be published in the Federal Register 20 days after the petition is filed. There will be no further Federal Register publication later if and when a petition is granted.

(b) Any petition filed under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line must be accompanied by a map that meets the requirements of § 1152.22(a)(4) of this part.

(c) A petitioner for an abandonment exemption shall submit, with its petition, a draft Federal Register notice of its petition according to the form prescribed below:

Draft Federal Register Notice. The petitioner shall submit a draft notice of its petition to be published by the Board within 20 days of the petition's filing with the Board. The petitioner must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The draft notice shall be in the form set forth below:

STB No. AB–_____ (Sub-No._____)

Notice of Petition for Exemption to Abandon or to Discontinue Service

On (insert date petition was filed with the Board) (name of petitioner) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of (the discontinuance of service on) a line of railroad known as_____, extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes, a distance of _____ miles, in [County(ies), State(s)]. The line for which the abandonment (or discontinuance) exemption request was filed includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

(d) A petitioner for an abandonment exemption must serve a copy of the petition on the persons receiving notices of exemption under § 1152.50(d). The petition must include the following statement: ''Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it.''

(e) As Provided in § 1152.29(e)(2), rail carriers that receive authority to abandon a line by individual exemption under 49 U.S.C. 10502 must file with the Board a notice that abandonment has been consummated.

[FR Doc. 96–32229 Filed 12–23–96; 8:45 am]

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Federal Register

Tuesday
December 24, 1996

Part III

Department of Education

Title I Migrant Education Coordination Program; Notice Inviting Applications for New Awards for Fiscal Year 1997 Using Fiscal 1996 Funds

DEPARTMENT OF EDUCATION

[CFDA No.: 84.144]

Title I Migrant Education Coordination Program; Notice Inviting Applications for New Awards for Fiscal Year 1997 Using Fiscal Year 1996 Funds

Purpose of the Program: To support projects that use technology in innovative ways to strengthen the academic achievement of migrant students who move between school districts. The fiscal year 1997 competition focuses on projects designed to meet the priority in the notice of final priority for this program, as published elsewhere in this issue of the Federal Register.

Eligible Applicants: Any State educational agency (SEA), local educational agency (LEA), institution of higher education (IHE) or other public or private nonprofit entity is eligible to apply. The Secretary specifically invites the following entities to submit applications: SEAs that administer Migrant Education Programs; LEAs with a high number or high percentage of migrant students; and non-profit community-based organizations that work with migrant families. Applicants must apply as part of a consortium made up of at least two entities previously described, and consortium members must provide educational services to migrant students in at least two or more school districts. The consortium must include at least one other partner from the business community, institutions of higher education, academic content experts, software designers, or other entities.

Deadline for the Transmittal of Applications: February 28, 1997.

Deadline for Intergovernmental Review: April 28, 1997.

Applications Available: December 24, 1996.

Available Funds: $3,000,000 per year for 5 years (depending on appropriations).

Estimated Range of Awards: $200,000 to $600,000 per year.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to five years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except §§ 75.201, 75.210 and 75.217), 77, 79, 80, 81, 82, 85, and 86; and 34 CFR 200.40. The selection criteria, as published elsewhere in a notice in this issue of the Federal Register, apply to this program.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the Federal Register, applies to this competition.

FOR APPLICATIONS OR INFORMATION CONTACT: Kristin Gilbert, Office of Migrant Education, U.S. Department of Education, 4100 Portals Building, 600 Independence Avenue, SW, Washington, DC 20202–6134, by telephone (202) 260–1357, by e-mail Kristin__Gilbert@ed.gov or by fax (202) 205–0089. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.,Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 6398(a).

Dated: December 17, 1996.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 96–32561 Filed 12–23–96; 8:45 am]

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Federal Register

Tuesday
December 24, 1996

Part IV

Department of Education

Title I Migrant Education Coordination Program; Notice of Final Priority for Fiscal Year 1997

DEPARTMENT OF EDUCATION

Title I Migrant Education Coordination Program

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1997.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces an absolute priority for competitive grants awarded under the Migrant Education Program for Fiscal Year (FY) 1997. Under this priority, the Department will support projects that use technologies in innovative ways to strengthen the academic achievement of migrant students who move between school districts.

