1–23–97
Vol. 62 No. 15
Pages 3441–3602

Federal Register

Thursday
January 23, 1997

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530 1–888–293–6498

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

NOW AVAILABLE ONLINE

The January 1997 Office of the Federal Register Document Drafting Handbook

Free, easy, online access to the newly revised January 1997 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/nara/fedreg/ddh/ddhout.html

This handbook helps Federal agencies to prepare documents for publication in the Federal Register.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

Contents

Federal Register

Vol. 62, No. 15

Thursday, January 23, 1997

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

Presidential Documents

Title 3—

The President

Proclamation 6967 of January 17, 1997

Martin Luther King, Jr., Federal Holiday, 1997

By the President of the United States of America

A Proclamation

People throughout the world celebrate the birthday of Dr. Martin Luther King, Jr., as a tribute to his shining example of love and justice.

Dr. King was a man of clear and powerful vision who offered an uncompromising message of brotherhood and hope at a time when violence and racial intolerance tore at the seams of our Nation. In addressing these ills, he often referred to what he called the ''magnificent words'' of the Declaration of Independence, which proclaimed that ''all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.'' He declared these words to be ''a promissory note to which every American was to fall heir,'' and upon which payment could no longer be delayed. Dr. King's struggle made it possible for all of us to move closer to the ideals set forth in the Declaration of Independence and in our Constitution.

Although ours is the most successful multiracial, multicultural society in human history, in the words of Dr. King, ''our work is not yet done.'' We have not yet fully realized Dr. King's dream of a Nation of full opportunity, genuine equality, and consistent fair play for all.

Every citizen must rise to meet that challenge because America's promise of freedom and opportunity cannot truly be realized for any of us until it is realized for every one of us. We all have an obligation to reach out to one another—across the artificial barriers of race, gender, religion, class, and age—so that each member of our society shares fully in the promise of the American Dream.

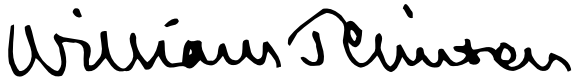
In the spring of 1963, Dr. King was arrested in Birmingham, Alabama, while protesting discrimination in public accommodations and employment. From his jail cell, he wrote of his faith that ultimately what was good in America would prevail over fear and prejudice:

> We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. . . . We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

As I begin my second term as the last President of the 20th century, I ask each American to work with me to usher in a new era of hope, reconciliation, and fellowship among all our people—rich and poor, young and old, and men and women of every race. I urge all Americans to put intolerance behind us, seek common ground, and strive for justice and community in our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 20, 1997, as the Martin Luther King, Jr., Federal Holiday. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

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



[FR Doc. 97–1743
Filed 1–22–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6968 of January 20, 1997

National Day of Hope and Renewal, 1997

By the President of the United States of America

A Proclamation

Today as we celebrate the last Presidential Inauguration of the 20th century and raise our sights with hope and humility toward the challenges of a new age, let us together ask God's guidance and blessing.

This day marks not a personal or political victory but the triumph of a free people who have freely chosen the course our country will take as we prepare for the 21st century.

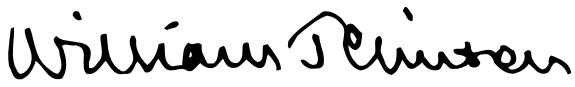
During the past 4 years, we have grown together as a people and as a Nation. Touched by tragedy, strengthened by achievement, exhilarated by the challenges and opportunities ahead, we have come a long way on our journey to change America's course for the better. We have always been a people of hope—hope that we can make tomorrow brighter than today, hope that we can fulfill our Nation's enduring promise of freedom and opportunity. And we have always known that, by the grace of God and our mutual labor, we can make our hopes reality.

Today, we live in an age of possibility—a moment of rich opportunity that brings with it a deep responsibility for the future and the generations to come. We must seize this special moment with a commitment to do right by those who will follow us in this blessed land.

Dr. Martin Luther King, Jr., whose life and vision we honor today, recognized that the destiny of each American is bound to the destiny of all Americans; that if we are to go forward, we must go forward together. So, let us pledge today to continue our national journey together. Let us reaffirm our commitment to our shared values of family and faith, work and opportunity. And let us resolve to work together, one Nation under God, to build a bridge of hope and renewal to a new American century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 20, 1997, a National Day of Hope and Renewal, and I call upon the citizens of this great Nation to observe this day by reflecting on their obligations to one another and to our beloved country and by facing the future with a spirit of hope and renewal.

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



[FR Doc. 97–1744
Filed 1–22–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 96–005–2]

Cattle Exportations; Tuberculosis and Brucellosis Test Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations by eliminating requirements for pre-export diagnostic tests for tuberculosis and brucellosis in certain cattle being exported from the United States directly to slaughter. As amended by this document, the rule eliminates the tuberculosis and brucellosis test requirements for slaughter cattle exported from States free of brucellosis or tuberculosis and those exported to countries that the Administrator has determined have an acceptable disease surveillance system and that agree to share with the United States any findings of brucellosis or tuberculosis in U.S. origin cattle. We believe that these test requirements can be eliminated without compromising the integrity of our brucellosis and tuberculosis surveillance systems. This rule facilitates the movement of U.S. slaughter cattle to foreign countries.

EFFECTIVE DATE: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, ''Inspection and Handling of Livestock for Exportation'' (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.5 requires, among other things, that cattle intended for exportation be tested for tuberculosis and brucellosis.

In an interim rule effective on February 15, 1996, and published in the Federal Register on February 23, 1996 (61 FR 6917–6918, Docket No. 96–005–1), we amended the cattle exportation regulations in 9 CFR part 91 to remove the tuberculosis and brucellosis test requirements for cattle being exported for slaughter. We amended the regulations to remove these testing requirements for cattle exported directly to slaughter in a foreign country, if the receiving country has a disease surveillance system equivalent to that of the United States, as determined by the Administrator of the Animal and Plant Health Inspection Service (APHIS), and if the receiving country agrees to share any findings of brucellosis or tuberculosis in U.S. origin cattle with APHIS. In addition, we amended the regulations to remove these testing requirements for any cattle moving directly to slaughter from a State designated as free of tuberculosis or brucellosis in 9 CFR 77.1 or 78.41, respectively. This action relieved restrictions and facilitated the movement of U.S. slaughter cattle to foreign countries.

We solicited comments concerning the interim rule for 60 days ending April 23, 1996. We received two comments by that date. Both comments were from State Departments of Agriculture. The comments are discussed below.

Both commenters agreed with the economic benefits of the rule and the actions taken by the interim rule. However, both commenters were concerned with the wording about Mexico having a tuberculosis surveillance system equivalent to that of the United States.

We understand and agree with the commenters' concerns. Federal slaughter plants in Mexico have a tuberculosis surveillance system in place. This rule deals with exports to Mexico of slaughter cattle but not other cattle. In the interim rule we should have specified that the slaughter plants in Mexico, to which the slaughter cattle are being exported, have tuberculosis surveillance systems that are acceptable to the United States. As a result of these comments, we are making changes in this final rule to revise two references to specify that the Administrator has determined that Canada and Mexico have acceptable tuberculosis surveillance systems at slaughter plants for the purposes of receiving cattle exported from the United States for slaughter.

For consistency, we are making the same changes for brucellosis testing. Therefore, two references will be changed to specify that the Administrator has determined that Canada has an acceptable brucellosis surveillance system at slaughter plants for the purposes of receiving cattle exported from the United States for slaughter.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

As stated in the interim rule published in the Federal Register on February 23, 1996, timely compliance with sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) was impracticable to make this rule effective in time for U.S. exporters of slaughter cattle to take advantage of a favorable marketing situation. This final rule includes the analysis of the economic impact of this regulatory change on small entities.

Our interim rule amended the regulations in § 91.5 to remove the tuberculosis and brucellosis testing requirements for cattle moving directly to slaughter in a foreign country. Cattle exported directly for slaughter no longer require tuberculosis or brucellosis tests

prior to exportation when the receiving country (1) has a disease surveillance system at slaughter plants that is acceptable to the United States and (2) agrees to share any findings of tuberculosis or brucellosis in U.S. origin cattle with APHIS. Cattle moving directly to slaughter present a negligible risk of transmitting either brucellosis or tuberculosis to other cattle. Monitoring of these cattle by the receiving country will provide information on the source of any affected cattle within the United States. The interim rule also removed these test requirements for cattle moving directly to slaughter when they originate from a Class Free State for brucellosis or an Accredited-Free State for tuberculosis. Cattle exported for slaughter from a State which is free of brucellosis or tuberculosis present a negligible risk of carrying brucellosis or tuberculosis, respectively.

The Regulatory Flexibility Act requires that we specifically consider the economic impact associated with rule changes on small entities. The Small Business Administration's definition of a small entity involved in cattle exportation is one whose total sales is less than $0.5 million annually. In 1992 there were 1,034,189 cattle and calf farms in the United States, of which 1,011,591, or 97.8 percent, would be considered small entities. The number of these entities exporting cattle for slaughter to Mexico and Canada or exporting cattle for slaughter from a brucellosis or tuberculosis free State is unknown.

There were 148,906 and 71,781 cattle, except breeding cattle, exported from the United States in 1994 and 1995, respectively. In both years, over 99 percent of the cattle were exported to Mexico and Canada. Approximately 50 percent of the cattle exported to Canada moved directly to slaughter and virtually all of the cattle exported to Mexico moved directly to slaughter.

To the extent that the elimination of testing requirements represents a reduction in operating costs, any entity bypassing this testing will benefit economically from the rule change. The degree to which an entity is affected depends on its market power or on the extent to which the cost reduction can be retained by the entity. Without information on either profit margins and operational expenses of the affected entities or the supply responsiveness of the affected industry, the affect cannot be precisely predicted. However, we expect that some exporters will experience a small economic benefit as a result of eliminating the test requirements and their associated costs.

The cost of these tests vary depending upon where and how the tests are performed. Brucellosis tests may be administered along with the tuberculosis test. Brucellosis and tuberculosis tests cost pennies per animal when performed at a market concentration center where a card test is used. At a farm the brucellosis and tuberculosis tests cost as much as $19.00 per animal including labor, laboratory costs, and miscellaneous charges. This cost would be only slightly lower for performing the tuberculosis test alone. With such a low cost per animal, we do not expect these changes to have a significant impact on any entity, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, and Transportation.

Accordingly, the interim rule amending 9 CFR part 91 which was published at 61 FR 6917–6918 on February 23, 1996, is adopted as a final rule with the following changes:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 91.5 is amended by revising paragraphs (a)(1)(i), (a)(2), (b)(1)(iv) and (b)(2) to read as set forth below.

§ 91.5 Cattle.

* * * * *

(a) * * *

(1) * * *

(i) Cattle exported directly to slaughter in a country that the Administrator has determined has an acceptable tuberculosis surveillance system at slaughter plants and that agrees to share any findings of tuberculosis in U.S. origin cattle with APHIS; or

* * * * *

(2) The Administrator has determined that the following countries have an acceptable tuberculosis surveillance system at slaughter plants: Canada and Mexico.

(b) * * *

(1) * * *

(iv) Cattle exported directly to slaughter in a country that the Administrator has determined has an acceptable brucellosis surveillance system at slaughter plants and that agrees to share any findings of brucellosis in U.S. origin cattle with APHIS; or

* * * * *

(2) The Administrator has determined that the following country has an acceptable brucellosis surveillance system at slaughter plants: Canada.

* * * * *

Done in Washington, DC, this 16th day of January 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–1634 Filed 1–22–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–70–AD; Amendment 39–9887; AD 97–02–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. It requires a one-time inspection to verify the correct routing and tension of the flight control lock cables and the elevator control cables, and rerouting or adjustment of the tension of these cables, if necessary. This amendment is prompted by a report indicating that an inspection for correct routing and tension of those cables may not have been accomplished during modification of the airplanes at the factory. The actions specified by this AD are intended to prevent incorrect routing and tension of the flight control lock cables and the elevator control cables, which could result in

inadvertent disconnection of those cables, and consequent reduced controllability of the airplane.

DATES: Effective February 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on September 30, 1996 (61 FR 51066). That action proposed to require a one-time visual inspection to verify the routing of the flight control lock cables and to verify the tension of the left and right elevator control cables, and rerouting of cables or adjustment, if necessary.

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

Conclusion

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

Cost Impact

The FAA estimates that 5 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,400, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–02–03 Fokker: Amendment 39–9887. Docket 96–NM–70–AD.

Applicability: Model F28 Mark 0100 series airplanes having serial numbers 11323 through 11326 inclusive, 11423, 11429, 11431, 11441, 11444, and 11445; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect routing and incorrect tension of the flight control lock cables and elevator control cables, which could result in inadvertent disconnection of those cables, and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to verify the correct routing and correct tension of the flight control lock cables and elevator control cables, in accordance with Fokker Service Bulletin SBF100–27–064, dated September 15, 1994.

(1) If the routing and tension of the flight control lock cables and elevator control cables are correct, as specified in the service bulletin, no further action is required by this AD.

(2) If the routing and/or tension of the flight control lock cables or the elevator control cables is not correct, as specified in the service bulletin, prior to further flight, reroute and/or adjust the tension of those cables, as necessary, in accordance with the service bulletin.

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

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

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

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–27–064, dated September 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies

may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 27, 1997.

Issued in Renton, Washington, on January 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–811 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–79–AD; Amendment 39–9890; AD 97–02–06]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 and F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 and F28 Mark 0100 series airplanes, that requires installation of a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl. This amendment is prompted by a report indicating that the housing of the lavatory pump and filter assembly is not grounded properly. The actions specified by this AD are intended to prevent such improper grounding, which could result in an electrical fire and/or injury to passengers and crewmembers.

DATES: Effective February 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 050 and F28 Mark 0100 series airplanes was published in the Federal Register on October 1, 1996 (61 FR 51255). That action proposed to require installation of a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 48 Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $209 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model F28 Mark 0100 series airplanes of U.S. registry is estimated to be $27,312, or $569 per airplane.

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

Currently, there are no Model F27 Mark 050 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $88 per airplane. Based on these figures, the cost impact of this AD on Model F27 Mark 050 series airplanes would be $208 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–02–06 Fokker: Amendment 39–9890. Docket 96–NM–79–AD.

Applicability: Model F27 Mark 050 series airplanes, as listed in Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994; and Model F28 Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

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

Compliance: Required as indicated, unless accomplished previously.

To prevent improper grounding of the housing of the lavatory pump and filter assembly, which could result in an electrical fire and/or injury to passengers and crewmembers, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a bonding cable for the housing of the lavatory pump and filter assembly and the lavatory bowl in accordance with Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994 (for Model F27 Mark 050 series airplanes); and Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995 (for Model F28 Mark 0100 series airplanes); as applicable.

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

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

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

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994; and Fokker Service Bulletin SBF100–25–069, dated July 13, 1994, as revised by Service Bulletin Change Notification (SBCN) SBF100–25–069/01, dated February 15, 1995; as applicable. Fokker Service Bulletin SBF50–25–046, Revision 1, dated August 5, 1994, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	August 5, 1994.
2–3	Original	August 1, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 27, 1997.

Issued in Renton, Washington, on January 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–882 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–243–AD; Amendment 39–9889; AD 97–02–05]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires, among other things, replacing certain yaw damper servos in the autopilot system, or rendering the servo inoperative. The actions specified by that AD are intended to prevent overheat failure of the Flight Control Computer (FCC), which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane. This new amendment requires installation of circuit breakers on the avionics relay panel, which, when accomplished, constitutes terminating action for the previous requirements of the AD.

DATES: Effective February 27, 1997.

The incorporation by reference of Jetstream Service Bulletin J41–22–006, dated July 1, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of February 27, 1997.

The incorporation by reference of Jetstream Alert Service Bulletin J41–22–005, dated July 1, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 1, 1996 (61 FR 48614, September 16, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–19–06, amendment 39–9754 (61 FR 48614, September 16, 1996), which is applicable to certain Jetstream Model 4101 airplanes, was published in the Federal Register on October 23, 1996 (61 FR 54967). The action proposed to supersede AD 96–19–06 to continue to require the actions currently specified in that AD:

1. A one-time inspection of the airplane records to determine:

—the serial number,
—the total number of hours time-in-service accumulated,
—the date of installation of the yaw damper servo in the autopilot system; and
—the date of installation of a particular kit, if installed.

2. Removal and replacement of certain yaw damper servos, or rendering the yaw damper servo inoperative.

The action also proposed to add a requirement to install circuit breakers on the avionics relay panel. When accomplished, this installation would constitute terminating action for the previous requirements of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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

Cost Impact

There are approximately 55 Jetstream Model 4101 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–19–06 take approximately 2 to 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be between $6,600 and $16,500, or between $120 and $300 per airplane.

The new action (installation of circuit breakers) that is required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the installation requirement of this AD on U.S. operators is estimated to be $9,900, or $180 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9754 (61 FR 48614, September 16, 1996), and by adding a new airworthiness directive (AD), amendment 39–9889, to read as follows:

97–02–05 Jetstream Aircraft Limited: Amendment 39–9889. Docket 96–NM–243–AD. Supersedes AD 96–19–06, Amendment 39–9754.

Applicability: Model 4101 airplanes having serial numbers 41004 through 41092, inclusive; on which Jetstream Service Bulletin J41–22–006, dated July 1, 1996 (Kit JK42867), has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheat failure of the Flight Control Computer (FCC), which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane, accomplish the following:

(a) Within 14 days after October 1, 1996 (the effective date of AD 96–19–06), perform a one-time inspection of the airplane records to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of Kit JK42716 (reference Jetstream Service Bulletin J41–53–016 or J41–22–007), if installed. Accomplish the inspection in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996. Thereafter, either remove and replace the yaw damper servo and install Kit JK42716 (if not installed previously), or render the yaw damper servo inoperative, in accordance with Part 2 or 3 of the alert service bulletin, respectively, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If Kit JK42716 has not been installed: Prior to the accumulation of 1,000 hours total time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(2) If Kit JK42716 has been installed and the yaw damper servo was installed prior to the installation of Kit JK42716: Prior to the accumulation of 1,000 hours total time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(3) If Kit JK42716 has been installed and the yaw damper servo was installed after the installation of Kit JK42716: Prior to the accumulation of 3,000 total hours time-in-service on the yaw damper servo, or within 30 days after October 1, 1996, whichever occurs later.

(b) Within 90 days after the effective date of this AD, install circuit breakers on the avionics relay panel (Kit JK42867) in accordance with Jetstream Service Bulletin J41–22–006, dated July 1, 1996. Accomplishment of this installation constitutes terminating action for the requirements of paragraph (a) of this AD.