EFFECTIVE DATE: This priority takes effect January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Kristin Gilbert, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4100 Portals Building, Washington, DC 20202–6140. Telephone: (202) 260–1357. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Inquiries may also be sent by e-mail to kristin__gilbert@ed.gov or by FAX at (202) 205–0089.

SUPPLEMENTARY INFORMATION: The Secretary intends to award grants to applicants, applying as a member of consortia, who propose to use technologies in innovative and effective ways to improve teaching and learning for highly mobile migrant students. Projects selected for funding will be those judged most likely to be effective in helping migrant children whose education is interrupted by moves between districts and States. In FY 1997, the Secretary will make up to $3 million available under the Migrant Education Program (MEP) for this competition, from which 6 to 8 projects are expected to be funded. Grants are projected to range from $200,000 to $600,000 per year and may be funded for up to 5 years.

The MEP is authorized in Title I, Part C, of the Elementary and Secondary Education Act of 1965 (ESEA). Under this program, the Secretary makes grants to State educational agencies (SEAs) to help ensure that migrant children have the opportunity to meet the same challenging State content and student performance standards that all children are expected to meet. Toward this objective, the program supports a range of services for migrant children, including preschool children, and youth through age 21 who are entitled to a free public education through grade 12. For example, it provides supplemental instruction and other related services that address educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors inhibiting the ability of children to do well in school or make successful transitions to postsecondary education or employment.

Section 1308 of the ESEA authorizes the Secretary to reserve a portion of each year's MEP appropriation and, in consultation with the States, make grants for programs to improve the coordination of services to migrant students who move within and between States. The Secretary will use part of the FY 1996 and subsequent year reservation to support multi-year projects under the priority in this notice. The Secretary believes that technology, if applied thoughtfully, can be the catalyst that reinforces and extends migrant students learning opportunities, motivation and achievement. This priority is intended to stimulate creative thinking about how to integrate technology more effectively into high-quality educational programs that meet the special needs of the migrant community.

As some migrant programs are already beginning to demonstrate, technology can help improve the teaching and learning of migrant students by, for example, making curricula and other teaching materials more readily available to migrant students; stimulating new education solutions to counter the adverse impact that frequent moves have on the education of migrant students; and facilitating on-going cooperative arrangements between schools in ''sending'' and ''receiving'' States to reinforce and extend teaching and learning of migrant students. Moreover, States and districts are spending their own funds and funds from other Federal programs for technology and technology-related expenses. These expenditures frequently complement the investments of the MEP and other ESEA programs to help all children, including migrant children, learn to high standards.

The competition is intended to build on those activities by helping to support efforts to put challenging academic standards more closely within reach of migrant students. The grants are intended to stimulate partnerships, funding, and action at the State and local levels and private sector. Each project's choice of partners, and each project's design with new approaches and strategies, are keys to whether the handful of projects to be funded under this competition can have a significant impact on the education of hard-to-reach, highly mobile, migrant children and youth—now and in the future.

Applicants are encouraged to consider a range of other Federal and non-Federal sources of technical or financial support. Possible sources of Federal support include assistance that States and communities receive under programs administered by the Department, including: Goals 2000; Title I, Part A of the ESEA; the Eisenhower Professional Development program; Bilingual Education programs; School-to-Work Opportunities; the Star Schools program; the Challenge Grants for Technology in Education; the Office of Special Education and Rehabilitative Services technology programs; the recently created Regional Comprehensive Assistance Centers and Regional Technology Consortia; the Regional Educational Laboratories; and the MEP itself.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expand the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve these Goals.

This priority and these selection criteria would address the National Education Goals that all students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter, and that by the year 2000 the high school graduation rate will increase to at least 90 percent. The priority and selection criteria would further the objectives of these Goals by focusing available funds on projects that will provide students, while they migrant between school districts, a richer learning environment and continuity of education through the innovative use of technologies.

On August 20, 1996, the Assistant Secretary for Elementary and Secondary Education published a notice of proposed priority (NPP) for this program in the Federal Register (61 FR 43122–5). Additional information is provided in that notice on pages 43122–3, including examples of existing programs for migrant youth that include technology components. While changes have been made since publication of the NPP, these changes merely clarify the priority without altering its intent.

Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this edition of the Federal Register.

Summary of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 10 parties submitted comments. All commenters supported the thrust of this priority. In general, commenters recommended that the priority clarify (1) who are eligible applicants, as well as the composition and financial responsibilities of the consortium; (2) that applicants must address how their consortia would actually use technology to increase achievement of migrant students; and (3) that applicants may propose uses of technology that focus exclusively on improving the skills or knowledge of those who teach migrant students. An appendix to this notice contains an analysis of the comments and of the changes in the priority. The changes do not alter the priority's original intent.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this priority:

Technology Applications for Teaching and Learning in the Migrant Community

Under this priority, an eligible applicant will compete for a grant, as a member of a consortium that may be funded for up to five years, to cover the costs of developing, adapting, or expanding existing and new applications of technology that members of the consortium will use to improve teaching and learning for migrant students who move within and between States. In developing their projects, applicants are encouraged to consider how technology might be put to effective use within the whole spectrum of educational inputs—including curriculum, modes of learning, professional development, parental involvement—to increase the achievement of the migrant students they serve. To help broaden project planning and impact, consortium efforts must be carefully designed to encourage—wherever possible—the ongoing involvement of educators and parents, business and civic leaders, community organizations, and others committed to providing enhanced educational opportunity for highly mobile migrant students. While there is no matching requirement for this competition, applications will be reviewed for, among other things, the extent to which the consortium as a whole secures from partners or other entities monetary or in-kind contributions for equipment, technical support, and any other associated project costs. These additional contributions may be from Federal or non-Federal sources; however, the reviewers will note the degree to which a project has broad support as evidenced by its non-Federal contributions. Additional sources of support might also include foundation grants and other philanthropic contributions, and services provided through grants or contracts from other government agencies. Examples of assistance available from Federal agencies, other than the Department of Education, are included in the notice of proposed priority for this program published in the Federal Register (61 FR 43122–5).

Eligible Applicants

Any SEA, local educational agency (LEA), institution of higher education, or public or private nonprofit entity is eligible to apply. However, the Secretary specifically invites the following entities to submit applications: SEAs that administer MEPs; LEAs that have a high percentage or high number of migrant students; and non-profit community-based organizations that work with migrant families. In addition, to help ensure that this competition supports coordination activities between school districts: (1) applicants must apply as part of a consortium that includes at least two entities described in the preceding sentence, and (2) consortium members must provide educational services to migrant students in at least two or more school districts. To help ensure that the projects are effective and have broad community and technical support, the consortium must also include at least one other partner from the business community, institutions of higher education, academic content experts, software designers, or other entities.

Application Contents

Objectives: Applicants must demonstrate how the consortium would make innovative uses of technologies to achieve the following objectives: (a) promoting greater continuity of instruction for migrant students as they are served in different school districts in which members of the consortium operate educational programs that are available to migrant students; and (b) helping these migrant students achieve to high academic standards.

Required Application Descriptions: In describing how it would use technologies to meet the educational purposes described in response to the preceding paragraph, each applicant must also address how the project will provide—

1. Adequate access to technology for all project participants, whether they are migrant students, their families, or teaching personnel;
2. Sufficient time and opportunity for teachers (and other educational support staff) to learn to use the technologies and to incorporate them into their own curricular goals;
3. Easily accessible technical support, such as on-site assistance;
4. A method for evaluating the educational benefits of the project; and
5. A strategy for disseminating a successful project to other SEAs, LEAs and other agencies that operate MEPs.

Other Application Requirements: Among other generally applicable application requirements, applicants are reminded that 34 CFR 75.112 and 75.117 of the Education Department and General Administrative Regulations (EDGAR) contain additional narrative and budgetary requirements for applicants that request funding on a multi-year basis. In particular, § 75.112 requires an application to include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective. (In determining whether to make a continuation award in future years to a project recipient, the Secretary intends to examine each performance report submitted under 34 CFR 75.253 to ensure, among other things, the quality of the project's emerging design and implementation activities.)

Selection Criteria

The Secretary will use two criteria to select applications for funding: significance and feasibility; i.e., is the proposed activity important, and can it be done?