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

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

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

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996; and Jetstream Service Bulletin J41–22–006, dated July 1, 1996. The incorporation by reference of Jetstream Alert Service Bulletin J41–A22–005, dated July 1, 1996, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 1, 1996 (61

FR 48614, September 16, 1996). The incorporation by reference of Jetstream Service Bulletin J41–22–006, dated July 1, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 23, 1997.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–881 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–21–AD; Amendment 39–9885; AD 97–02–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Model PA–31T2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft, Inc. (Piper) Model PA–31T2 airplanes that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 installed in accordance with Supplemental Type Certificate (STC) SA599GL. This action requires rerouting the landing gear emergency extension line. This AD results from three incidents of the brake cylinder contacting the landing gear emergency extension air line on both wheel wells. The actions specified by this AD are intended to prevent the brake cylinder from chafing against the landing gearemergency extension air line when the gear is in the up and locked position, which could result in damage to the air line and subsequent loss of emergency gear extension capability.

DATES: Effective February 14, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from the Parker Hannifin Corporation, Aircraft Wheel & Brake, 1160 Center Road, P.O. Box 158, Avon, Ohio 44011; telephone (216) 937–6211; facsimile (216) 937–5409. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Miller, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7837; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–31T2 airplanes that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 installed in accordance with STC SA599GL was published in the Federal Register on June 13, 1996 (61 FR 29992). The action proposed to require rerouting the landing gear emergency extension air line. Accomplishment of the proposed action as specified in the supplemental notice of proposed rulemaking (NPRM) would be in accordance with Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995.

The supplemental NPRM results from three incidents of the brake cylinder contacting the landing gear emergency extension air line on both wheels.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 62 Piper Model PA31–T2 airplanes in the U.S. registry could incorporate Parker Hannifin Wheel and Brake Conversion Kit 199–111 (in accordance with STC SA599GL), that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators could be as much as $16,120 if all affected airplanes had the referenced conversion kit installed.

Parker Hannifin has informed the FAA that it has distributed 31 kits (shipped after March 28, 1994) to Piper Model PA31T2 airplane owners/operators. Kits shipped after March 28, 1994, included the replacement parts referenced in Parker Hannifin SB7034, Revision B, dated December 19, 1995. Based on each of the 31 kits being incorporated on an affected airplane, the cost impact of this AD on U.S. owners and operators is reduced 50 percent from $16,120 to $8,060. The reduction results from the difference between the 62 airplanes that are type certificated to have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 incorporated (in accordance with STC SA599GL) and the 31 kits that have already been distributed.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–02–01 The New Piper Aircraft, Inc.: Amendment 39–9885; Docket No. 95–CE–21–AD.

Applicability: Model PA31T2 airplanes (serial numbers31T–8166001 through 31T–8166062), certificated in any category, that have a Parker Hannifin Wheel and Brake Conversion Kit 199–111 incorporated in accordance with Supplemental Type Certificate (STC) SA599GL.

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

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the brake cylinder from chafing against the landing gear emergency extension air line when the gear is in the up and locked position, which could result in damage to the air line and subsequent loss of emergency gear extension capability, accomplish the following:

(a) Reroute the landing gear emergency extension air line in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

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

(d) The rerouting required by this AD shall be done in accordance with Parker Hannifin Service Bulletin SB7034, Revision B, dated December 19, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Parker Hannifin Corporation, Aircraft Wheel & Brake, 1160 Center Road, P.O. Box 158, Avon, Ohio 44011. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9885) becomes effective on February 14, 1997.

Issued in Kansas City, Missouri, on January 6, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–880 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 97

[Docket No. 28777; Amdt. No. 1776]

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 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 routing 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 January 10, 1997.

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. 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 ISAPs, identified as follows:

...Effective January 30, 1997

Fayetteville, AR, Drake Field, LDA/DME RWY 34, Orig
Burlington, CO, Kit Carson County, LOC RWY 33, Orig
Suffolk, VA, Suffolk Muni, LOC RWY 4, Orig
Suffolk, VA, Suffolk Muni, NDB RWY 4, Orig

...Effective February 27, 1997

Unalakleet, AK, Unalakleet, MLS RWY 14, Orig
Frankfort, IL, Frankfort, VOR or GPS RWY 27, Amdt 4
Youngstown, OH, Youngstown Elser Metro, VOR or GPS–C, Amdt 1
Miller, SD, Miller Muni, NDB or GPS RWY 13, Amdt 2, CANCELLED
Miller, SD, Miller Muni, NDB RWY 15, Orig

...Effective March 27, 1997

Port Heiden, AK, Port Heiden, VOR/DME RWY 13, Orig
St Mary's, AK, St Mary's, LOC/DME RWY 16, Amdt 2
St Mary's, AK, St Mary's, NDB RWY 16, Amdt 1
Benton, AR, Saline County, GPS RWY 17, Orig
Benton, AR, Saline County, GPS RWY 35, Orig
Hope, AR, Hope Muni, VOR/DME RWY 4, Amdt 7
Hope, AR, Hope Muni, NDB RWY 16, Amdt 4
Hope, AR, Hope Muni, GPS RWY 4, Orig
Hope, AR, Hope Muni, GPS RWY 16, Orig
Grass Valley, CA, Nevada County Air Park, GPS RWY 7, Orig
Telluride, CO, Telluride Regional, GPS RWY 9, Amdt 1
Oxford, CT, Waterbury-Oxford, NDB RWY 36, Amdt 7
Oxford, CT, Waterbury-Oxford, GPS RWY 18, Orig
Oxford, CT, Waterbury-Oxford, GPS RWY 36, Orig
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 5
Brooksville, FL, Hernando County, GPS RWY 9, Orig
Brooksville, FL, Hernando County, GPS RWY 20, Orig
Claxton GA, Claxton-Evans County, NDB RWY 9, Orig, CANCELLED
Claxton, GA, Claxton-Evans County, NDB RWY 9, Orig
Muscatine, IA, Muscatine Muni, GPS RWY 23, Amdt 1
Frankfort, IN, Frankfort Muni, NDB or GPS RWY 9, Amdt 1
Frankfort, IN, Frankfort Muni, GPS RWY 27, Orig
Menominee, MI, Menominee-Marinette Twin County, GPS RWY 32, Orig
Ely, MN, Ely Muni, VOR/DME RWY 30, Amdt 4
ELY, MN, Ely Muni, VOR/DME RWY 12, Amdt 4
Ely, MN, Ely Muni, VOR or GPS RWY 30, Amdt 6
Ely, MN, Ely Muni, VOR or GPS RWY 12, Amdt 6
St Paul, MN, St Paul Downtown Holman Fld, GPS RWY 14, Orig
Sidney, MT, Sidney-Richland Muni, GPS RWY 1, Orig
Sidney, MT, Sidney-Richland Muni, GPS RWY 19, Orig
York, NE, York Muni, GPS RWY 17, Orig
York, NE, York Muni, GPS RWY 35, Orig
West Milford, NJ, Greenwood Lake, GPS RWY 6, Orig
Columbus, OH, Ohio State University, LORAN RNAV RWY 9R, Orig, CANCELLED
Columbus, OH, Ohio State University, LORAN RNAV RWY 27L, Orig, CANCELLED
Columbus, OH, Ohio State University, GPS RWY 9R, Orig
Columbus, OH, Ohio State University, GPS RWY 27L, Orig
Newberry, SC, Newberry Muni, GPS RWY 22, Orig
Houston, TX, Houston Intercontinental, GPS RWY 14L, Orig
Marfa, TX, Marfa Muni, GPS RWY 30, Orig
Galax/Hillsville, VA, Twin County, NDB OR GPS–A, Amdt 6
Galax/Hillsville, VA, Twin County, GPS RWY 36, Orig
Leesburg, VA Leesburg Muni/Godfrey Field, VOR OR GPS–A, Amdt 1
Leesburg, VA Leesburg Muni/Godfrey Field, LOC RWY 17, Amdt 2
Leesburg, VA Leesburg Muni/Godfrey Field, GPS RWY 17, Orig
Orange, VA, Orange County, GPS RWY 7, Orig
Portsmouth, VA, Hampton Roads, NDB OR GPS RWY 2, Amdt 6
Portsmouth, VA, Hampton Roads, GPS RWY 10, Orig

Portsmouth, VA, Hampton Roads, GPS RWY 28, Orig
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Amdt 1
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Regional, GPS RWY 23, Orig
Charlotte Amalie, VI, Cyril E King, GPS RWY 10, Orig
Phillips, WI, Price County, GPS RWY 1, Orig
Phillips, WI, Price County, GPS RWY 19, Orig

Note: The FAA published two amendments of the Federal Aviation Regulations (Vol 61, No. 248, page 67704, dated Tuesday, December 24, 1996) under Sections 97.29 and 97.33 in Docket No. 28765, Amdt. No. 1770 to Part 97, with an effective publication date of January 30, 1997, which is hereby amended to read as follows:

Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 15L, Amdt 4
Wilmington, DE, New Castle County, VOR/DME RNAV OR GPS RWY 9, Orig

[FR Doc. 97–1579 Filed 1–22–97; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28778; Amdt. No. 1777]

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 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 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 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 affected airport is located.

By Subcription—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 Aviations 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 SIAP 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 January 10, 1997.

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

2. Part 97 is amended as read as follows:

§§ 97.23, 97.25, 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
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0026	ILS RWY 22, AMDT 4...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0027	ILS RWY 11L, AMDT 3...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0028	ILS RWY 29R, AMDT 7...
01/02/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 7/0029	NDB or GPS RWY 29R, AMDT 11...
01/03/97	AL	Auburn	Auburn-Opelika Robert G. Pitts	FDC 7/0042	VOR or GPS RWY 28 AMDT 9A...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0041	NDB RWY 28 AMDT 8...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0044	LOC BC RWY 10 AMDT 7...
01/03/97	FL	Gainesville	Gainesville Regional	FDC 7/0045	ILS RWY 28 AMDT 11...
01/05/97	IL	Monline	Quad City Airport	FDC 7/0066	ILS RWY 27 ORIG–A...
01/06/97	AR	Little Rock	Adams Field	FDC 7/0101	ILS RWY 22L, AMDT 1B...
01/06/97	PA	Perkasie	Pennridge	FDC 7/0102	VOR or GPS RWY 8 AMDT 1...
01/07/97	OR	Portland	Portland Intl	FDC 7/0119	ILS RWY 10R AMDT 30B...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0134	ILS RWY 32 AMDT 17...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0135	NDB RWY 32 AMDT 3...
01/07/97	SD	Rapid City	Rapid City Regional	FDC 7/0136	VOR or TACAN or GPS RWY 32 AMDT 24...
10/03/96	KS	Manhattan	Manhattan Muni	FDC 6/7604	VOR or GPS RWY 3, AMDT 17...
12/06/96	OH	Columbus	Port Columbus Intl	FDC 6/9115	NDB RWY 28R ORIG...
2/20/96	FL	St Augustine	St Augustine	FDC 6/9433	VOR or GPS RWY 13 AMDT 5...

[FR Doc. 97–1578 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28779; Amdt. No. 1778]

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: Aviailability 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 January 10, 1997.

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*

De Queen, AR, J. Lynn Helms Sevier County, NDB or GPS RWY 8, Amdt 4A CANCELLED

De Queen, AR, J. Lynn Helms Sevier County, NDB RWY 8, Amdt 4A

Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt 3 CANCELLED

Holdenville, OK, Holdenville Muni, NDB RWY 17, Amdt 3

Houston, TX, Ellington Field, VOR or TACAN or GPS RWY 22, Amdt 2 CANCELLED

Houston, TX, Ellington Field, VOR or TACAN RWY 22, Amdt 2

[FR Doc. 97–1577 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4192–N–01]

Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of staff guidance.

SUMMARY: The Office of Consumer and Regulatory Affairs in HUD has developed guidelines to assist its staff in addressing preemption issues concerning the National Manufactured Housing Construction and Safety Standards Act of 1974. Because of the interest of outside persons in the subject generally, HUD has decided to publish these internal guidelines to assist regulated entities and consumers in understanding the guidelines under which HUD will be operating. These guidelines are not binding on either HUD or the public and are published for informational purposes only.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–6401, or on e-mail through Internet at David__R.__Williamson@hud.gov. For hearing and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The staff guidelines reproduced in this notice are internal guidance to assist the HUD office administering the manufactured housing program in answering questions from the public as to whether particular State or local laws or regulations are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act). The guidelines are based upon the Act and its implementing regulations in 24 CFR parts 3280, 3282, and 3800 and do not provide new interpretations of the Act

or create new HUD policy. The guidelines were developed to assist HUD staff in giving uniform and timely responses to the public, including consumers and affected industries, and State and local governments on preemption issues.

HUD is publishing these guidelines because of the interest in preemption questions that has been expressed by members of these groups. HUD welcomes comments on these guidelines. Anyone wishing to comment on these guidelines may do so by submitting written comments to the attention of the person listed in the ''For Further Information Contact'' section of this notice.

The internal guidelines that were prepared are as follows:

Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act

I. Introduction

These guidelines have been prepared to assist in answering questions from the public as to whether particular State or local laws or regulations are preempted by the Act. These guidelines are based upon the National Manufactured Housing Construction and Safety Standards Act and its implementing regulations and are not intended to add new interpretations to the Act or to create new HUD policy.

II. Statutory And Regulatory Background

The Act establishes a national set of construction standards for manufactured housing. To ensure that State or local governments did not enact or allow to continue conflicting construction standards, Congress provided that no State or local government could establish a standard dealing with an aspect of performance that is not identical to those standards established under the Act (section 604(d)). However, where there is no Federal standard, the States are free to act (section 623(a)).

HUD has interpreted these statutory provisions in its regulations implementing the Act (24 CFR 3282.11). In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding construction and safety that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the Federal superintendence of the industry as established by the Act (24 CFR 3282.11).

The Act does not impose a duty on HUD to make any determinations as to the applicability of the preemption provision, to investigate preemption issues, or to render advisory opinions regarding preemption questions. Further, a State is not specifically prohibited under section 610 of the Act from implementing a provision that is preempted, nor is there any requirement under the Act for the Secretary to enforce the preemption provision. Generally, enforcement of preemption requirements is left up to the Courts. Where an issue is unclear, it is appropriate for the Courts to decide whether a State or local requirement is preempted.

To the extent possible, HUD wishes to be responsive to inquiries of consumers, the industry, and State or local governments on the applicability of preemption. These responses should be considered as an effort by HUD to advise the public of its construction of the statute and the rules which it administers, and to give its opinion as to the applicable law and the particular facts.

III. Guidelines for Specific Situations

Most inquiries can be responded to merely by discerning if there is a specific Federal standard which addresses the same aspect of performance as the State standard. If so, the Federal law preempts the State law. In a significant number of cases, however, the determination is not as clear and requires either an engineering or legal analysis, or both. There are four general areas of inquiry which are frequently raised:

A. Installation

There is no specific Federal standard that deals with the installation of manufactured homes. As such, standards as to the installation of manufactured homes can be regulated by local or State governments and are not preempted under the Act.

It is possible, however, that a local installation rule may hinder the implementation of Federal standards. For example, the implementation of a local rule may conflict with a requirement of a Federal construction standard for plumbing or water hookup. In such cases, the local rule is preempted.

B. Zoning

Normally, zoning issues fall outside the scope of the preemption provisions of sections 604 of the Act. There may be limited instances, however, in which the Federal definition of ''manufactured home'' could fall within the broad definitions applied to prefabricated or factory built homes under the local zoning ordinance. Such homes are treated differently depending on the building code under which they are constructed.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of homes so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics protects property values, preserves the character and integrity of communities and neighborhoods, and assures architectural compatibility.

If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority. Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as the local or State Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal standards. By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.

A locality is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Federal definition of Manufactured Homes the same under local zoning laws.

C. State Enforcement

A number of questions have arisen as to when a State's enforcement of manufactured housing standards are preempted by Federal law. HUD's regulations at 24 CFR 3282.11 (c) and (d) set forth a clear standard as to the appropriateness of State enforcement of its manufactured home standards. The Federal regulations prohibit a State from establishing a code enforcement system for manufactured homes which is outside, or goes beyond, those enforcement procedures specifically set forth in the Federal regulations. ''The test of whether a State rule or action is

valid or must give way is whether the State rule can be enforced, or the action taken, without impairing the Federal superintendence of the manufactured home industry as established by the Act'' (24 CFR 3282.11(d)). There are several specific situations:

1. A State, as a State Administrative Agency (SAA) under section 623 of the Act, can enforce the Federal standards. It may also enforce State standards which are identical to the Federal standards. Such actions would not be preempted. However, the State's system of enforcing these standards must be identical to the enforcement procedures in the Federal regulations. ''No State may establish * * * procedures or requirements * * * which * * * require remedial actions which are not required by the Act and the regulations'' (24 CFR 3282.11(c)).

2. A State may enforce its own consumer protection or warranty laws as to defects in individual homes. As such, a State may require a manufacturer to correct non-compliances and defects in response to individual consumer complaints. Such acts would not be preempted by Federal law (24 CFR 3282.11(d)).

3. Notwithstanding the above, however, there are limitations on a State's actions to correct individual homes. These are situations in which State action would interfere with Federal superintendence of the manufactured home industry.

(a) *Imminent safety hazards or serious defects.* Where it appears that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement (24 CFR 3282.405(b) and 3282.407(a)).

(b) *Class of manufactured homes.* Where it appears that the same defect exists in a class of manufactured homes and the State is *not* the State in which the homes were produced, then the State is required to refer the matter to the SAA in the State in which the homes were produced or to HUD (if there is no SAA in the State of production) for enforcement. Further, if a class of defective homes is produced in more than one state, HUD is responsible for the enforcement actions. If the homes were all manufactured in the State, the State may take actions, consistent with the Federal regulations, with regard to the noncompliance and defects (24 CFR 3282.405(b) and 3282.407(a)(3)).

(c) *Prior HUD enforcement.* Where HUD has already taken action to have a class of serious defects corrected, then the State is preempted from taking corrective actions of its own pursuant to the Act (24 CFR 3282.404(e)).

D. Utility Companies

There have been a few utility companies which have attempted to impose their own construction or safety standards on manufactured homes as a requirement for connection to their services. The Act, by its express terms, prohibits only ''State or political subdivisions of a State'' from establishing standards that conflict with the Federal standards (section 604(d)). Accordingly, if the utility company is owned or controlled by a political subdivision, its standards are preempted by the Federal standards. If the utility is privately owned, its standards would not be preempted.

E. State Construction and Safety Standards

1. *Aspects of performance.* Additional questions arise in situations in which the State or locality attempts to apply its own building or safety code to the manufactured home. Under section 604 of the Act, State law is preempted whenever there is a State performance standard regarding construction and safety that is not identical to an established Federal standard. On the other hand, section 623 of the Act provides that Federal law does not preempt State construction or safety standards for which a Federal standard had not been established. Thus, for there to be Federal preemption, there must be a specific aspect of a Federal performance standard which duplicates a local standard.