Significance will be determined by the extent to which the project: 1. Offers a creative vision for using technology to help migrant students who move within or between States learn challenging academic content and improve the coordination of their teaching and learning when they move;

2. Is likely to achieve far-reaching impact through results, products, or benefits that can be readily achieved, exported or adapted to other migrant communities or to settings of other mobile populations;

3. Will enhance inter- or intrastate coordination of teaching and learning

(that takes into consideration the cultural and language characteristics of the migrant population) by integrating acquired technologies into the curriculum;

4. Will provide for ongoing, intensive professional development for teachers (and other personnel) working with the migrant population to further the learning of migrant students through the use of technology in the classroom, library, home, or other learning environment;

5. Is designed to serve highly mobile migrant populations that are likely to benefit the most from educational technology applications;

6. Is designed to create new learning communities, and expanded markets for high-quality educational technology applications and services for migrant and other similar populations.

Feasibility will be determined by the extent to which: 1. The project will ensure successful, effective, and efficient uses of technologies for inter- and intrastate coordination of teaching and learning for migrant students and staff that will be sustainable both during and beyond the period of the grant;

2. The consortium and other appropriate entities will contribute substantial financial and/or other resources or both to achieve the goals of the project; and

3. The applicant is capable of carrying out the project, as evidenced by: the extent to which the project is likely to meet the needs that have been identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final priority notice is 1810–0028.

Selection Procedures

The Secretary will consider only applications that establish the likelihood that the proposed projects will meet the objectives, and that include the required elements, described within the section, ''Application Contents.'' The Secretary will evaluate applications using the unweighted selection criteria described under the ''Selection Criteria'' section of this notice. In determining whether applicants have met these criteria, the Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications. Therefore, the Secretary will not apply the selection procedures in EDGAR, 34 CFR 75.210 and 75.217, which otherwise require a rank order to be established based on weighted selection criteria.

The Secretary intends to use the following selection procedures for this competition:

The first peer review panel or panels of experts will analyze each application to determine whether or not it responds to the requirements in the application contents section of this notice, and in terms of the two selection criteria: significance and feasibility. A reviewer will assign to each application two separate qualitative ratings—one for significance, the other for feasibility—based on the extent to which the application meets each of these criteria. The two ratings (which are of equal importance) taken together will yield a composite rating, representing each reviewer's total rating of each application. All reviewer ratings for each application will then be combined across the reviewers in a panel to yield an overall rating for each application. The panels will also identify inconsistencies, points in need of clarification, and other concerns, if any, pertaining to each application.

The Secretary will assign each application to one of three or four groups based on the panel's composite rating of each applicant. Starting with the highest quality group and moving down to the lowest, the Secretary will identify the groups containing applications that are of sufficiently high quality to be considered for funding.

Depending upon the number of applications received, a second panel will be convened to reevaluate each application identified by the first panel as being of sufficiently high quality to be considered for funding. In doing so, this second panel will take into account any additional information or materials supplied by applicants after the first panel review in response to a request by the Secretary (see final paragraph of this section), to redetermine the extent to which each application addresses the selection criteria. The Secretary will reassign each reevaluated application to one of the several quality groups.

In the final stage of the selection process, the Secretary will select for funding those applications of highest quality, based on the final results of the second review panel or panels, but only if the Secretary is satisfied that they are of high quality with regard to both significance and feasibility. If in this final stage, the Secretary determines that the highest quality group or groups include more applications than can be funded, panelists may be asked to differentiate further between the applications on the basis of quality.

The Secretary might not have need for the two-tiered procedures, depending upon the number of applications received.

In accordance with 34 CFR 75.109(b), an applicant is permitted to make changes to an application on or before the deadline date for submission of applications. Also, in accordance with 34 CFR 75.231, the Secretary may request an applicant to submit additional information after the application has been selected for funding. Given the technical nature of the proposals, the Secretary expects that it might be necessary to obtain clarifications and additional information from applicants during the selection process. The Secretary would request additional information or materials from applicants that the review panel has determined are of sufficiently high quality, and that address the concerns and questions, if any, identified by the peer review panel. Therefore, for the purpose of this grant competition, the Secretary will also permit an applicant to submit additional information in response to a specific request from the Secretary made during the application review and selection process.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Regulations: EDGAR 34 CFR Parts 74, 75 (except § 75.201, 75.210 and 75.217), 77, 79, 80, 81, 82, 85 and 86; and 34 CFR 200.40.

Program Authority: 20 U.S.C. 6398(a).

Dated: December 17, 1996.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

Appendix—Analysis of Comments and Changes

Comments: One commenter suggested that the priority clarify whether charter schools are eligible for grants.

Discussion: This grant competition is open to any SEA, LEA or other public or private nonprofit entity that applies as part of a consortium and meets the criteria announced in this notice. A charter school that is an LEA or a public or private nonprofit agency in the State in which it is located would be eligible to apply.

Changes: None.

Comments: Two commenters questioned the proposed requirement that the consortium partners contribute financial or in-kind resources to the project. One commenter requested clarification as to whether members of the consortium could meet this requirement by using resources provided through another Federal program. The other commenter expressed concern that the proposed requirement could limit the number of applicants. The commenter noted that because LEAs, SEAs, and nonprofit agencies might not have substantial resources to contribute to the project, other participants in a consortium, such as the business community and academic content experts, might have to contribute the bulk of additional financial assistance.

Discussion: Funds awarded under this competition can play a pivotal role in helping to support initiatives that use technology as a key ingredient to increasing the academic achievement of migrating students. However, initiatives that rely solely—or even principally—on these or other Federal funds may be less likely than other projects to succeed or endure beyond the project period. First, the amount of project funds that the Secretary can award under section 1308(a) of the ESEA may simply be too small to meet total project costs. But more important, a project's likely impact and success depends in part on funding support that is broad and lasting, as demonstrated by the degree to which applicants obtain significant commitments of non-Federal as well as Federal resources. For this reason, while applicants are not required to demonstrate that they have any outside support as a condition of their eligibility for an award, the notice clarifies that project's feasibility will depend, in part, on the degree to which (a) consortium partners and other entities are committed to making substantial financial and in-kind contributions to the success of the project, and (b) contributions include those from non-Federal sources. Moreover, the Secretary believes that applications that demonstrate a consortium's ability to leverage significant additional resources are likely to be more competitive than applications that do not.

The Secretary is aware that some participants in a consortium may be unable to contribute significant amounts of actual or in-kind resources to the project, and that some consortia may be able to pull together more resources for their projects than others. The final notice clarifies that applications will be reviewed for the extent to which the consortium as a whole—rather than its individual members or other participating entities—are contributing substantial financial and/or in-kind contributions to achieve the project goals.

Changes: The supplementary information and statement of the priority have been revised accordingly.

Comments: A commenter requested clarification about whether priority will be given to consortia that includes all three applicants (SEA, LEA, or other non-profit organization) that were specifically invited to apply.

Discussion: No priority will be given to any particular make-up of consortia.

Changes: None.

Comments: A commenter questioned the use of the word, ''or'' illustrating types of partners—beyond SEAs, LEAs and nonprofit agencies—that must be a part of a consortium funded under this competition. The statement referred to the inclusion of entities ''such as business, academic content, or software designers * * *.'' The commenter recommends that the word ''and'' be substituted for ''or'' in order to emphasize the need for projects to include both software design and academic content expertise.

Discussion: The Secretary encourages partnerships of all types to compete for funding under this notice and does not believe it to be appropriate to limit eligibility to any particular configuration.

Changes: None.

Comments: Two commenters suggested that the priority strengthen the connections between the use of technology and the educational program design. Two other commenters recommended that the applications be required not only to describe the use of technology, but also to show how they address inter- and intra-state coordination of educational programs that serve migrant students.

Discussion: The Secretary agrees with the commenters that further clarity is needed in these areas. As explained in the ''Supplementary Information'' section of this notice, the intent of this competition is, and has been, to further support the effective use of technology as a means of increasing migrant student achievement. Moreover, because funds will be awarded under section 1308(a) of the ESEA, funded projects need to be designed to improve inter- or intra-state coordination among programs assisting migrant students.

Changes: In order to ensure that all selected projects reflect these objectives, the Secretary has revised the ''Application Contents'' portion of the notice to require an applicant to demonstrate how it would use technology as a tool to improve achievement. Further, this section of the notice now clarifies that applicants also must demonstrate how they would use technology to promote greater continuity of instruction for migrant students as they are served at different project sites.

Comments: A commenter suggested that eligibility be expanded to include States and island nations with immigrant populations. In this context, the commenter also suggested that all agencies responsible for providing services to migrant and immigrant children be required to share appropriate electronic databases.

Discussion: Section 1308(a) of the ESEA does not authorize the use of funds under this program to serve the needs of immigrant children.

Changes: None.

Comments: One commenter suggested that the criteria be broadened to permit funding of interstate projects that would use technology only to strengthen professional development of teachers of migrant students. The commenter expressed concern that, as written, the notice appears to require migrant student participation in all projects.