Federal preemption cannot be based upon a general purpose of the Act, or the need for national uniformity in the manufactured housing industry. The courts have applied this ''aspect of performance'' standard in analogous situations by focusing not on the purpose or scope of the Act, but, rather, on the specific requirements of an established Federal standard. If the Federal standard is encompassed or impacted by the State requirement, the State law is preempted.

2. *Superintendence.* It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry as established by the Act.

Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.

The scope of this regulatory provision is limited by the language ''as established by the Act''. This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

Authority: 42 U.S.C. 3535(d) and 5401 et seq.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–1646 Filed 1–22–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8710]

RIN 1545–A073

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the consistency rules under section 338 of the Internal Revenue Code of 1986 that are applicable to certain cases involving controlled foreign corporations. The final regulations substantially revise and simplify the stock and asset consistency rules. The final regulations include the provisions of the consistency rules applicable to controlled foreign corporations contained in recent proposed and temporary regulations. The final regulations would affect taxpayers that own controlled foreign corporations.

EFFECTIVE DATE: These regulations are effective January 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 338 of the Internal Revenue Code.

On January 20, 1994, temporary regulations (TD 8516) were published in the Federal Register (59 FR 2956) under section 338 of the Internal Revenue Code. See 1994–1 C.B. 119. A notice of proposed rulemaking (INTL–0177–90) cross-referencing the temporary regulations was published in the Federal Register for the same day (59 FR 3045). See 1994–1 C.B. 818. The temporary regulations provided rules to replace the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T. The temporary regulations included consistency rules applicable to certain cases involving controlled foreign corporations (CFCs).

No written comments responding to the notice were received. No public hearing was requested or held. The proposed regulations under section 338 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

The preamble to the temporary and proposed regulations (1994–1 C.B. 119) contains a discussion of the provisions. Changes to the temporary and proposed regulations are noted below.

Section 1.338–4T(h)(3) of the temporary regulations is clarified by stating that the basis of the stock of a controlled foreign corporate target affiliate is not increased by section 1248 earnings attributable to the disposition of an asset in which a carryover basis is taken under this section.

Section 1.338–4T(h)(4) of the temporary regulations addresses a situation in which the income or gain from the disposition of a controlled foreign corporation target affiliate (CFC T affiliate) asset is not subject to the consistency rules of paragraph (h)(2). The regulation states that if a CFC T affiliate pays a dividend to a target (T) or a domestic T affiliate wholly or partially out of the earnings generated by the disposition of that asset, and the dividend increases the basis of the T stock under § 1.1502–32, then the basis of the stock of the CFC T affiliate is reduced by the amount of the dividend that was paid from the earnings and profits resulting from the asset disposition. This rule applies to any actual dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291) or amount included in income under section 951(a)(1)(B).

The final regulations retain this rule. The final regulations also add a special ordering rule, in § 1.338–4(h)(4)(ii), clarifying that any such dividend is first considered attributable to earnings and profits resulting from the disposition of the asset.

Section 1.338–4(h)(4)(ii) is clarified to state that the basis of the stock of a controlled foreign corporation may not be reduced below zero under the carryover basis rules of § 1.338–4.

Section 1.338–4(h)(2)(iv)(A) and § 1.338–4(h)(4)(iii)(A) are added to allow the purchasing group in certain instances to increase the basis of the CFC T stock by the amount of either the basis increase denied under § 1.338–4(h)(2)(ii) or the basis reduction required under § 1.338–4(h)(4)(ii). The rule applies when the purchasing group disposes of an asset acquired from CFC T that is subject to the consistency rules to an unrelated party in a taxable transaction and includes in U.S. gross income the greater of (i) the income or gain equal to the basis amount denied to the asset under either § 1.338–4(h)(2)(i) or § 1.338–4(g) and § 1.338–4(h)(4)(i), respectively, or (ii) the gain recognized on the asset.

Similarly, § 1.338–4(h)(2)(iv)(B) and § 1.338–4(h)(4)(iii)(B) are added to allow the purchasing group to increase the basis of an asset acquired from CFC T that is subject to the consistency rules by the basis amount denied to the asset under either § 1.338–4(h)(2)(i) or § 1.338–4(g) and § 1.338–4(h)(4)(i). The rule applies when the purchasing group disposes of the stock of CFC T to an unrelated party in a taxable transaction and includes in U.S. gross income the greater of (i) the gain equal to the basis increase denied under § 1.338–4(h)(2)(ii) or the basis reduction required under § 1.338–4(h)(4)(ii), respectively, or (ii) the gain recognized in the stock.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996 the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.338–4T(h) to read as follows:

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

Par. 2. In § 1.338–0, the outline of topics is amended by revising the entry for § 1.338–4(h) and removing the entry for § 1.338–4T to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–4 Asset and stock consistency.

* * * * *

(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income or gain resulting from asset dispositions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Operating rule.
(iv) Increase in asset or stock basis.
(3) Stock issued by target affiliate that is a controlled foreign corporation.
(4) Certain distributions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Increase in asset or stock basis.
(5) Examples.

* * * * *

Par. 3. Section 1.338–4 is amended as follows:

1. Paragraph (a)(5) is amended by removing the language ''Section 1.338–4T(h)'' and adding ''Paragraph (h) of this section'' in its place.

2. Paragraph (c)(4) is amended by removing the language ''§ 1.338–4T(h)(2)'' and adding ''paragraph (h)(2) of this section'' in its place.

3. Paragraph (d)(2)(iii) is amended by removing the language ''§ 1.338–4T(h)(3)'' and adding ''paragraph (h)(3) of this section'' in its place.

4. Paragraph (g)(2) is amended by removing the language ''§ 1.338–4T(h)(4)'' and adding ''paragraph (h)(4) of this section'' in its place.

5. Paragraph (h) is revised.

6. Paragraph (j)(3)(i)(A)(*2*) is amended by removing the language ''§ 1.338–4T(h)'' and adding ''paragraph (h) of this section'' in its place.

The revision reads as follows:

§ 1.338–4 Asset and stock consistency.

* * * * *

(h) *Consistency for target affiliates that are controlled foreign corporations*—(1) *In general.* This paragraph (h) applies only if target is a domestic corporation. For additional rules that may apply with respect to controlled foreign corporations, see paragraph (g) of this section. The definitions and nomenclature of § 1.338–1 (b) and (c) and paragraph (e) of this section apply for purposes of this section.

(2) *Income or gain resulting from asset dispositions*—(i) *General rule.* Income or gain of a target affiliate that is a controlled foreign corporation from the disposition of an asset is not reflected in the basis of target stock under paragraph (c) of this section unless the income or gain results in an inclusion under section 951(a)(1)(A), 951(a)(1)(C), 1291 or 1293.

(ii) *Basis of controlled foreign corporation stock.* If, by reason of paragraph (h)(2)(i) of this section, the carryover basis rules of this section apply to an asset, no increase in basis in the stock of a controlled foreign corporation under section 961(a) or 1293(d)(1), or under regulations issued pursuant to section 1297(b)(5), is allowed to target or a target affiliate to the extent the increase is attributable to income or gain described in paragraph (h)(2)(i) of this section. A similar rule applies to the basis of any property by reason of which the stock of the controlled foreign corporation is considered owned under section 958(a)(2) or 1297(a).

(iii) *Operating rule.* For purposes of this paragraph (h)(2)—

(A) If there is an income inclusion under section 951 (a)(1) (A) or (C), the shareholder's income inclusion is first attributed to the income or gain of the controlled foreign corporation from the disposition of the asset to the extent of the shareholder's pro rata share of such income or gain; and

(B) Any income or gain under section 1293 is first attributed to the income or gain from the disposition of the asset to the extent of the shareholder's pro rata share of the income or gain.

(iv) *Increase in asset or stock basis*—(A) If the carryover basis rules under paragraph (h)(2)(i) of this section apply to an asset, and the purchasing corporation disposes of the asset to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the income or gain from the disposition of the asset by the selling controlled foreign corporation that was reflected in the basis of the target stock under paragraph (c) of this section, or the gain recognized on the asset by the purchasing corporation on the disposition of the asset, then the purchasing corporation or the target or a target affiliate, as appropriate, shall increase the basis of the selling controlled foreign corporation stock subject to paragraph (h)(2)(ii) of this section, as of the date of the disposition of the asset by the purchasing corporation, by the amount of the basis increase that was denied under paragraph (h)(2)(ii) of this section. The preceding sentence shall apply only to the extent that the controlled foreign corporation stock is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(B) If the carryover basis rules under paragraph (h)(2)(i) of this section apply to an asset, and the purchasing corporation or the target or a target affiliate, as appropriate, disposes of the stock of the selling controlled foreign corporation to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the gain equal to the basis increase that was denied under paragraph (h)(2)(ii) of this section, or the gain recognized in the stock by the purchasing corporation or by the target or a target affiliate, as appropriate, on the disposition of the stock, then the purchasing corporation shall increase the basis of the asset, as of the date of the disposition of the stock of the selling controlled foreign corporation by the purchasing corporation or by the target or a target affiliate, as appropriate, by the amount of the basis increase that was denied pursuant to paragraph (h)(2)(i) of this section. The preceding sentence shall apply only to the extent that the asset is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(3) *Stock issued by target affiliate that is a controlled foreign corporation.* The exception to the carryover basis rules of this section provided in paragraph (d)(2)(iii) of this section does not apply to stock issued by a target affiliate that is a controlled foreign corporation. After applying the carryover basis rules of this section to the stock, the basis in the stock is increased by the amount treated as a dividend under section 1248 on the disposition of the stock (or that would have been so treated but for section 1291), except to the extent the basis increase is attributable to the disposition of an asset in which a carryover basis is taken under this section.

(4) *Certain distributions*—(i) *General rule.* In the case of a target affiliate that is a controlled foreign corporation, paragraph (g) of this section applies with respect to the target affiliate by treating any reference to a dividend to which section 243(a)(3) applies as a reference to any amount taken into account under § 1.1502–32 in determining the basis of target stock that is—

(A) A dividend;

(B) An amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291); or

(C) An amount included in income under section 951(a)(1)(B).

(ii) *Basis of controlled foreign corporation stock.* If the carryover basis rules of this section apply to an asset, the basis in the stock of the controlled foreign corporation (or any property by reason of which the stock is considered owned under section 958(a)(2)) is reduced (but not below zero) by the sum of any amounts that are treated, solely by reason of the disposition of the asset, as a dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291), or amount included in income under section 951(a)(1)(B). For this purpose, any dividend, amount treated as a dividend under section 1248 (or that would have been so treated but for section 1291), or amount included in income under section 951(a)(1)(B) is considered attributable first to earnings and profits resulting from the disposition of the asset.

(iii) *Increase in asset or stock basis*—(A) If the carryover basis rules under paragraphs (g) and (h)(4)(i) of this section apply to an asset, and the purchasing corporation disposes of the asset to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the gain equal to the basis increase denied in the asset pursuant to paragraphs (g) and (h)(4)(i) of this section, or the gain recognized on the asset by the purchasing corporation on the disposition of the asset, then the purchasing corporation or the target or a target affiliate, as appropriate, shall increase the basis of the selling controlled foreign corporation stock subject to paragraph (h)(4)(ii) of this section, as of the date of the disposition of the asset by the purchasing corporation, by the amount of the basis reduction under paragraph (h)(4)(ii) of this section. The preceding sentence shall apply only to the extent that the

controlled foreign corporation stock is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(B) If the carryover basis rules under paragraphs (g) and (h)(4)(i) of this section apply to an asset, and the purchasing corporation or the target or a target affiliate, as appropriate, disposes of the stock of the selling controlled foreign corporation to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the amount of the basis reduction under paragraph (h)(4)(ii) of this section, or the gain recognized in the stock by the purchasing corporation or by the target or a target affiliate, as appropriate, on the disposition of the stock, then the purchasing corporation shall increase the basis of the asset, as of the date of the disposition of the stock of the selling controlled foreign corporation by the purchasing corporation or by the target or a target affiliate, as appropriate, by the amount of the basis increase that was denied pursuant to paragraphs (g) and (h)(4)(i) of this section. The preceding sentence shall apply only to the extent that the asset is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T1 sells the T2 stock to P and recognizes gain. On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(1) of this section, paragraph (d) of this section applies to the T2 stock. Under paragraph (h)(3) of this section, paragraph (d)(2)(iii) of this section does not apply to the T2 stock. Consequently, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. See paragraph (h)(2)(i) of this section. Consequently, under paragraph (b)(1) of this section, paragraph (d)(1) of this section applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1 of Year 2, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of paragraph do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. In Years 1 through 4, T2 does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1 of Year 4, T2 sells an asset with a basis of $400,000 to P for $900,000. T2's gain of $500,000 is not subpart F income. On December 15 of Year 4, T1 sells T2, in which it has a basis of $600,000, to P for $1,600,000. Under section 1248, $800,000 of T1's gain of $1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only $300,000 would have been treated as a dividend under section 1248. On December 30 of Year 4, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, paragraph (g)(2) of this section applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502–32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in paragraph (g)(1) of this section. Consequently, paragraph (d)(1) of this section applies to the asset sold by T2 to P and P's basis in the asset is $400,000 as of December 1 of Year 4.

(c) Under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock and P's basis in the T2 stock is $600,000 as of December 15 of Year 4. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by $300,000 (the amount of T1's gain treated as a dividend under section 1248 ($800,000), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P ($500,000)) to $900,000.

* * * * *

§ 1.338–4T [Removed]

Par. 4. Section 1.338–4T is removed.

Par. 5. In § 1.338(i)–1, paragraphs (a) and (b) are revised to read as follows:

§ 1.338(i)–1 Effective dates.

(a) *In general.* Sections 1.338–1 through 1.338–5 (except § 1.338–4(h)), 1.338(b)–1, and 1.338(h)(10)–1 generally are applicable for targets with acquisition dates on or after January 20, 1994. Section 1.338–4(h) is applicable for targets with acquisition dates on or after January 20, 1997. Section 1.338–4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996) is generally applicable for targets with acquisition dates on or after January 20, 1994, and before January 20, 1997.

(b) *Elective retroactive application.* A target with an acquisition date on or after January 14, 1992 and before January 20, 1994 may apply §§ 1.338–1 through 1.338–5, 1.338–4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996), 1.338(b)–1, and 1.338(h)(10)–1 by including a statement with its return (including a timely filed amended return) for the period that includes the acquisition date to the effect that it is applying all of these sections pursuant to this paragraph (b). A target with an acquisition date on or after January 14, 1992, and before January 20, 1997, may choose to apply § 1.338–4(h) for the period that includes the acquisition date pursuant to paragraph (b) of this section.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: January 13, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–1521 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–96–069]

RIN 2115–AE47

Drawbridge Operation Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is hereby providing notice that the Florida Department of Transportation (FDOT) has been granted permission to temporarily deviate from the regulations governing the operation of the Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville from Friday November 8, 1996, through Friday, February 7, 1997, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation authorizes the draws of the Fuller Warren Bridge to remain closed for longer periods during the morning and afternoon weekday highway commuter periods. In addition, the Fuller Warren Bridge is allowed to open only once per hour from 9 a.m. to 4 p.m. on weekdays except Federal holidays. This test will help determine whether the revised opening schedule will improve the flow of highway traffic without unreasonably impacting navigation.

DATES: The deviation is effective from November 8, 1996 through February 7, 1997. Comments must be received on or before February 7, 1997.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Officer, Seventh Coast Guard District, Aids to Navigation, at (305) 536–7331.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the Fuller Warren Drawbridge operated by the State of Florida by submitting written data, view or arguments to the address above. Persons submitting comments should include their names and addresses, identify this notice [CGD7–96–069] and give the specific provision to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to initiate a rulemaking to propose a permanent change to the drawbridge operating schedule. Persons may submit comments by writing to the Commander Seventh Coast Guard District listed under **ADDRESSES**.

Background and Purpose

The Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville, Florida has a vertical clearance, in the closed position, of 44 feet above mean high water and 45 feet above mean low water (MLW). On November 6, 1996 FDOT requested a deviation from the current operating schedule in 33 CFR 117.325 in order to reduce the number of drawbridge openings that would impact the heavy volumes of highway traffic being experienced on I95. The traffic volume has doubled on this interstate highway system since 1991, reducing the Level of Service (LOS) to LOS E during weekdays. This temporary deviation to the operating regulations for the Fuller Warren Drawbridge, owned and operated by the FDOT, increases the morning and afternoon closed periods and authorizes hourly openings from 9 a.m. to 4 p.m. on weekdays. This deviation is intended to reduce highway delays. However, due to strong river currents and difficult maneuvering characteristics, tugs with tows are exempted from these restrictions. Other vessels using this reach of the St. Johns River have adequate maneuvering room to wait the hourly openings and should not be unreasonably impacted by this deviation.

The Coast Guard has granted the Florida Department of Transportation a temporary deviation from the operating regulations outlined in Title 33, Code of Federal Regulations, § 117.325 governing the Fuller Warren Drawbridge located across the St. Johns River. This deviation from normal operating regulations is authorized in accordance with the provisions of Title 33, Code of Federal Regulations, § 117.43 for the purpose of evaluating a possible change to the permanent regulations. Under this deviation, the Fuller Warren Drawbridge operated by the FDOT shall open on signal; except that, Monday through Friday except Federal holidays from 7 a.m. to 6 p.m. the draw need not open except on the hour. However, the draw need not open between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m. Monday through Friday except Federal holidays. Tugs with tows shall be passed at any time except during the authorized weekday closures from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. The bridge shall open at any time for vessels in a situation where a delay would endanger life or property.

This period of deviation is effective from November 8, 1996 through February 7, 1997.

Dated: December 27, 1996.

R.C. Olsen, Jr.,

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

[FR Doc. 97–1576 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD07–96–054]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulation governing the operation of the Coronado Beach bridge, mile 845 at New Smyrna Beach. This drawbridge has been replaced by a higher drawbridge and there is no longer a need for the regulation. Therefore, the Coast Guard is removing 33 CFR 117.261(h).

DATES: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Officer, Seventh Coast Guard District, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard finds that in accordance with 5 U.S.C. 553, good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that has been replaced. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the Federal Register.

Background and Purpose

The bridge regulation for the old Coronado Beach drawbridge, locally known as the north bridge, was published in the Federal Register on December 14, 1987 [52 FR 47391]. This regulation established draw times on the opening of the old Coronado Beach drawbridge. This drawbridge was replaced by a new higher bascule drawbridge which opened to auto traffic on August 26, 1996. Therefore, the regulations governing the operation of

the old drawbridge are no longer necessary and the Coast Guard is removing 33 CFR 117.261(h).

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policy and procedures of DOT is unnecessary. We conclude this because the drawbridge has been replaced with a new bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because the drawbridge has been replaced with a new bridge and is no longer necessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and has determined pursuant to section 2.B.2. of Commandant Instruction M16475.1b (as revised by 59 FR 38654, July 29, 1994), that this rule is categorically excluded from further environmental documentation. Pursuant this instruction, specifically section 2.B.2e.(32)(e), a Categorical Exclusion checklist and determination has been prepared and are available for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 stat. 5039.

§ 117.261 [Amended]

2. Section 117.261(h) is removed and reserved.

Dated: December 19, 1996.

J.W. Lockwood,

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

[FR Doc. 97–1575 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 157

[CGD 91–045]

RIN 2115–AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Final rule; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on the under-keel clearance provisions contained in the operational measures final rulemaking to allow an additional 30 days for public comment.

DATES: Comments must be received on or before February 26, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 91–045], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2:00 p.m.; Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 27, 1996, the Coast Guard published a partial suspension of regulation with request for comments (61 FR 60189) delaying implementation of certain under-keel clearance requirements and opening a 60 day comment period limited to the provisions of 33 CFR 157.455(a). Since publication of the partial suspension notice, the Coast Guard received a request from a regulated entity for additional information on the under-keel clearance provisions. The information requested has been added to the docket. In light of this addition, the Coast Guard is extending the comment period to allow an additional 30 days to comment on the under-keel clearance provisions.

Dated: January 17, 1997.

G.F. Wright,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–1637 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL–5678–1]

RIN 2060–AF48

Acid Rain Program; Nitrogen Oxides Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On December 19, 1996, the Environmental Protection Agency (EPA) promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. These emission limitations will reduce the serious adverse effects of NO_X emissions on human health, visibility, ecosystems, and materials. This action corrects the effective date and other inadvertent

typographical and administrative errors in the December 19, 1996 final rule. The effective date of the December 19, 1996 rule is corrected from December 19, 1996 to February 17, 1997.

EFFECTIVE DATE: The effective date of the December 19, 1996 rule (61 FR 6711) is corrected from December 19, 1996 to February 17, 1997. The remaining corrections in this action are effective February 17, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (for technical matters) (202–233–9620); or Dwight C. Alpern (same address) (for legal matters) (202–233–9151).

SUPPLEMENTARY INFORMATION: On December 19, 1996 (61 FR 6711), EPA promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. Subsequent to publication of the December 19, 1996 rule, EPA identified several inadvertent typographical and administrative errors in the December 19, 1996 document. Today's action corrects those errors.

The December 19, 1996 document incorrectly stated that the effective date of the rule would be the date of publication. As stated elsewhere in the preamble of December 19, 1996 rule, EPA submitted the rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller of the General Accounting Office under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The effective date is being revised to February 17, 1997, which is 60 days after the December 19, 1996 publication date, as required by SBREFA.

The several other corrections made by today's action involve correcting the amendatory instructions in the December 19, 1996 rule. For example, the amendatory instruction adding defined terms to the definitions section (§ 76.2) included terms for which no definitions were actually provided or intended to be provided. The incorrectly listed terms are removed from the amendatory instructions.

The remaining corrections involve typographical or similar errors in the rule language itself. For example, the rule provisions establishing cutoffs for application of the emission limitations for cyclone and wet bottom boilers expressed the cutoffs in terms of Maximum Continuous Steam Flow at 100% of Load in lb/hr but the term, ''Maximum Continuous Steam Flow at 100% Load'', is defined as being expressed in thousands of lb/hr. The rule provisions are corrected to express the cutoffs in thousands of lb/hr.

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

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

Dated: January 13, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, the publication on December 19, 1996 of the final rule at 61 FR 67112 is corrected as follows:

1. On page 67112, in the first column, the **EFFECTIVE DATE** is corrected to read ''February 17, 1997''.

2. On page 67162, in the first and second columns, the amendatory instruction 2 is corrected to read ''Section 76.2 is amended by revising the definitions of 'coal-fired utility unit' and 'wet bottom' and adding, in alphabetical order, definitions for 'arch-fired boiler', 'combustion controls', 'Maximum Continuous Steam Flow at 100% of Load', 'non-plug-in combustion controls', 'plug-in combustion controls', and 'vertically fired boiler', to read as follows:''.

§ 76.5 [Corrected]

3. On page 67162, in the third column, the amendatory instruction 3 is corrected to read ''Section 76.5 is amended by removing paragraph (g).''.

§ 76.6 [Corrected]

4. On page 67163, in the first column, § 76.6(a)(2), line 5 is corrected to read ''1060, in thousands of lb/hr. The NO_X emission control''.

5. On page 67163, in the first column, § 76.6(a)(3), line 5 is corrected to read ''than 450, in thousands of lb/hr. The NO_X emission''.

6. On page 67163, in the first column, § 76.6(b), line 5 is corrected to end with the words ''part 75 of this chapter.''. The remainder of the line becomes the first line of the amendatory instruction 5.

§ 76.16 [Corrected]

7. On page 67163, in the third column, § 76.16(c)(1), line 2 is corrected to read ''draft decision on:''.

Appendix B to Part 76 [Corrected]

8. On page 67164, in the third column, the amendatory instruction 9, line 9 is corrected to read ''effectiveness in each place that the words appear and adding, in their'' and the amendatory instruction 9, line 20 is corrected to read ''the heading of section 2 and the''.

[FR Doc. 97–1641 Filed 1–22–97; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1852, and 1870

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: As part of the National Performance Review initiative to streamline and clarify regulations, NASA issued an interim rule (61 FR 52325–52347, October 7, 1996) as corrected (61 FR 56271, October 31, 1996) which revised part 1815, Contracting by Negotiation, and part 1816, Types of Contracts; made conforming changes to part 1852, Solicitation Provisions and Contract Clauses; and removed subpart 1870.3, NASA Source Evaluation. The interim rule is being adopted as a final rule with minor editorial revisions.

EFFECTIVE DATE: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

No comments were received by the closing date in response to the interim rule. Several comments were received after the closing date, primarily

addressing the changes in NASA's source selection process. Specifically, the comments requested NASA: Eliminate the competitive range numerical goal of three proposals (1815.609(a)); clarify that the restrictions of the Procurement Integrity Act apply before a blackout notice is issued (1815.408–70); clarify that the evaluation of relevant experience and past performance for new businesses may include an evaluation of the company's principals (1815.605–70(d)); clarify the definition of proposal weakness (1815.610(c)(2)(A)); and eliminate the requirement that source selection statements be publicly releasable (1815.611(d)(iii)). NASA considered these comments and believes the sections in question are both adequately stated and integral to the Agency's acquisition streamlining initiatives. Accordingly, no changes are made to the interim rule as a result of public comment.

However, the following editorial and administrative changes are made to ensure consistency among the rewritten and renumbered NFS parts:

1. In 1815.407–70(a), the reference to ''issued pursuant to subpart 1870.1'' is deleted.

2. In 1815.602(b) (ii) and (iii), the parenthetical cross references are corrected.

3. In 1815.708–70, the title is changed to ''NASA contract clauses''.

4. In 1815.902(a)(2)(G), the redundant language after ''unsuitable'' is deleted.

5. In 1816.404–270(b)(3), the reference to ''CPAF'' is a typographical error and is corrected to ''cost-plus-fixed-fee (CPFF).''

6. In 1852.216–76, the NFS reference in the footnote is corrected to ''1816.404–272(a).''

7. In 1852.216–77(c)(4), the phrase ''cumulative provisional fee payments'' in the second sentence is corrected to ''cumulative interim (and provisional, if applicable) fee payments'' to reflect the policy in 1816.404–2.

8. In 1852.216–88, footnote (5) is deleted and corrected to ''(5) Insert the appropriate amount in accordance with 1816.402–270(e).''

In addition, other miscellaneous revisions are made to correct printing errors in the published interim rule.

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and upon completion of all parts, the NFS will be reissued in a new edition.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1816, 1852 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1852, and 1870 are amended as follows:

1.–2. Part 1815 is revised to read as follows:

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

Sec.

Subpart 1815.5—Unsolicited Proposals

Subpart 1815.6—Source Selection

Subpart 1815.7—Make-or-Buy Programs

Subpart 1815.8—Price Negotiation

Subpart 1815.9—Profit

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

Subpart 1815.70—Ombudsman

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405–70 Draft requests for proposals.

(a) Except for acquisitions described in 1815.602(b), contracting officers shall

issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(b) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(c) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(d) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(e) The procurement officer may waive the requirement for a DFRP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1815.406–2 Part I—The Schedule.

(NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.406–5 Part IV—Representations and instructions.

(NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision. Although offerors should be provided the maximum flexibility in developing their proposals, contracting officers shall specify any information and standard formats required for the efficient and impartial evaluation of proposals.

1815.406–70 Page limitations.

(a) Technical and contracting personnel will mutually agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½″×11″, with at least one inch margins on all sides, using not smaller than 12 characters per inch or equivalent type. Foldouts count as an equivalent number of 8½″×11″ pages. The metric standard format most closely approximating the described standard 8½″×11″ size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will mutually agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of contents, and cost/price information, shall not exceed 500 pages using the page definition of 1815.406–70(a). Firm page limitations shall also be established for Best and Final Offers (BAFOs), if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the acquisition and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Pages submitted in excess of the specified limitations for the initial proposal and BAFO will not be evaluated by the Government and will be returned to the offeror.

1815.406–71 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting, called a Solicitation Review Board (SRB), as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.612–70, the SEB shall review and approve the RFP prior to issuance.

1815.406–72 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology that are not included in the RFP itself should also be provided.

1815.407 Solicitation provisions.

(NASA supplements paragraphs (c) and (d))

(c)(6) The provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals shall not be used in solicitations for the Small Business Innovation Research (SBIR) or Small Business Technology Transfer Programs, or for broad agency announcements listed in 1835.016. See instead 1815.407–70(a).

(d)(4) The contracting officer shall insert FAR 52.215–16 Alternate II in all competitive negotiated solicitations.

1815.407–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), in lieu of the provision at FAR 52.215–10 in Announcements of Opportunity and in Small Business Innovation Research (SBIR) and Small Business Technology Transfer solicitations. (See 1815.412.)

(b) The contracting officer shall insert a provision substantially as stated at 1852.215–74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government.

(c) The contracting officer shall insert the provision at 1852.215–75, Expenses Related to Offeror Submissions, in all requests for proposals.

(d) The contracting officer shall insert the provision at 1852.215–77, Pre-proposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a pre-proposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(e) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(f) The Contracting Officer shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(g) The Contracting Officer shall insert the provision at 1852.214–81, Proposal Page Limitations, in all competitive requests for proposals.

(h) The Contracting Officer shall insert the provision at 1852.215–82, Offeror Oral Presentations, in competitive requests for proposals when the Government intends to allow offerors to make oral presentations prior to commencement of the Government's formal evaluation.

1815.408 Issuing solicitations.

1815.408.70 Blackout notices.

(a) Upon release of the formal RFP, the Contracting Officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the Contracting Officer or other authorized representative. This procedure is commonly known as a ''blackout notice'' and shall not be imposed prior to release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(b) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal offeror proprietary data.

1815.412 Late proposals, modifications, and withdrawals of proposals.

1815.412–70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.

For BAAs listed in 1835.016, SBIR Phase I and Phase II solicitations, and STTR solicitations—

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), are satisfied.

1815.413 Disclosure and use of information before award.

1815.413–2 Alternate II.

(NASA supplements paragraphs (a), (e), and (f))

The alternate procedures at FAR 15.413–2 shall be used for NASA acquisitions in lieu of those prescribed at FAR 15.413–1. These procedures, as implemented by this section, apply both before and after award.

(a) During evaluation proceedings, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(e) The notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.402 regarding release of the names of firms submitting offers.)

(f)(i) Except as provided in paragraph (f)(ii) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(ii) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(A) NASA Announcements of Opportunity proposals;

(B) Unsolicited proposals;

(C) NASA Research Announcement proposals;

(D) SBIR and STTR proposals.

(iii) The written approvals required by paragraphs (f) (i) and (ii) of this section shall be provided to the contracting officer before the release of the proposal information. As a minimum, the approval shall:

(A) Identify the precise proposal information being released;

(B) Identify the person receiving the proposal information and evidence of their appointment as a special government employee or a statement of the applicable exception (see 1815.413–270);

(C) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(D) Provide a statement that a signed ''Agreement and Conditions for Evaluation of Proposals,'' in accordance with paragraph (f)(2) of this section, will be obtained prior to release of the proposal to the evaluator.

(iv) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (f)(i) and (f)(ii) of this section.

(f)(2) The NASA official approving the disclosure of any proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following ''Agreement and Conditions for Evaluation of Proposals.''

Agreement and Conditions for Evaluation of Proposals (October 1996)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413–2(e) and NFS 1815.413–2(e)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient

becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

Signature: _____

Name typed or printed: _____

Date: _____

[End of agreement]

1815.413–270 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government participants in proposal evaluation proceedings, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a Special Government employee is a separate action from the approval required by paragraph 1815.413–2(f) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.

(NASA supplements paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.503 General.

(NASA supplements paragraph (e))

(e) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

1815.504 Advance guidance.

(NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) is responsible for preparing for public use a brochure titled ''Guidance for the Preparation and Submission of Unsolicited Proposals,'' which shall be provided without charge by the Office of Procurement and other NASA officials in response to requests for proposal submission information. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. Code HK is responsible for internal distribution of the brochure.

1815.506 Agency procedures.

(NASA supplements paragraph (a))

(a)(i) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (larger business, small business, university, or nonprofit institution).

1815.506–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.508 Prohibitions.

(NASA supplements paragraph (b))

(b) FAR 15.508(b) shall not apply to NASA; see instead 1815.508–70.

1815.508–70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413–2 and 1815.413–2.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509–70.

1815.509–70 Limited use of proposals.

(a) The provision at FAR 52.215–12, Restriction on Disclosure and Use of Data, is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413–2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413–2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413–2(f) and 1815.413–2.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413–2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

Subpart 1815.6—Source Selection

1815.601 Definitions.

(NASA supplements paragraphs (1) and (2))

(1) The source selection authority (SSA) is the Agency official responsible

for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities:

(i) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) prior to release of the RFP, or delegate this authority to appropriate management personnel;

(ii) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(iii) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(2) The SSA shall be established at the lowest reasonable level for each acquisition. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

1815.602 Applicability.

(NASA supplements paragraphs (a) and (b))

(a)(i) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(A) Acquisitions of $50 million or more—in accordance with FAR 15.6 and this subpart.

(B) Other acquisitions—in accordance with FAR 15.6 and this subpart except section 1815.612–70.

(ii) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.6 and this subpart are not applicable to acquisitions conducted under the following procedures:

(i) MidRange (see part 1871).

(ii) Announcements of Opportunity (see part 1872).

(iii) NASA Research Announcements (see 1835.016–70).

(iv) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(v) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

1815.605–70 Evaluation factors and subfactors

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Relevant Experience and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or ''key swingers''—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and any elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.608(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Million Suitability scores.

(c) *Cost/Price factor.* This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs, prices. The Cost/Price factor is not numerically weighted or scored.

(d) *Relevant Experience and Past Performance factor.* (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their relevant experience and past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems and terminations.

(3) The Contracting Officer may start collecting past performance data prior to proposal receipt. One method for initiating the past performance evaluation early is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

1815.608 Proposal evaluation.

(NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any failures to meet any terms and conditions of the RFP;

(ii) All strengths and weaknesses, classified as major or minor to further underscore discriminators among proposals;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactor and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The adjectival rating of the Relevant Experience and Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule and performance impacts associated with these approaches. Risk evaluations must consider the probability of success, the impact of

failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths; weaknesses and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(1) Cost or price evaluation.

(A) In accordance with 1815.804–1, cost or pricing data shall not be requested in competitive acquisitions. Only the minimal information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested.

(B) When contracting on a firm fixed price basis, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

(C) When contracting on a basis other than firm fixed price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(*a*) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from the offeror's proposal.

(*b*) The differences in business methods, operating procedures, and practices as they impact cost.

(*c*) A level of confidence in the probable cost assessment for each proposal.

(D) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.608(a)(3)(B).

(E) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(a)(2) Past performance evaluation.

(A) The Relevant Experience and Past Performance evaluation assesses the contractor's performance under previously awarded contracts. It should evaluate the company, not the individuals, involved with contract performance. Relevant Experience and Past Performance is not numerically scored, but is assigned an adjectival rating.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) The evaluation may consider past performance data provided by offerors and data from other sources. Questionnaires and interviews may be used to solicit assessments of the offeror's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(2) (iii) Firms without relevant experience or a past performance record shall not be given a proposal deficiency or weakness (see 1815.610) and shall be given a neutral rating. If the adjectival rating system of 1815.608(a)(3)(A) is used for the Relevant Experience and Past Performance factor, a rating of ''Good'' shall be assigned in such cases.

(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor weaknesses exist.	91–100
Very Good	A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist.	31–50
Poor	A proposal that has one or more major weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to address..	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(*a*) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(*b*) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(*c*) Affect a significant number of points in order to encourage realistic pricing.

(*d*) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardward development	Point adjustment
+/− 5 percent	+/− 30 percent ..	0
+/− 6 to 10 percent.	+/− 31 to 40 percent.	−50
+/− 11 to 15 percent.	+/− 41 to 50 percent.	−100
+/− 16 to 20 percent.	+/− 51 to 60 percent.	−150
+/− 21 to 30 percent.	+/− 61 to 70 percent.	−200
+/− more than 30 percent.	+/− more than 70 percent.	−300

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

§ 1815.608–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

1815.608–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the Source Selection Authority shall direct the contracting officer to:

(1) Award without discussions provided the contracting officer determines that adequate price competition exists (see FAR 15.804–1(b)(1)(ii));

(2) Award after negotiating a mutually acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.804–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.608–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.609 Competitive range.

(NASA supplements paragraphs (a))

(a) Proposals shall not be included in the competitive range when they do not have a reasonable chance of selection. To reduce unnecessary expense to both offerors and NASA, a total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

1815.610 Written or oral discussions.

(NASA supplements paragraph (c))

(c)(2)(A) The contracting officer shall identify, and give offerors a reasonable opportunity to address, all weaknesses that have an adverse impact on the evaluation. Weaknesses are defined as deficiencies (see FAR 15.601) and other proposal inadequacies. Weaknesses may include all proposal areas that are inadequate for evaluation, contain contradictory statements, or strain credibility. However, minor irregularities, informalities, or apparent clerical mistakes are not considered weaknesses. They may be identified to offerors through the clarification technique defined in FAR 15.601, rather than discussions as contemplated in this section.

(B) The contracting officer shall advise an offeror if, during written or oral discussions, an offeror introduces a new weakness. The offeror can be advised during the course of the discussions or as part of the request for BAFO.

(C)The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a ''bottom line'' is necessary.

(c)(3)(A) The contracting officer shall discuss contract terms and conditions so that a ''model'' contract can be sent to each offeror with the request for BAFO. Any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's ''model'' contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror declines to include these strengths in its ''model'' contract, the Government evaluators should reconsider their characterization as strengths.