Discussion: This competition is intended to fund well-designed proposals that improve teaching and learning for migrant students who move from one location to another. In doing so, applicants may propose uses of technology that focus exclusively on those who teach migrant students, rather than on the migrant students themselves, for example, by offering those teachers increased access to professional development activities.

Changes: The ''Required Application Descriptions'' section clarifies that while project participants must be given adequate access to technology, those participants may be students, their families, or teaching personnel.

Comments: One commenter requested that the notice clarify that within a consortium, partnerships with universities—for the purpose of developing software—would have the same weight as business partnerships. Another commenter suggested that Comprehensive Regional Assistance Centers be included in the list of potential partners.

Discussion: The Secretary agrees with the commenters that universities and comprehensive centers are potentially very important partners in any consortium. The Secretary does not believe that the notice should emphasize university participation through the development of software.

Changes. The ''Technology Applications for Teaching and Learning in the Migrant Community'' and ''Eligible Applicants'' sections of the notice have been revised to clarify the importance of institutions of higher education, while the ''Supplementary Information'' section has been revised to clarify the importance of the comprehensive centers.

Comments: Two commenters expressed concern that use of unweighted selection criteria would create difficulties in making systematic and substantiated judgments about the relative quality of applications, whereas one commenter expressed support for use of the unweighted criteria. One commenter also suggested that training be offered to the review panels to help ensure quality of the comments.

Discussion: This competition is designed to encourage all applicants, and particularly SEAs, LEAs, and other public and private nonprofit agencies serving migrant students, to reach out to businesses, universities, and others in their communities in creative ways that can give migrant students the benefit of recent technological innovations. Given the nature of the competition, and the many forms and varieties of new technological applications that it can support, the Secretary believes that unweighted criteria provide the most promising opportunity to select for funding those projects that are most significant and feasible. The Secretary will ensure that judgments about the relative quality of applicants are made systematically and in ways that are substantiated.

Changes. None.

Comments: Two commenters suggested that there be a separate competition or a reservation of funds under this competition for credit exchange and accrual activities for migrant secondary school students.

Discussion: A proposal that focuses on credit exchange and accrual, and, in so doing, uses technology to provide instruction and/or improved teaching to migrant students, is within the purview of the priority. Beyond this, the Secretary recognizes the importance of credit exchange and accrual activities, and will consider whether, in the future, a competition focusing specifically on credit exchange and accrual activities is desirable.

Changes: None.

Comments: A commenter recommended that the priority be expanded to include applications for projects to offer technology workshops and training to migrant personnel.

Discussion: The limited funds available under this competition are intended to help support a few high quality programs that incorporate technology into teaching and learning and that ultimately might be adapted in other sites. Each application must include as a part of its project easily accessible technical support, adequate access to technology for all project participants and sufficient time for teachers and educational staff to learn to use the technology. This competition is not a vehicle for financing broad-based technology workshops for the migrant community.

Changes. None.

Comment. One commenter recommended that the final priority notice prohibit for-profit entities from receiving funds awarded under this competition. The commenter asserted that these entities are not authorized by the program statute to receive grant funds, and that grant funds should not benefit for-profit entities at the expense of disadvantaged migrant students.

Discussion. Section 1308(a) of the ESEA authorizes the Secretary to make grants or contracts for the improvement of inter-state and intra-state coordination of migrant education projects to SEAs, LEAs, IHEs and other public and private nonprofit entities. This notice permits these entities—and only these entities—to be recipients of project grants. While applicants must apply as part of a broader consortium that conceivably might include a for-profit entity, the for-profit entity would not be the project grantee. Beyond this, the ESEA does not prohibit a project grantee from procuring services from a for-profit entity. Indeed, cost principles in Office of Management and Budget Circular A–87, which govern an SEA's or LEA's use of project funds by virtue of 34 CFR 80.22, authorize SEA and LEA grantees to use reasonable and necessary amounts of program funds to procure supplies, materials and other services from for-profit entities.

Changes. None.

Comment. Officials within the Department suggested that the notice should include the relevant sections of EDGAR that will apply to this competition.

Discussion. The Department inadvertently omitted references to EDGAR that govern this competition and agrees that these sections should be cited in the notice.

Changes. The section, ''Applicable Regulations,'' includes references to all sections of EDGAR that apply to this competition.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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