(B) In no case shall the contracting officer relax or amend RFP requirements for any offeror, without amending the RFG and permitting the other offerors an opportunity to propose against the relaxed requirements.

1815.611 Best and Final Offers.

(NASA supplements paragraphs (b), (c) and (d))

(b) The request for BAFOs shall also:

(i) Identify for any remaining weaknesses.

(ii) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(iii) Require offerors to complete and execute the ''model'' contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(iv) Caution offerors against unsubstantiated changes to their proposals; and

(v) Establish a page limit for BAFOs.

(c)(i) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more.

(ii) Approval of the procurement officer is required for all other acquisitions.

(d)(i) Proposals are rescored based on BAFO evaluations. Scoring changes between initial and BAFO proposals shall be clearly traceable.

(ii) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(iii) Prior to award, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: The acquisition; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Relevant Experience and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions

(see 1815.1004–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in debriefing unsuccessful offerors and shall be provided to debriefed offerors upon request.

(iv) Once the selection decision is made, the contracting officer shall, without post-selection negotiations, award the contract.

1815.612–70 NASA formal source selection.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.602(a)(i)(A).

(b) General. The SEB assists the SSA in decisionmaking by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) Designation. (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with NFS 1815.413–2.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) Organization. (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels/consultants (as described in 1815.612–70(d) (4) and (5)), to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20 people, unless approved in writing by the procurement officer.

(e) Voting members. (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of a NASA SEB.

(3) The SEB shall review the findings of committees, panels or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) Ex officio members.

(1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in 1815.612–70(f)(3) is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) Evaluation plan. (1) The SEB evaluation plan consists of general and specific evaluation guidelines (and special standards of responsibility, where applicable) established to assess each offeror's proposal against the RFP evaluation factors, subfactors, and elements. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation and scoring of each offeror's proposal.

(2) The evaluation plan shall be approved by the SEB (and other personnel designated in accordance with installation procedures) before the formal RFP is issued.

(h) Evaluation. (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment, consistent with the approved evaluation plan. SEB minutes shall reflect this evaluation process.

(i) SEB presentation. (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the major strengths and weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant headquarters Program Office.

(j) *Recommended SEB presentation format*—(1) *Identification of the acquisition*. Identifies the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background*. Identifies any earlier phases of a phased acquisition or, as in the case of the continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements*. Explains any special standards of responsibility and the evaluation factors, subfactors, and elements. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Relevant Experience and Past Performance evaluations.

(4) *Sources*. Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings*. Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Strengths and weaknesses of offerors*. Summarizes the SEB's findings, using the following guidelines:

(i) Present only the major strengths and weaknesses of individual offerors.

(ii) Directly relate the strengths and weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the significance of major strengths and weaknesses.

(iv) Indicate the results and impact, if any, of written and/or oral discussions and BAFOs on ratings and scores.

(7) *Final mission suitability ratings and scores*. Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation*. Summarizes proposed costs/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant experience and past performance*. Reflects the summary conclusions, supported by specific case data, with particular emphasis on exemplary or inferior performance and its potential bearing on the instant acquisition.

(10) *Special interest*. Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

(k) A source selection statement shall be prepared in accordance with 1815.611(d)(iii). For installation selections, the Field Installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.706 Evaluation, negotiation, and agreement.

(NASA supplements paragraph (b))

(b) The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

1815.708 Contract clause.

1815.708–70 NASA contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for ''Make-or-Buy'' Changes, in contracts that include FAR 52.215–21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data and information other than cost or pricing data.

1815.804–1 Prohibition on obtaining cost or pricing data.

(NASA supplements paragraph (b))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception. In such cases, information other than cost or pricing data may be requested to the extent necessary to ensure price reasonableness and assess cost realism.

(2)(iii) The contracting officer shall document the comparison of the item with the catalog or market priced commercial item, including the technical similarities and differences and the price justification methodology.

(5) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HC).

1815.804–170 Acquisitions with the Canadian Commercial Corporation (CCC).

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31, 1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

1815.804–2 Requiring cost or pricing data.

(NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of price agreement.

1815.805–5 Field pricing support.

(NASA supplements paragraph (a))

(a)(1)(A) The threshold for obtaining a field pricing report for cost reimbursement contracts is $1,000,000.

(B) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(C) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(D) When the threshold for requiring field pricing support is met and the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

1815.807 Prenegotiation objectives.

(NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under competitive negotiated procedures.

1815.807–70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.808 and 1815.808). In addition to the information described in FAR 15.807 and, as appropriate, 15.808(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.808(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) *Cost analysis.* For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the

contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective;

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.806–2(a), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, and unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, cost risk, and so forth, as applicable.

(e) *Negotiation approval sought.* The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

1815.807–71 Installation reviews.

Each contracting activity shall establish a formal system for the review of prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807–72 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.808 Price negotiation memorandum.

(NASA supplements paragraphs (a) and (b))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.808 shall be reflected in the evaluation and selection documentation to the extent applicable.

(b) When the PNM is a ''stand-alone'' document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, subcontractors; wage rate determinations; or the current status of the contractor's systems).

Subpart 1815.9—Profit

1815.902 Policy.

(NASA supplements paragraph (a)).

(a)(1) The NASA structured approach for determining profit or fee objectives, described in 1815.970, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except as indicated in paragraph (a)(2) of this section.

(2) The use of the NASA structured approach for profit or fee is not required for:

(A) Architect-engineer contractors;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and

(G) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.903 Contracting officer responsibilities.

(NASA supplements paragraph (d))

(d)(1)(ii) In architect-engineer contracts, the price or estimated cost and fee for services other than the production and delivery of designs, plans, drawings, and specifications, are not subject to the 6 percent limitation set forth in FAR 15.903(d)(1).

1815.970 NASA structured approach for profit or fee objective.

1815.970–1 General.

(a) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in 1815.970–2 through 1815.970–4. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.807–70(d)(3).

(b)(1) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b)(2) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(2) For contracts with nonprofit organizations under which profits or

fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970–2 Contractor effort.

(a) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(b) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1. (a) in the computation of profit or fee.

(c) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) Material acquisition (subcontracted items, purchased parts, and other material). (i) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard of near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(ii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(2) Direct labor (engineering, service, manufacturing, and other labor). (i) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(ii) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(3) Overhead and general management (G&A). (i) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for the rates proposed in future years.

(ii) Contracting officers should also consider the historical accuracy of the contractor's proposed overheads as well as the ability to control overhead pool expenses.

(iii) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(4) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

1815.970–3 Other factors.

(a) *Cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(1) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(2) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0-to-3 percent range for cost-reimbursement contracts and 3-to-7 percent range for fixed-price contracts.

(i) Within the ranges set forth in paragraph (a)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(3) The cost risk arising from contract type is not the only form of cost risk to consider.

(i) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weigh should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(ii) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(b) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(1) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit/fee. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(2) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(c) *Performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(d) *Subcontract program management.* Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(e) *Federal socioeconomic programs.* In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(f) *Special situations.* (1) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

1815.970–4 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) CAS 417, Cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

1815.971 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1003 Notification to successful offeror.

The reference to notice of award in FAR 15.1003 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed:

1815.1004–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely

disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contacting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

3. Part 1816 is revised to read as follows:

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
1816.202 Firm-fixed-price contracts.
1816.202–70 NASA contract clause.
1816.203 Fixed-price contracts with economic price adjustment.
1816.203–4 Contract clauses.

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.
1816.306 Cost-plus-fixed-fee contracts.
1816.307 Contract clauses.
1816.307–70 NASA contract clauses.

Subpart 1816.4—Incentive Contracts

1816.402 Application of pre-determined, formula-type incentives.
1816.402–2 Technical performance incentives.
1816.402–270 NASA technical performance incentives.
1816.404 Cost-reimbursement incentive contracts.
1816.404–2 Cost-plus-award-fee (CPAF) contracts.
1816.404–270 CPAF contracts.
1816.404–271 Base fee.
1816.404–272 Award fee evaluation periods.
1816.404–273 Award fee evaluations.
1816.404–274 Award fee evaluation factors.
1816.404–275 Award fee evaluation scoring.
1816.405 Contract clauses.
1816.405–70 NASA contract clauses.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.
1816.505 Ordering.
1816.505–70 Task Ordering.
1816.506–70 NASA contract clause.

Subpart 1816.6—Time-and-Materials, Labor-House, and Letter Contracts

1816.603 Letter contracts.
1816.603–370 Approvals.

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses. (NASA supplements paragraphs (a) and (d)).

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2 through 52.216–4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2 through 52.216–4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HC, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Associate Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts. (NASA supplements paragraph (d)).

(d) *Completion and term forms.*

(4) Term form contracts are incompatible with performance base contracting (PBC) and should not be used with PBC requirements.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216–8,

Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303–70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216–7, Allowable Cost and Payment, or FAR clause 52.216–13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

Subpart 1816.4—Incentive Contracts

1816.402 Application of pre-determined, formula-type incentives.

1816.402–2 Technical performance incentives.

1816.402–270 NASA technical performance incentives.

(a) A performance incentive shall be included in all contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million unless it is determined that the nature of the acquisition (for example, commercial off-the-shelf computers) would not effectively lend itself to a performance incentive. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under $25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g.. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) The sum of the maximum positive performance incentive and other fixed or earnable fees on the contract shall not exceed the limitations in FAR 15.903(c).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee (CPAF) contracts.

1816.404–270 CPAF contracts.

(a) For purposes of this subsection, ''performance based contracting'' means effort which can be contractually defined so that the results of the contractor's effort can be objectively measured in terms of technical and

quality achievement, schedule progress or cost performance. ''Nonperformance based contracting'' means contractor effort that cannot be objectively measured but is evaluated based on subjective, qualitative assessments (e.g., controlling changes or interfacing with other agencies, contractors and international organizations).

(b)(1) Normally, award fee incentives are not used when contract requirements can be defined in sufficient detail to allow for performance based contracting. If incentives are considered necessary, objectively measured incentives as described in FAR 16.402 are preferred.

(2) Award fee incentives may be used as follows:

(i) As a CPAF contract where a cost reimbursement contract is appropriate and none of the requirements can be defined to permit performance based contracting;

(ii) As a CPAF line item for nonperformance based requirements in conjunction with a non-CPAF line item(s) for performance based requirements. In this instance, fees for the performance based and nonperformance based requirements shall be developed separately IAW FAR 15–9 and 1815.9; and

(iii) Under a performance based contract when it is determined to be necessary to motivate the contractor toward exceptional performance (see FAR 16.404–2(b)(ii)) and the increased level of performance justifies the additional administrative expense. When an award fee incentive is used in this instance, the basic contract type shall be other than CPAF (e.g., CPIF or FPIF). The potential award fee should not exceed 10 percent of the total contract fee or profit and shall not be used to incentivize cost performance.

(3) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

(c) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should be used on contracts with a total estimated cost and fee greater than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

1816.404–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.404–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final product/results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with a performance based contract structure, such as an incentive fee arrangement.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is ''satisfactory'' or better. (See 1816.404–273 and 1816.404–275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is ''poor/unsatisfactory'', all provisional base fee payments shall be refunded to the Government.

1816.404–272 Award fee evaluation periods.

(a) Award fee evaluation periods should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

1816.404–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or ''rolled-over,'' into subsequent periods.

(b) On other contracts, such as those for end item deliverables where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition, interim evaluations are done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making interim award fee payments. These interim payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payment.

(c) Provisional award fee payments, i.e., payments made within evaluation periods, may be included in the contract and should be negotiated on a case-by-case basis. The amount of the provisional award fee payment is determined by applying the lesser of the prior period's interim evaluation score (see 1816.404–275) or 80 percent of the fee allocated to the current period. The provisional award fee payments are superseded by the fee determinations made at the conclusion of each award fee performance period.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due to the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.404–274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an

individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.404–275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.404–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) When an AF arrangement is used in conjunction with a performance based contract structure (see 1816.404–270(b)(2)(iii)), the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g., CPIF, FPIF).

(f) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(g) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

1816.404–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated ''Excellent,'' the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0–100 according to the ratings defined in 1816.404–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.405 Contract clauses.

1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for End Item Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) As provided at 1816.402–270, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts. (NASA supplements paragraph (a))

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

1816.505 Ordering. (NASA supplements paragraphs (a) and (b))

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(4) The Agency and installation ombudsmen designated in accordance with 1815.70 shall review complaints from contractors on task order contracts and delivery order contracts.

1816.505–70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.404–270(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216–80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843–70.

1816.506–70 NASA contract clause.

Insert the clause at 1852.216–80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NHB 9501.2), use the clause with its Alternate I.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603–370 Approvals.

(a) All requests for authority to issue a letter contract shall include the following:

(1) Proposed contractor's name and address.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed.

(10) A statement that the definitive contract will contain all required clauses or identification of specific clause deviations that have been approved.

(11) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(12) The definitization schedule described in FAR 16.603–2(c) expected to be negotiated with the contractor.

(b) Requests for authority to issue letter contracts having an estimated definitive contract amount equal to or greater than the Master Buy Plan submission thresholds of 1807.7101 (or modifications thereto) shall be signed by the procurement officer and submitted to the Associate Administrator for Procurement (Code HS) for approval.

(c) Authority to approve the issuance of letter contracts below the Master Buy Plan submission thresholds specified in 1807.7101 is delegated to the procurement officer.

(d) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with paragraph (c) of this section that increases the estimated definitized contract amount to or above the Master Buy Plan submission thresholds must have the prior approval of the Associate Administrator for Procurement (Code HS).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The authority citation for part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1852.215–73, 1852.215–74, 1852.215–75 [Revised]

5–6. Sections 1852.215–73, 1852.215–74 and 1852.215–75 are revised to read as follows:

1852.215–73 Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs).

As prescribed in 1815.407–70(a), insert the following provision:

Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs)

(October 1996)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice of telegram (Including mailgram) received at any time before award. Proposals maybe withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

1852.215–74 Alternate Proposals.

As prescribed in 1815.407–70(b), insert the following provision:

Alternate Proposals

(October 1996)

(A) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, it accepted, would result in a contract with terms varying in one or more material respects from those

contained in this solicitation, and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interest, the Government may modify its solicitation in a manner appropriate the incorporate the changes but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

1852.215–75 Expenses Related to Offeror Submissions.

As prescribed in 1815.407–70(c), insert the following provision:

Expenses Related to Offeror Submissions

(December 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

1852.215–77, 1852.215–78, 1852.215–79 [Revised]

7.–8. Sections 1852.215–77, 1852.215–78 and 1852.215–79 are revised to read as follows:

1852.215–77 Preproposal/Pre-bid Conference.

As prescribed in 1815.407–70(d), insert the following provision:

Preproposal/Pre-Bid Conference

(December 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

1852.215–78 Make or Buy Program Requirements.

As prescribed in 1815.708–70(a), insert the following provision:

Make or Buy Program Requirements

(December 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy.''

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or ''buy.''

(d) Reasons for (i) categorizing items and work effort as ''must make'' or ''must buy'' and (ii) proposing to ''make'' or ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

1852.215–79 Price Adjustment for ''Make-or-Buy'' Changes.

As prescribed in 1815.708–70(b), insert the following clause:

Price Adjustment for ''Make-or-Buy'' Changes

(December 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

1852.215–81, 1852.215–82 [Revised]

9. Section 1852.215–81 and 1852–215–82 are revised to read as follows:

1852.215–81 Proposal Page Limitations.

As prescribed in 1815.407–70(g), insert the following provision:

Proposal Page Limitations

(January 1994)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)
_____	_____
_____	_____
_____	_____
_____	_____

(b) A page is defined as one side of sheet, 8½'' x 11'', with at least one inch margins on all sides, using not smaller than 12 characters per inch (or equivalent) type. Foldouts count as an equivalent number of 8½'' x 11'' pages. The metric standard format most closely approximating the described standard 8½'' x 11'' size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If Best and Final Offers (BAFOs) are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

1852.215–82 Offeror oral presentations.

As prescribed in 1815.407–70(h), insert the following provision:

Offeror Oral Presentations

(November 1993)

(a) Offerors are invited to give an oral presentation to the Government on the structure and general content of their proposals. These presentations are intended to assist Government evaluation by providing a ''roadmap'' to understanding proposals, i.e., an overview of the proposal organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation.

(b) The Government will not engage in any discussions during the oral presentation, and no proposal revisions will be accepted as part of the presentation. The Government's evaluation of offeror proposals will be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation will not be evaluated.

(c) Offerors should indicate in their proposals if they wish to give an oral presentation. These presentations are not mandatory, and electing not to give a presentation will not, in itself, affect proposal evaluation.

(d) Because the presentations are intended to assist the Government's evaluation, they will be scheduled to take place prior to commencement of the formal initial evaluation, normally within three days after proposal receipt. Offerors unable to accommodate this schedule forfeit their opportunity to provide a presentation.

(e) The presentations will consist of an offeror briefing not to exceed [*insert 1 or 2*] hours to be followed by a question and answer period. The order of offeror presentations will be determined at random. The exact time and place of the presentation, along with any other guidance, will be provided to the offeror by the contracting officer or his/her representative.

(f) Presentation materials are not required, but if used, the Government will retain one copy in its official file as a historical record of the presentation even though these materials will not be used in the Government's evaluation process.

(End of provision)

1852.215–84 [Revised]

10.–11. Section 1852.215–84 is revised to read as follows:

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

Ombudsman

(October 1996)

An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, [Insert name], at _____ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Deputy Administrator for Procurement, at 202–358–2090. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

1852.216–73, 1852.216–74, 1852.216–75, 1852.216–76, 1852.216–77, 1852.216–78 [Revised]

12.–13. Sections 1852.216–73, 1852.216–74, 1852.216–75, 1852.216–76, 1852.216–77 and 1852.216–78 are revised to read as follows:

1852.216–73 Estimated Cost and Cost Sharing.

As prescribed in 1816.307–70(a), insert the following clause:

Estimated Cost and Cost Sharing

(December 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert ''Limitation of Cost'' or ''Limitation of Funds''] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

1852.216–74 Estimated Cost and Fixed Fee.

As prescribed in 1816.307–70(b), insert the following clause:

Estimated Cost and Fixed Fee

(December 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

(End of clause)

1852.216–75 Payment of Fixed Fee.

As prescribed in 1816.307–70(c), insert the following clause:

Payment of Fixed Fee

(December 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

1852.216–76 Award Fee for Service Contracts.

As prescribed in 1816.405–70(a), insert the following clause:

Award Fee for Service Contracts

(October 1996)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan].* The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The *[insert payment office]* will make payment based on *[Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].*

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts].* Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).]

Alternate I

(October 1996)

As prescribed in 1816.405–70(a), insert the following paragraph (f) and reletter existing paragraph (f) to (g):

(f)(1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a *[Insert the frequency of provisional payments (not more often than monthly)]* basis. The portion paid will be _____ *[Insert percentage (not to exceed 80 percent)]* percent of the current period's available amount or the equivalent of the prior period's interim fee, whichever is lower; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will *[insert ''not'' if appropriate]* be made prior to

the first award fee determination by the Government.

(End of clause)

1852.216–77 Award Fee for End Item Contracts.

As prescribed in 1816.405–70(b), insert the following clause:

Award Fee for End Item Contracts

(Insert Month of Publication)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is ''poor/unsatisfactory.''

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with *[identify performance evaluation plan]* to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in *[Insert ''monthly'', or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.*

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will *[insert ''not'' if applicable]* be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see *[insert applicable cite]*). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is ''poor/unsatisfactory,'' the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance). This determination is not subject to the Disputes clause.

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is ''poor/unsatisfactory'', any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].*

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).]

(End of clause)

1852.216–78 Firm Fixed Price.

As prescribed in 1816.202–70, insert the following clause:

Firm Fixed Price

(December 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

1852.216–80, 1852.216–81 [Revised]

14.–15. Sections 1852.216–80 and 1852.216–81 are revised to read as follows:

1852.216–80 Task Ordering Procedure.

As prescribed in 1816.506–70, insert the following clause:

Task Ordering Procedures

(October 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ____ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

Alternate I

(October 1996)

As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.
(3) Cost and hours incurred to date for each issued task.
(4) Costs and hours estimated to complete each issued task.
(5) Significant issues/problems associated with a task.
(6) Cost summary of the status of all tasks issued under the contract.

1852.216–81 Estimated Cost.

As prescribed in 1816.307–70(d), insert the following clause:

Estimated cost

(December 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

1852.216–83, 1852.216–84, 1852.216–85 [Revised]

16.–17. Sections 1852.216–83, 1852.216–84 and 1852.216–85 are revised to read as follows:

1852.216–83 Fixed Price Incentive.

As prescribed in 1816.405–70(c), insert the following clause:

Fixed Price Incentive

(October 1996)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.]

The cost sharing for target cost underruns is: Government _____percent; Contractor _____percent.

The cost sharing for target cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

1852.216–84 Estimated Cost and Incentive Fee.

As prescribed in 1816.405–70(d), insert the following clause:

Estimated Cost and Incentive Fee

(October 1996)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____.

The maximum fee is $_____.

The minimum fee is $_____.

The cost sharing for cost underruns is: Government _____percent; Contractor _____percent.

The cost sharing for cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

1852.216–85 Estimated Cost and Award Fee.

As prescribed in 1816.405–70(e), insert the following clause:

Estimated Cost and Award Fee

(September 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

(End of clause)

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee)].*

(End of clause)

1852.216–87, 1852.216–88, 1852.216–89 [Revised]

18–19. Sections 1852.216–87, 1852.216–88 and 1852.216–89 are revised to read as follows:

1852.216–87 Submission of Vouchers for Payment.

As prescribed in 1816.307–70(e), insert the following clause:

Submission of Vouchers for Payment

(December 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract *number*] and be forwarded to:

[Insert the mailing address for submission of cost vouchers.]

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:

[Insert the mailing address for submission of fee vouchers.]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

1852.216–88 Performance Incentive.

As prescribed in 1816.405–70(f), insert the following clause:

Performance Incentive

(January 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called ''unit(s) of measurement,'' e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ____ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) ____ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) ____. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within

[insert number of months or years] after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

1852.216–89 Assignment and release forms.

As prescribed at 1816.307–70(f), insert the following clause:

Assignment and Release Forms

(October 1996)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR Clause 52.216–7, Allowable Cost and Payment, and FAR Clause 52.216–13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release
NASA Form 779, Assignee's Release
NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts

Computer generated forms are acceptable, provided that they comply with FAR Clause 52.253–1.

(End of clause)

[FR Doc. 97–1240 Filed 1–22–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 1)]

Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—1997 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board adopts its 1997 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1997 Government salary increases and increases in Federal Register publication costs.

EFFECTIVE DATE: These rule are effective on February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5249, or David T. Groves, (202) 927–6395. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

The Board's regulations at 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Because Board employees will receive a salary increase of 3.33% in January 1997, we are updating our user fees to recover our increased personnel cost. This update also reflects the increased Federal Register publication costs, which became effective on January 1, 1997. All fees will be updated based on our cost formula at 49 CFR 1002.3(d).

In *Central Power & Light Company* v. *Southern Pacific Transportation Company,* No. 41242 (STB served Dec. 31, 1996), the Board indicated that in certain cases ''bottleneck'' rate relief would be available in connection with the filing of a competitive access complaint. The Board is adding a new Fee Item 56(iv), Competitive access complaints, to cover that activity.

In *Class Exem. For The Construction of Connecting Track,* 1 S.T.B. 75 (1996), the Board adopted new regulations at 49 CFR 1150.36 that provide for a class exemption for the construction and operation of connecting railroad track. We are adding new Fee Item 12(ii), Notice of exemption under 49 CFR 1150.36, to cover that activity. Also, to conform with other fee items, we are providing a separate Fee Item 12(iii), Petition for exemption under 49 U.S.C. 10502 involving construction of rail lines.

Because the Board only recently revised the fees for formal complaints in Fee Items 56 (i)–(iii) in the *Regulations Governing Fees For Services Performed in Connection with Licensing and Related Services—1996 Update,* 61 FR 66229 (December 17, 1996), the fees for those items will remain at current levels.

The fee increases involved here result only from the mechanical application of the update formula at 49 CFR 1002.3(d), that was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update,* 4 I.C.C.2d 137 (1987). Therefore, we believe that good cause exists for finding that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees for Services—1990 Update,* 7 I.C.C.2d 3 (1990), *Regulations Governing Fees for Services—1991 Update,* 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees for Services—1993 Update,* 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: January 13, 1997.

By the Board, Chairman Morgan and Vice-Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (a), (b), (c), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $10.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or

extracts therefrom at the rate of $25.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $17.00 per hour.

* * * * *

(e) * * *

(1) A fee of $44.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$7.37
GS–2	8.02
GS–3	9.04
GS–4	10.15
GS–5	11.35
GS–6	12.66
GS–7	14.06
GS–8	15.58
GS–9	17.20
GS–10	18.95
GS–11	20.82
GS–12	24.95
GS–13	29.67
GS–14	35.06
GS–15 and over	41.24

* * * * *

3. In § 1002.2, paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
Part I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic.	$2,600.
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,200.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13706.	$16,500.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$2,700.
(ii) Minor amendment	$60.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i).	$300.
(6)–(10) [Reserved]	
Part II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$4,300.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35.	$1,100.
(iii) Petition for exemption under 49 U.S.C. 10502.	$7,500.
(12) (i) An application involving the construction of a rail line.	$44,500.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36.	$1,100.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line.	$44,500.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii).	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$3,700.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45.	$1,100.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$3,900.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24.	$1,000.
(16)–(20) [Reserved]	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments.	$13,200.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50.	$2,200.
(iii) A petition for exemption under 49 U.S.C. 10502.	$3,800.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$250.
(23) Abandonments filed by bankrupt railroads.	$1,100.
(24) A request for waiver of filing requirements for abandonment application proceedings.	$1,000.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$900.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned.	$13,500.
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d).	$150.
(28)–(35) [Reserved]	
Part IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102.	$11,300.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322.	$6,100.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$1,000.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d).	$850.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$750.
(v) Responsive application	$4,700.

Type of proceeding	Fee
(vi) Petition for exemption under 49 U.S.C. 10502.	$5,600.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$889,500.
(ii) Significant transaction	$177,900.
(iii) Minor transaction	$4,700.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d).	$850.
(v) Responsive application	$4,700.
(vi) Petition for exemption under 49 U.S.C. 10502.	$3,900.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5).	$1,500.
(43) An application for approval of a rail rate association agreement 49 U.S.C. 10706.	$41,600.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$7,700.
(ii) Minor amendment	$60.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328.	$450.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$4,800.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562.	$150.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$150.
(49)–(55) [Reserved]	
Part V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of rail carriers, motor carriers of passengers or motor carriers of household goods:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) except a complaint filed by small shipper.	$23,300.
(ii) A formal complaint involving rail maximum rates filed by a small shipper.	$1,000.
(iii) All other formal complaints (except competitive access complaints).	$2,300.
(iv) Competitive access complaints.	$150.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$5,200.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order.	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	$4,200.
(60) Labor arbitration proceedings.	$150.
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$150.
(62) Motor carrier undercharge proceedings.	$150.
(63)–(75) [Reserved]	
Part VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$700.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements.	$70.
(78) (i) The filing of tariffs, including supplements, or contract summaries.	$1 per page. ($14 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less.	$45.
(ii) Applications involving over $25,000.	$90.
(80) Informal complaint about rail rate applications.	$350.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less.	$45.
(ii) Petitions involving over $25,000.	$90.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$100.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	$24 per document.
(84) Informal opinions about rate applications (all modes).	$150.
(85) A railroad accounting interpretation.	$650.
(86) An operational interpretation	$850.
(87)–(95) [Reserved]	
Part VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	$19 per delivery.
(97) Request for service or pleading list for proceedings.	$14 per list.
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a FEDERAL REGISTER notice.	$150.
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a FEDERAL REGISTER notice.	$400.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam.	$100.
(ii) Practitioners' Exam Information Package.	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual.	$50.
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor.	$10.
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board.	$20.
(iv) Public requests for *Source Codes* to the PC version URCS Phase III.	$500.
(v) PC version or mainframe version URCS Phase II.	$400.
(vi) PC version or mainframe version Updated Phase II databases.	$50.
(vii) Public requests for *Source Codes* to PC version URCS Phase II.	$1,500.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year.	$450.
(ii) Requests for Public Use File on R–CD Each Additional Year.	$150.
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year.	$650.
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD.	$450.

Type of proceeding	Fee
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R-CD.	$500.
(vi) User Guide for latest available Carload Waybill Sample.	$50.

* * * * *

[FR Doc. 97–1613 Filed 1–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 011697B]

Atlantic Tuna Fisheries; Fishery Closure

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) Incidental Other category has attained its 1997 annual quota. Therefore, the Incidental Other category for 1997 will be closed.

EFFECTIVE DATE: The closure of the Incidental Other category is effective 11:30 p.m. local time on January 17, 1997, until the effective date of a quota adjustment, if any, which will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq*.) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Incidental Other Category Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 1 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the Incidental Other category quota over the period January 1 - December 31. Based on reported catch, NMFS has determined that this quota has been reached; reported landings as of January 16, 1997, total 1.23 mt. Therefore, retaining, possessing, or landing large medium or giant ABT under the Incidental Other category quota must cease at 11:30 p.m. local time on January 17, 1997, until the effective date of a quota adjustment, if any, which will be published in the Federal Register.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: January 16, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1588 Filed 1–17–97; 2:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–236–FOR]

Ohio Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio abandoned mine land reclamation plan (hereinafter the ''Ohio plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment which was published April 17, 1996 (61 FR 16731) consists of changes to provisions of the Ohio plan pertaining to the acid mine drainage set-aside program, water quality improvement, project eligibility, and remining incentives. The amendment is intended to revise the Ohio plan to be consistent with SMCRA, as amended.

DATES: Written comments must be received by 4:00 p.m., [e.s.t.], February 7, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Plan

On August 10, 1982, the Secretary of the Interior approved the Ohio plan. Background information on the Ohio plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the April 15, 1994, Federal Register (59 FR 17930). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.25.

II. Description of the Proposed Amendment

By letter dated March 19, 1996, (Administrative Record No. OH–2163) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The provisions of the Ohio plan that it proposes to amend are: Acid mine drainage set-aside program, water quality improvement, project eligibility, and remining incentives. The proposed amendment was announced in the April 17, 1996, Federal Register (61 FR 16731).

By letter dated December 6, 1996 (Administrative Record No. OH–2163–12), Ohio submitted revisions to the original amendment. At page 4–2, the following language is inserted, ''to encourage reclamation in conjunction with active mining of abandoned areas causing acid mine drainage (AMD) within approved hydrologic units and in other areas causing AMD within approved hydrologic units and in other areas through the funding of AMD remediation projects and studies necessary to develop pollution plans.'' At page 4–17, Ohio clarifies that AMDAT funds are being used to collect and analyze data necessary to qualify watersheds as hydrologic units. At page 4–19, Ohio is revising Stage 5 of the project selection process to provide for the reclamation of abandoned mine areas causing AMD in conjunction with active mining. Federal abandoned mine lands funds may be used to fund reclamation of abandoned mine lands causing AMD under certain conditions.

By letter dated December 20, 1997 (Administrative Record No. OH–2163–13), Ohio submitted an additional revision. At page 4–19, Ohio proposes to delete the language identified as Stage 5 of the project selection process. The deletion is based on Ohio's understanding that such language is not necessary to fulfill its goals and objectives regarding the use of the acid mine drainage set-aside funds for the restoration of watersheds impacted by acid mine drainage from abandoned coal mines. Sufficient flexibility exists within its program to manage the funds in a manner that will achieve its objectives.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions to the State's Plan that were submitted on March 19, 1996, and revised on December 6 and 20, 1996. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans submitted by a State or Tribe must be based solely on a determination of whether the submittal is consistent with Title IV of SMCRA (30 U.S.C. 1231–1243) and whether the other requirements of 30 CFR Parts 884 and 888 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1997.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–1600 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Ch. XI

Negotiated Rulemaking Committee to Revise the Motor Carrier Financial and Operating Data Collection Program; Meeting and Extension of Comment Period on Proposed Establishment

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice of meeting; extension of comment period.

SUMMARY: The Bureau of Transportation Statistics (BTS) has proposed the establishment of a negotiated rulemaking advisory committee (the Committee) to examine the relevant issues and attempt to reach a consensus in developing regulations governing the collection of financial and operating data from motor carriers of property. Before making a final decision on formation of the Committee, BTS will hold a public meeting to help decide whether a negotiated rulemaking advisory committee is needed, and, if so, to help determine the appropriate Committee membership and issues for consideration. The meeting will be held Monday, February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time. BTS is also extending the comment period on the proposal to establish the negotiated rulemaking committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. Persons are invited to submit applications or nominations for membership on the Committee. The comment period is extended to February 28, 1997.

DATES: *Meeting.* The meeting will be held Monday, February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time.

Comment period. Interested parties may file comments and nominations for committee membership on or before February 28, 1997.

ADDRESSES: *Meeting.* The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C., in conference room 2230 of the Nassif Building. Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify David Mednick on (202) 366–8871 prior to February 7. Attendance is open to the interested public but limited to space available.

Comment period. When sending comments and/or nominations, send the original plus three copies. Mail to Docket Clerk, Docket No. BTS–96–1979, Department of Transportation, 400 Seventh Street, SW., Room PL–401,Washington, D.C. 20590. Commenters desiring notification of receipt of comments must include a stamped, self-addressed postcard. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: David Mednick, Bureau of Transportation Statistics, K–2, 400 Seventh Street, SW., Washington, D.C. 20590; by phone at (202) 366–8871; by e-mail at david.mednick@bts.gov; or by Fax at (202) 366–3640.

SUPPLEMENTARY INFORMATION:

Background

Under Section 103 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (to be codified at 49 U.S.C. 14123), the Secretary of Transportation has authority to establish regulations for the collection of certain data from motor carriers of property and others. On December 9, 1996, BTS published a notice in the Federal Register (the Notice) proposing to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act. 61 FR 64849. The Committee would consider the relevant issues and attempt to reach a consensus on regulations governing the collection of financial and operating data from motor carriers of property. This effort also is in response to the President's Regulatory Reinvention Initiative, which specifically directed agencies to increase use of regulatory negotiation in rulemaking proceedings. The Committee would be composed of people who represent the interests that would be substantially affected by the rule.

The Notice proposing establishment of the Committee listed potential topics

for the negotiated rulemaking process. It also listed entities identified as interested parties that should be included in the negotiated rulemaking process either directly as members of the Committee or as part of a broader caucus of similar or related interests. The Notice requested comments on the proposal to establish a negotiated rulemaking advisory committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. BTS has decided to supplement its request for comments by (1) holding a public meeting on this matter; and (2) extending the comment period until after the public meeting.

Announcement of BTS Public Meeting

To better determine the utility of negotiating a rule on this matter, BTS will hold a public meeting on February 10, 1997, 9:30 am to 3:00 pm, Eastern Standard Time. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C., in conference room 2230 of the Nassif Building. Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify David Mednick on (202) 366–8871 prior to February 7. Attendance is open to the interested public but limited to space available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Mednick at (202) 366–8871 at least seven days prior to the meeting.

While negotiated rulemaking would attempt to resolve issues surrounding the motor carrier data collection program, several initial matters deserve attention. First, do we need to amend the existing rule and, if so, is negotiated rulemaking the best process for updating the motor carrier data collection program? Second, if so, what are the core issues in dispute and differing legitimate needs of the interested parties? Third, which organizations or interests should be represented on the Committee?

While comments received have been helpful, BTS does not have enough information to determine whether to pursue negotiated rulemaking. The public meeting will bring together the various interest groups. A facilitator will be on hand to help develop potential issues and promote open discussion. In addition to helping BTS decide whether to pursue the negotiated rulemaking, it should also help lay the groundwork for the proposed Committee.

All those interested in this rulemaking, including the potential participants listed in the Notice and those submitting applications or nominations for membership, are encouraged to attend.

Extension of Comment Period

Because BTS has not reached a final decision on whether to use a negotiated rulemaking process for this rule, it is extending the comment period on its proposal published December 19, 1996. 61 FR 64849. The comment period is extended to February 28, 1997. BTS is soliciting comments on the proposal to establish a negotiated rulemaking advisory committee, on the proposed membership of the Committee, and on the proposed issues for consideration by the Committee. BTS is also accepting applications and nominations for membership on the Committee. Please refer to the original Notice for full details.

Issued in Washington, DC, on January 16, 1997.

Robert A. Knisely,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 97–1580 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AA98

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is reopened. A notice of availability that opened the original public comment period was published on September 12, 1995 (60 FR 47339). The Service extended the comment period until December 15, 1995, in a notice published on November 13, 1995 (60 FR 56976). The Service hereby reopens the comment period and solicits new information and public comment on all information and data received since the listing of the species in 1993.

DATES: The comment period is reopened until March 10, 1997. Any comments and materials received by the closing date will be considered in the final determination.

ADDRESSES: Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the address listed above (telephone 208/378–5243, facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1993, the Service published a final rule in the Federal Register determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation, Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural errors during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993 the district court determined that the Service committed several procedural errors and set aside the final rule listing the springsnail as an endangered species.

The district court decision was appealed to the United States Court of Appeals for the Ninth Circuit by two intervening conservation groups, the Idaho Conservation League and Committee for Idaho's High Desert. On June 29, 1995, the appellate court overturned the district court decision

and reinstated the Bruneau hot springsnail to the endangered species list. However, the appellate court concluded that the Service should have made the draft USGS report (i.e., Berenbrock 1992) available for public review, as the Service relied largely on this report to support the final listing rule. The appellate court directed the Service to provide an opportunity for public comment on the final USGS report and to reconsider its listing decision.

To comply with the court's direction, the Service announced that the Berenbrock (1992) report, and other reports and data pertaining to the listing of the springsnail were available for public comment until November 13, 1995, in a notice published on September 12, 1995 (60 FR 47339). Because of a request from Susan E. Buxton on behalf of her client (John B. Urquidi, J & J Ranches, Bruneau, Idaho), the Service extended the public comment period until December 15, 1996, in a notice published on November 13, 1995 (60 FR 56976). Nearly 400 comments were received from individuals and agencies during the public comment period.

Because of a moratorium on final listing actions from April 10, 1995, until April 26, 1996 (Pub. L. 104–6), the Service was unable to comply with the June 1995 court decision and issue its reconcideration listing decision. In anticipation of the end of the moratorium and after it was lifted, the Service issued interim guidance on March 11, 1996 (61 FR 9651), final guidance for fiscal year 1996 on May 16, 1996 (61 FR 24722), and final guidance for fiscal year 1997 on December 5, 1996 (61 FR 64475), regarding the setting of priorities for various listing actions. These guidance documents focused the Service's limited funding on emergency actions, and final rules for imminently and highly threatened species, and for multi-species packages. Consequently, the Service took no action on the springsnail during fiscal year 1996. Though listing priorities now allow the Service to take final action on this court decision, it has been over 1 year since the close of the last public comment period. Therefore, the Service is now soliciting additional comments and making available for public review new information and other data pertaining to the listing of the Bruneau hot springsnail received since the last comment period.

Available Reports and Data

In addition to the draft USGS report, which was finalized in August 1993 (i.e., Berenbrock 1993), the Service listed 13 additional reports and documents in its past notices (60 FR 47339 and 60 FR 56976) that are pertinent to the listing decision and were received since the original listing rule was published on January 25, 1993. Moreover, the Service received 5 additional reports or letters pertinent to this listing decision since the close of the public comment period on December 15, 1995. The following combined list of reports and letters contained in Service files, including other non-cited information, are available for public review and comment:

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations, Boise, Idaho. Preliminary report.

Berenbrock, C. 1993. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations Report 93–4001, Boise, Idaho.

Bruneau Valley Coalition, Inc. 1995. Habitat maintenance and conservation plan for the Bruneau hot springsnail, January, 1995. Unpublished plan.

Bruneau Valley Coalition, Inc. 1995. Proposed amendment to the ''Threatened and Endangered Species'' section of the Interim Comprehensive Land Use Plan for the federally and state managed lands in Owyhee County. Unpublished amendment.

Idaho Water Resources Research Institute. 1994. Bruneau hot springs aquifer restoration report: A preproposal. Unpublished report, University of Idaho, Moscow, Idaho.

Lee, J.A. 1994. Summary report for the control survey of the Bruneau hot springsnail. Unpublished report, Bureau of Land Management, Boise District Office, Boise, Idaho.

Mladenka, G.C. 1993. Report on the 1993 Bruneau hot springsnail site survey. Unpublished report.

Mladenka, G.C. 1995. Bruneau hot springs invertebrate survey. Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Mladenka, G.C. and G.W. Minshall. 1996. Report on the 1996 Bruneau hot springsnail site survey. Unpublished report.

Royer, T.V. and G.W. Minshall. 1993. 1993 Annual Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

U.S. Geological Survey. 1993. Unpublished letter addressing error in estimating natural recharge to geothermal aquifer system, and status of Bruneau-area ground water-levels and spring discharges. Boise, Idaho.

U.S. Geological Survey. 1995a. Unpublished letter summarizing results of Bruneau-area ground water-level and spring discharge monitoring data through December 1994. Boise, Idaho.

U.S. Geological Survey. 1995b. Unpublished letter commenting on Idaho Water Resources Research Institute's report and summarizing provisional, spring discharge data collected from June 1994 through July 1995 from three hot springs above Hot Creek, Idaho.

U.S. Geological Survey. 1996a. Unpublished letter summarizing Bruneau-area ground water-level and spring discharge monitoring data collected through January 1996. Boise, Idaho.

U.S. Geological Survey. 1996b. Annual report summarizing results of Bruneau-area ground water-level and spring discharge monitoring through June 1996. Boise, Idaho.

U.S. Geological Survey. 1996c. Annual report summarizing results of Bruneau-area ground water-level and spring discharge monitoring through September 1996. Boise, Idaho.

Varricchione, J.T. and G.W. Minshall. 1995. 1994 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Technical Bulletin No. 95–14, Idaho Bureau of Land Management.

Varricchione, J.T. and G.W. Minshall. 1995. Gut content analysis of wild *Gambusia* and *Tilapia* in Hot Creek, Bruneau, Idaho. Unpublished report, Idaho State University, Pocatello, Idaho.

Varricchione, J.T. and G.W. Minshall. 1996. 1995 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Idaho Bureau of Land Management Technical Bulletin No. 96–8. Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531–1544.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Dated: January 14, 1997

H. Dale Hall,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–1602 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011397B]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, January 29, 1997, at 10 a.m., and on Thursday, January 30, 1997, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

January 29, 1997

After introductions, the January 29 session will begin with a report on the 23rd Stock Assessment Workshop presented by the staff of the Northeast Fisheries Science Center. Analyses will be reviewed for the following species/stocks: Atlantic sea scallops, monkfish, and bluefish.

At the afternoon session and on the following day, the Council will consider action on framework adjustments to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. This will be the final meeting to discuss and vote on Framework Adjustment 20 to the FMP (stock rebuilding measures for 1997). The range of options under consideration include area closures, gear modifications, and possible reductions in days-at-sea allocations. As part of this action, the Council will discuss effort reduction measures for gillnet vessels and alternatives to the current haddock trip limit. Measures to protect the 1992 year class of winter flounder also will be discussed and included in this action. Other adjustments included in Framework Adjustment 20 would allow operation of mussel dredges in Southern New England and would modify the bycatch allowances in the northern shrimp fishery.

January 30, 1997

The January 30 session will begin with reports from the Council Chairman, Executive Director, NMFS Northeast Regional Administrator (Regional Administrator), Northeast Fisheries Science Center, Mid-Atlantic Council Liaisons, representatives of the Atlantic States Marine Fisheries Commission and the U.S. Coast Guard. NMFS will follow with a briefing on the Magnuson-Stevens Fishery Conservation and Management Act requirements concerning essential fish habitat.

In the afternoon, the Council will hold the final meeting on a framework adjustment to consider measures that would restrict fixed gear in the Great South Channel area to protect right whales in critical habitat during high use periods.

There will be a review of the Monkfish Committee's discussions on the Draft Environmental Impact Statement and the Draft FMP Amendment dealing with monkfish.

The day will conclude with a discussion on the use of negotiated rulemaking to resolve gear conflicts in the highly migratory species fisheries. Any other outstanding business will also be discussed.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 16, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1655 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 17, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

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

Food Safety and Inspection Service

Title: Use of Two Kinds of Poultry Without Label Change.

OMB Control Number: New Collection.

Summary: FSIS is proposing to amend the poultry products inspection regulations by adding a provision that would permit manufactures of poultry products to interchange the amounts and kinds of poultry present in a product without requiring new labels for each formulation.

Need and use of the Information: The information would be used to ensure that poultry products are properly labeled and packaged.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 125.

Farm Service Agency

Title: Farmer Program Loans.

OMB Control Number: 0560–0155.

Summary: The Secretary of Agriculture is authorized to make and service loans guaranteed by the Farm Service Agency (FSA) to eligible farmers and ranchers. The loans made and serviced under 7 CFR 1980 Subpart B include farm operating, farm ownership and soil and water loans. Also under this subpart are emergency loans and recreation loans, which are no longer guaranteed by FSA.

Need and use of the information: This collection of information is necessary to assure that the program is carried out in accordance with applicable laws and authorities.

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

Number of Respondents: 23,150.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 193,343.

Farm Service Agency

Title: Emergency Livestock Feed Assistance and Disaster Reserve Assistance Programs—7 CFR 1439.

OMB Control Number: 0560–0029.

Summary: Emergency livestock feed and disaster reserve assistance programs authorize the Secretary of Agriculture to assist in the preservation and maintenance of livestock in any area of the United States where the Secretary determines that a livestock feed emergency exists.

Need and use of the Information: These requirements are necessary for the proper performance of USDA's functions in administering provisions of the emergency livestock and disaster reserve assistance programs.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 60,000.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 81,832.

Emergency Processing of This Submission Has Been Requested by January 16, 1997.

Farm Service Agency

Title: 7 CFR 729 and 1446—Poundage Quota and Marketing Regulations for Peanuts—Addendum.

OMB Control Number: 0560–0006.

Summary: The Agriculture Adjustment Act of 1938 as amended, and the Agriculture Act of 1949, as amended, authorizes the peanut program. The Food Security Act of 1985 provides for a two-priced peanut program and permits growers to produce and market quota and additional peanuts. The law specifies exact quantities of quota that may be marketed from a farm and the level of support. It is required that tenants share in any increased quota due to the tenant's production of additional peanuts on the farm.

Need and Use of the Information: Data is used to monitor and control compliance with the peanut program.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 15,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 460,090.

Emergency Processing of This Submission Has Been Requested by *January 30, 1997.*

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 97–1635 Filed 1–22–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–6A018.''

U.S. Shippers Association's (''USSA'') original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and previously amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); and on June 28, 1994 (59 FR 34411, July 5, 1994). A summary of the application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association (''USSA''), 1209 Orange Street, Wilmington, Delaware 19801.

Contact: Andrew J. Shapiro, Counsel, Telephone: (202) 662–5447.

Application No.: 85–6A018.

Date Deemed Submitted: January 10, 1997.

Proposed Amendment

USSA seeks to amend its Certificate to add the following companies as new ''Members'' of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): NOVA Chemicals Inc., Monaca, PA (Controlling Entity: NOVA Corporation, Calgary, Alberta, Canada); Pecten Chemicals Inc., Houston, TX (Controlling Entity: Royal Dutch Petroleum Company, The Hague, The Netherlands); and Phillips Petroleum Company, Bartlesville, OK.

Dated: January 11, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–1574 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 960227052–6355–02]

RIN 0693–ZA06

Continuation of Fire Research Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program.

DATES: Proposals must be received no later than the close of business September 30, 1997.

ADDRESSES: Applicants must submit one signed original and two (2) copies of the proposal along with the Application for Federal Assistance, Standard Form 424, (Rev. 4–92), as referenced under the provisions of OMB Circular A–110 to: Building and Fire Research Laboratory (BFRL), Attention: Sonya Parham, Building 226, Room B206 National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Fire Research Grants Program should be directed to Sonya Parham, (301) 975–6854. Administrative questions concerning the NIST Fire Research Grants Program may be directed to the NIST Grants Office at (301) 975–6329. Additional information can be found in the Extramural Fire Research Program: Program Announcement and Preparation Guide. Copies may be downloaded from the BFRL web site (http://www.bfrl.nist.gov) or obtained from Sonya Parham at the above address.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards; 11.609.

Authority: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. The annual budget for the Fire Research Grants Program is approximately $1.4 million. Because of commitments for the support of multi-year programs, only a portion of the budget is available to initiate new programs in any one year. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range. The Fire Research Program is limited to innovative ideas generated by the proposal writer, who chooses the topic and approach. The issuance of awards is contingent upon the availability of funding.

All grants proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

A. Fire Modeling and Applications

To perform research, develop, and demonstrate the application of analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: develop methods to assess fire hazard and risk; create advanced, usable models for the calculation of the effluent from building fires; model the ignition and burning of furniture, contents, and building elements such as walls; develop methods of evaluating and predicting the performance of building safety design features; develop a protocol for determining the accuracy of algorithms and comprehensive models; develop data bases to facilitate use of fire models, and develop methodologies to acquire, model, and display fire information.

B. Large Fire Research

To perform research on and develop techniques to measure, predict the behavior of, and mitigate large fire events. This includes: understanding the mechanisms of large fires that control gas phase combustion, burning rate, thermal and chemical emissions, transport processes; developing field measurement techniques to assess the near- and far-field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; and developing and operating the Fire Research Program large-scale experimental facility.

C. Advanced Fire Measurements

Produces the scientific basis and robust measurement methods for characterizing fires and their effluents at full- and reduced-scales.

This includes discrete point, volume-integrated, and time- and space-resolved measurements for such properties as temperature, smoke density, chemical species and flow velocity. Laboratory and computational research is also performed to understand the underpinning fire phenomena to ensure the soundness of the developed measurement techniques.

D. Materials Fire Research

Performs research to enable the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread, and burning rate of materials and the chemical and physical characteristics that affect these aspects of flammability. This includes: Developing methods of measuring the response of a material to fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effect of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion.

E. Fire Sensing and Extinguishment

Develops understanding, metrology, and predictive methods to enable high-performance fire sensing and extinguishment systems; devises new approaches to minimizing the impact of unwanted fires and the suppression process. This includes: research for the identification and insitu measurement of the symptoms of pending and nascent fires and the consequences of suppression; devising or adapting monitors for these variables and the intelligence for timely interpretation of the data; developing methods to characterize the performance of new approaches to fire detection and suppression; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; and modeling the extinguishment process.

Award Period

Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, fit to the NIST Fire Research Program, and the availability of funds.

Matching Requirements

The Fire Research Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government.

Eligibility

Academic institutions, non-Federal agencies, and independent and industrial laboratories and research organizations.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the five programs listed above. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Division Chief. Applicants should allow up to 90 days processing time. Proposals are evaluated for technical merit by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies and experts from the fire research community at large.

Evaluation Criteria

a. Technical quality of the research: 0–35.

b. Potential impact of the results: 0–25.

c. Staff and institution capability to do the work: 0–20.

d. Match of budget to proposed work: 0–20.

Selection Procedure

The results of these evaluations are transmitted to the group leader of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments, considers overall program balance and objective, and makes a recommendation to the Division Chief.

Paperwork Reduction Act

The Standard Forms 424, 424A, 424B, and LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been approved by the Office of Management and Budget, (OMB), under Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Sonya Parham, NIST Fire Research Grants Program (301) 975–6854. An application kit includes the following:

SF–424 (Rev. 4/92)—Application for Federal Assistance
SF–424A (Rev. 4/92)—Budget Information-Non-Construction Programs
SF–424B (Rev. 4/92)—Assurance-Non-Construction Programs
CD–511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying
CD–512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions-Lower Tier Covered Transactions and Lobbying
SF–LLL—Disclosure of Lobbying Activities

Additional Requirements

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover preaward costs.

Primary Application Certification

All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F., ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F., ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, and;

4. Anti-Lobbying Disclosure. Any applicant that has been paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

False Statements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received, or;

3. Other arrangements satisfactory to DoC are made.

No Obligation for Future Funding

If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Federal Policies & Procedures

Recipients and subrecipients under the Fire Research Grants Program are subject to all applicable Federal laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. The Fire Research Grant Program does not directly affect any state or local government.

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

Executive Order Statement

This funding notice was determined to be ''not significant'' for purposes of E.O. 12866.

Dated: January 16, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–1653 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 011497A]

Atlantic Striped Bass Fishery; 1995 Survey of Atlantic Striped Bass Fisheries

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability and summarizes the results of a survey of the Atlantic coast striped bass fisheries for 1995. The Atlantic Striped Bass Conservation Act (Act), requires NMFS to provide information on the status of the fisheries.

ADDRESSES: Copies of the survey results are available from Paul Perra, NOAA/NMFS/FX2, 8484 Georgia Avenue, Suite 245, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Paul Perra, (301) 427–2014.

SUPPLEMENTARY INFORMATION:

The Act requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. The following is a summary of the survey for 1995. Management measures that severely restricted the harvest of striped bass by commercial and recreational fisheries were moderately relaxed in 1995, as the stocks continue to rebuild.

The 1995 commercial harvest of striped bass was 3,810,608 lb (1.728.5 mt), an increase of 98 percent above the landings of 1,923,000 lb (872.3 mt) in

1994. The Chesapeake Bay area (Maryland, Virginia, and the Potomac River) accounted for 52 percent of the 1995 commercial landings, while Massachusetts and North Carolina accounted for 21 percent and 9 percent respectively.

The recreational catch in 1995 was an estimated 9.6 million striped bass, of which 1.1 million were harvested; the remaining 8.5 million were released. The estimated weight of the recreational harvest was 12.1 million lb (5,492.4 mt).

Juvenile production in 1995 was lower than in 1994 but remained at levels above the long term averages for New York, Maryland, North Carolina, and Virginia. The Delaware juvenile production index of 7.6 was the highest in the time series for that index, which began in 1980.

Information from sampling the population of striped bass shows an increased relative abundance from recent year classes. Copies of the survey are available upon request (see **ADDRESSES**).

Dated: January 16, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–1654 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 011797A]

Endangered Species; Permits

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of an Environmental Assessment and the receipt of an application for a permit to allow an incidental take of threatened and endangered species by Weyerhaeuser Company on portions of its lands in Lane, Linn, Benton, and Douglas Counties, OR. This notice of availability supplements the notice of availability provided by the U.S. Fish and Wildlife Service published elsewhere in this Federal Register volume.

Authority: 16 U.S.C. 1531–1544, and 4201–4245.

Dated: January 17, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–1652 Filed 1–22–97; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 30, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: January 21, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–1798 Filed 1–21–97; 2:33 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America—School and Community-Based Programs; Notice

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds for new grants and notice of availability of fiscal year 1997 application guidelines.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of approximately $25,713,000 to support new Learn and Serve America—School and Community-Based Programs (CFDA #94.004). State educational agencies (for States and certain other jurisdictions, including U.S. territories), grantmaking entities, and Indian tribes are eligible to apply for school-based program funds. State Commissions and grantmaking entities are eligible to apply for community-based program funds. The application form and guidelines for completing the application are contained in the Learn & Serve America: School and Community-Based Programs 1997 Application Guidelines.

DATES: All applications must be received by 3:30 p.m., Eastern Standard Time, March 12, 1997.

ADDRESSES: Applications should be submitted to Box SCB at the Corporation for National and Community Service, 1201 New York Ave, NW., Washington, DC 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Learn & Serve America: School and Community-Based Programs 1997 Application Guidelines, call (202) 606–5000 ext. 260. Any further inquiries may be directed to Calvin Dawson at ext. 136.

SUPPLEMENTARY INFORMATION: The Learn and Serve America—School and Community-Based Programs (CFDA #94.004) aim to increase the opportunities of students and school-age youth and allow them to develop their own capabilities through service-learning. In Fiscal Year 1997, approximately $25,713,000 will be available for new Learn and Serve America—School and Community-Based Programs.

I. School-Based Programs

Up to $19,842,000 will be provided for new grants to State educational agencies from funds allotted to States by formula. Local educational agencies in those States where the State educational agency elects not to apply for its formula allotment may apply directly to the Corporation. Contact your State educational agency with any questions.

Up to $2,488,000 will be provided on a competitive basis to support new grants to grantmaking entities. To be eligible for an award under this program, a grantmaking entity must (1) be a public or private nonprofit organization experienced in service-learning, (2) submit an application to make grants for school-based service-learning programs in two or more states, and (3) have been in existence at least one year prior to submitting its application. Grantmaking entities must make subgrants for the service-learning purposes described in the application guidelines.

For Indian tribes and U.S. territories, approximately $200,000 is available on a competitive basis for new grants. These grants may be used for the services-learning purposes described in the application guidelines.

II. Community-Based Programs

Up to $3,183,000 will be provided on a competitive basis to support new grants to State Commissions and grantmaking entities. State Commissions and grantmaking entities may use funds to make subgrants to qualified organizations for the service-learning purposes described in the application guidelines, and to provide training and technical assistance to those organizations. Qualified organizations

may use funds to implement, operate, expand, or replicate a community-based service program as described in the application guidelines.

Dated: January 16, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–1562 Filed 1–22–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement/ Environmental Impact Report (FEIS/ FEIR) for Proposed Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The purpose of this project is to maximize training opportunities for military units that use Camp Roberts. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

This FEIS/EIR analyzes the proposed action, two alternatives, and the no-action alternative. The proposed action consists of three components: Combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: The M1 Abrams series of tanks would replace the M60 series tanks; Bradley Fighting Vehicles would replace the M113 series armored personnel carriers; the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers; and the AH–64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

In addition to the proposed action, the FEIS/EIR evaluates three other alternatives: No-Action, New Equipment Utilization and Range Modernization Program, and the Peak Training Use of Camp Roberts/Fort Hunter Liggett.

A 45-day public review and comment period was provided for the Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR). Two public hearings were held in San Luis Obispo and Paso Robles, California, on the DEIS/EIR after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS/EIR to constitute the FEIS/EIR. After a 30-day waiting period on the FEIS/EIR, a Record of Decision will be published.

ADDRESSES: Copies of the FEIS/EIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel William Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, CA, 93451–5000; telephone (805) 238–8207.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 97–1597 Filed 1–22–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Board of Visitors to the United States Naval Academy; Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that a special subcommittee of the Board of Visitors to the United States Naval Academy will meet on 23 January 1997, at the United States Naval Academy, Annapolis, MD, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Secretary of the Navy has determined in writing that the special subcommittee meeting shall be closed to the public because they will be concerned with matters as outlined in section 552(b) (2), (5), (6), and (7) of title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000 Telephone: (410) 293–1503.

Dated: January 14, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–1589 Filed 1–22–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.902B]

National Assessment of Educational Progress (NAEP), Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: NAEP provides information on the educational achievement of school children. The purpose of the NAEP Secondary Analysis program is to encourage eligible parties to apply new ideas or state-of-the-art techniques to the analysis and reporting of the information contained in NAEP and NAEP High School Transcript Studies.

Eligible Applicants: Public or private organizations and consortia of organizations.

Deadline for Transmittal of Applications: March 24, 1997.

Applications Available: January 29, 1997.

Available Funds: Up to $700,000.

Estimated Range of Awards: $15,000—$100,000.

Estimated Average Size of Awards: $85,000.

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR Part 700.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or both of the invitational priorities in this notice. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects that address the instructional factors, family background factors, and school and teacher characteristics that the educational research literature suggests are correlates of academic performance.

Invitational Priority 2—Projects that include the development of statistical software that would allow more advanced analytic techniques to be readily applied to NAEP data.

Evaluation Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: For application send written request to Alex Sedlacek, U.S. Department of Education, National Center for Education Statistics, Office of Educational Research and Improvement, Room 404B, 555 New Jersey Avenue, NW., Washington, DC 20208–5653; Internet (alex__sedlacek@ed.gov); or FAX your request to (202) 219–2061 (include CFDA number listed above and the surface mail address to which the application should be sent). *For information* contact Alex Sedlacek at (202) 219–1734. 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. 9010.

Dated: January 16, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–1648 Filed 1–22–97; 8:45 am]

BILLING CODE 4000–01–P

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: February 4, 1997, beginning at 8:30 a.m. and ending at 4:30 p.m. but closed from approximately 4:30 p.m. to 6:30 p.m., and on February 5, 1997, beginning at 8:30 a.m. and ending at 2:00 p.m.

ADDRESSES: Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The proposed agenda includes (a) presentations and discussion sessions on reauthorization of the Higher Education Act; (b) an Advisory Committee regulatory update; and (c) a planning session on the Committee's agenda for the remainder of fiscal year 1997, and other Committee business (e.g., election of officers, budget report, etc). Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV__COMSFA@ED.gov or Tracy__Deanna__Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone number. If you are unable to register through Internet, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Thursday, January 30, 1997.

The Advisory Committee will meet in Washington, D.C. on February 4, 1997, from 8:30 a.m. to 4:30 p.m., and on February 5, from 8:30 a.m. to approximately 2:00 p.m. The meeting will be closed to the public on February 4, from approximately 4:30 p.m. to 6:30 p.m. to elect a new chairperson and discuss other personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays except Federal holidays.

Dated: January 16, 1997.

Brian K. Fitzgerald,

Staff Director Advisory Committee on Student Financial Assistance.

[FR Doc. 97–1538 Filed 1–22–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ97–4–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 16, 1997.

Take notice that on January 14, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain substitute revised tariff sheets in the above captioned docket, with a proposed effective date of February 1, 1997.

Eastern Shore states the substitute revised tariff sheets are being filed to correct its PS–1 Demand Charge. Such correction is required due to a clerical error found in Eastern Shore's workpapers which developed its PS–1 tracking adjustment and resulted in Eastern Shore overstating its PS–1 Demand Charge by $0.39.

Eastern Shore states that copies of the filing have been served upon its jurisdictional 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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1631 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–147–001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 16, 1997.

Take notice that on January 7, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of February 1, 1997:

Third Revised Sheet No. 35
Third Revised Sheet No. 36
Second Revised Sheet No. 220
First Revised Sheet No. 220A
First Revised Sheet No. 220B
First Revised Sheet No. 220C
Third Revised Sheet No. 332

Equitrans states the proposed tariff sheets are submitted in compliance with ''Order on Technical Conference'' issued by the Commission on December 23, 1996 in Docket No. RP96–147. Equitrans states that the Commission required Equitrans to refile the tariff sheets to eliminate application of the proposed ratchets to Rate Schedule 115SS thereby limiting application of the ratchets to Rate Schedules 10SS, 30SS and 60SS and further required revision of the proposed tariff language to apply the ratchets on a pro rata basis across all three Rate Schedules based on each customer's individual storage level. Equitrans states that the proposed tariff sheets incorporate these revisions.

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 Commisson's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1627 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–108–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 16, 1997.

Take notice that on January 13, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1997:

Substitute Second Revised Sheet No. 28
Substitute Original Sheet No. 604
Substitute Original Sheet No. 605
Substitute Original Sheet No. 606
Original Sheet No. 607
Substitute Fourth Revised Sheet No. 1808
Substitute Fourth Revised Sheet No. 1809

Koch states that the purpose of this filing is to comply with a Commission ''Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions'' requesting changes to Koch's Parking and Lending filing (PAL). The PAL filing was made to implement a new nominated interruptible gas parking and lending service under Rate Schedule PAL.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1628 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–5–16–002]

National Fuel Gas Supply Corporation; Notice of Correction to Tariff Filing

January 16, 1997.

Take notice that on January 10, 1997, National Fuel Gas Supply Corporation (National) tendered for filing, a correction to part of its FERC Gas Tariff, Third Revised Volume No. 1, with a proposed effective date of January 1, 1997.

National states that on January 8, 1997, in Docket No. TM–97–5–16–001, National filed Fourth Revised Sheet No. 29. However, the plain version of Fourth Revised Sheet No. 29 contained an

error. Accordingly, National submitted Substitute Fourth Revised Sheet No. 29 to correct that error.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1630 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–190–000]

Northern Natural Gas Company; Notice of Application

January 16, 1997.

Take notice that on January 10, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an Docket No. CP97–190–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission at its Sublette Compressor Station located in Seward County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the compressor units that it proposes to abandon, will not be required due to changes in the operating conditions, resulting from the installation of five new units that Northern is proposing to install and operate, in a companion application that Northern filed in Docket No. CP97–191–000. Northern further states that the new units proposed in Docket No. CP97–191–000 will eliminate the need for the ten old and near obsolete units. It is asserted that the abandonment of the units will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely effect capacity since this compression will be replaced with newer and more efficient technology.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1624 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2833–049]

Public Utility District No. 1 of Lewis County; Notice Granting Extension of Time

January 16, 1997.

On November 1, 1996, the Commission issued notice of Public Utility District No. 1 of Lewis County's (Lewis County) application for amendment of the license for its Cowlitz Falls Project No. 2833, located on the Cowlitz River in Lewis County, Washington. On December 19, 1996, American Whitewater Affiliation and Rivers Council of Washington (AWA) jointly filed a timely motion to intervene in opposition in the amendment proceeding. Pursuant to Rule 213(d) of the Commission's Rules of Practice and Procedure,[1] the deadline for answers to AWA's motion was January 3, 1997.

On December 31, 1996, because of its delayed receipt of AWA's motion, Lewis County filed a request for a 30-day extension of time to answer the motion. Pursuant to Rule 213(d), Lewis County is granted a 15-day extension of time to file an answer to AWA's intervention motion.[2] Accordingly, the answer must be filed within 15 days of the issuance of this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1625 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–226–000]

Questar Pipeline Company; Notice of Tariff Filing

January 16, 1997.

Take notice that on January 13, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 12, 1997, and May 1, 1997, the following tariff sheets tariff):

Effective February 12, 1997

Second Revised Sheet Nos. 163 and 170
Original Sheet No. 170A

Effective May 1, 1997

Second Revised Sheet No. 164
Original Sheet Nos. 164A and 164B
Third Revised Sheet Nos. 166 and 167

The Questar states that the proposed tariff sheets revise Part 3 of the General Terms and Conditions of Questar's tariff by (1) allowing a Rate Schedule FSS shipper in Questar's Clay Basin storage field (Clay basin firm shipper) to transfer any or all of its injection rights and Minimum Required Deliverability (MRD) (withdrawal) rights to another Clay Basin firm shipper, (2) clarifying Questar's administration requests for interruptible storage service and (3) assuring that information regarding operational flow orders can be logically discovered by its customers.

Questar explains further that it is requesting a May 1, 1997, effective date for tariff sheets implementing provisions regarding the transfer of injection and withdrawal rights for two

[1] 18 CFR 385.213(d).

[2] Section 213(d) of the Commission's Regulations provides that, generally, any answer to a motion must be made within 15 days after the motion is filed. Furthermore, answers to intervention motions are to address only the standing to intervene and not the merits of the intervenor's position, and 15 days is an adequate amount of time in which to do so.

reasons. First, the date is consistent with the date Questar's injection period begins; and second, once the provisions are approved, Questar will need approximately two-months lead time to develop the computer programming changes that are needed to implement this concept.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

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 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. 97–1629 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–152–000]

Riverside Pipeline Company, L.P.; Notice of Technical Conference

January 16, 1997.

Take notice that the Commission Staff will convene a two-day technical conference in the above captioned docket on February 6, 1997, from 10:00 a.m. to 4:15 p.m. and on February 7, 1997 from 10:00 a.m. to 3:15 p.m. at the offices of the Federal Energy Regulatory Commission, 888 1st Street N.E., Washington, D.C. 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214 and any participant, as defined in 18 CFR 385.102(b), is invited to attend.

The purpose of the conference is to discuss the resolution of issues pertaining to the initial rates proposed in this proceeding and the underlying cost of service. In addition, the conference will provide an opportunity, as needed, for further discussion of other tariff-related issues which were addressed at previous technical conferences in this proceeding.

For further information, contact George Dornbusch (202) 208–0881, Office of Pipeline Regulation, Room 81–31.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1623 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–7–013, et al.]

PanEnergy Power Services, Inc., et al. Electric Rate and Corporate Regulation Filings

January 16, 1997.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Power Services, Inc.

[Docket No. ER95–7–013]

Take notice that on December 13, 1996, PanEnergy Power Services, Inc. tendered for filing a Notification of Change in Status in the above-referenced docket.

2. C.C. Pace Energy Services, Power Exchange Corporation, Rig Gas Inc., SuperSystems, Inc., Energy Marketing Services, Inc., Alternate Power Source Inc., and Preferred Energy Services, Inc.

[Docket No. ER94–1181–010, Docket No. ER95–72–007, Docket No. ER95–480–007, Docket No. ER96–906–002, Docket No. ER96–734–001, Docket No. ER96–1145–001, and Docket No. ER96–2141–001 (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 January 3, 1997, C.C. Pace Energy Services filed certain information as required by the Commission's July 25, 1995, order in Docket No. ER94–1181–000.

On December 17, 1996, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–72–000.

On December 3, 1996, Rig Gas, Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On December 4, 1996, SuperSystems, Inc. filed certain information as required by the Commission's March 27, 1996, order in Docket No. ER96–906–000.

On December 23, 1996, Energy Marketing Services, Inc. filed certain information as required by the Commission's February 13, 1996, order in Docket No. ER96–734–000.

On December 23, 1996, Alternate Power Source Inc. filed certain information as required by the Commission's April 30, 1996, order in Docket No. ER96–1145–000.

On December 2, 1996, Preferred Energy Services, Inc. filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2141–000.

3. Howard Energy Marketing, Inc., Gateway Energy, Inc., and Petroleum Source & Systems Group, Inc.

[Docket No. ER95–252–007, Docket No. ER95–1049–005, and Docket No. ER96–266–007 (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 10, 1996, Howard Energy Marketing, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

On December 3, 1996, Gateway Energy, Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On December 4, 1996, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

4. Duke/Louis Dreyfus L.L.C.

[Docket No. ER96–108–006]

Take notice that on December 20, 1996, Duke/Louis Dreyfus L.L.C. tendered for filing a change in status relating to the proposed combination of Duke Power Company and PanEnergy Corp.

5. Deseret Generation and Cooperative

[Docket No. ER97–137–000]

Take notice that on January 13, 1997, Deseret Generation and Transmission Cooperative, tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ER97–358–000]

Take notice that on December 23, 1996, Citizens Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Montana Power Company

[Docket No. ER97–523–000]

Take notice that on January 8, 1997, Montana Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER97–669–001]

Take notice that on December 26, 1996, South Carolina Electric & Gas Company tendered for filing its refund report in the above-referenced docket.

Comment date: January 30, 1997, 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 January 7, 1997, Northwest Natural Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER97–1026–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated August 1, 1996, with Duquesne Light Company (Duquesne) for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or Energy Sales Tariff. The Service Agreement adds Duquesne as an eligible customer under the Tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Duquesne and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER97–1027–000]

Take notice that on December 31, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated September 23, 1996, with TransCanada Power Corp. (TC) for the sale of capacity and/or energy under PP&L's Short Term Capacity and/or energy Sales Tariff. The Service agreement adds TPC as an eligible customer under the tariff.

PP&L requests an effective date of December 30, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to TPC and to the Pennsylvania Public Utilities Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–1035–000]

Take notice that on December 31, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Baltimore Gas & Electric Company pursuant to Ohio Edison's Power Sales Tariff. This Service Agreement will enable Ohio Edison and Pennsylvania Power Company to sell capacity and energy in accordance with the terms of the Tariff.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–1036–000]

Take notice that on December 31, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with Dayton Power & Light Company, AYP Energy, Inc., and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER97–1037–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Public Service Electric and Gas Company (PSE&G) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds PSE&G as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER97–1038–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Potomac Electric Power Company (PEPCO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PEPCO as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PEPCO and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–1039–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Alabama Municipal Electric Authority (AMEA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds AMEA as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to AMEA and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER97–1040–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Orange & Rockland Utilities (O&R) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds O&R as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to O&R and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER97–1041–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Florida Power & Light Company (FPL) under PECO's FERC Electric tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds FPL as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to FPL and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–1042–000]

Take notice that on December 31, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 23, 1996 with Cenerprise, Inc. (CENERPRISE) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds CENERPRISE as a customer under the Tariff.

PECO requests an effective date of December 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to CENERPRISE and to the Pennsylvania Public Utility Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER97–1043–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements, establishing Illinois Municipal Electric Agency (IMEA), and Central Illinois Light Company (CILCO), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 1, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA, CILCO, and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER97–1044–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (ComEd), submitted three Service Agreements, variously dated, establishing Central Illinois Light Company (CILCO), Western Resources, Inc. (Western), NIPSCO Energy Services, Inc. (NESI), Toledo Edison Company (Toledo), and Cleveland Electric Illuminating Company (CEIC), as non-firm customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 31, 1996, for the three service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of the filing were served upon CLCO, Western, NESI, Toledo, CEIC and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER97–1045–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 8, dated December 5, 1996, to the Interconnection Agreement, dated March 1, 1975 (1975 Agreement), between Edison and Wisconsin Power and Light Company (Wisconsin Power), (hereinafter referred to collectively as Parties). The Commission has previously designated the 1975 Agreement as Edison Rate Schedule No. 16.

Edison requests an effective date of December 31, 1996, for Amendment No. 8, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Wisconsin Power and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER97–1046–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted a Notice of Cancellation for the Area Coordination Agreement between Edison, Centerior Energy Corporation (Centerior), Consumers Energy Company (Consumers), Detroit Edison Company (Detroit), Indiana Michigan Power Company (Indiana Michigan), and Northern Indiana Public Service Company (Northern Indiana). The Commission has previously designated the Area Coordination Agreement as Edison's FERC Rate Schedule No. 11.

Edison requests an effective date of January 1, 1997, for the Notice of Cancellation, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Centerior, Consumers, Detroit, Indiana Michigan, Northern Indiana, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and Ohio Public Utilities Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Commonwealth Edison Company

[Docket No. ER97–1047–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 11 to the Interconnection Agreement between Edison and Central Illinois Public Service Company (Central Illinois). Amendment No. 11 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Central Illinois' unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 10.

Edison requests an effective date of December 31, 1996 for Amendment No. 11, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Central Illinois and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Company

[Docket No. ER97–1048–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 6 to the Interconnection Agreement between Edison and Interstate Power Company (Interstate). Amendment No. 6 amends certain service schedules that provide services redundant to those obtained through Edison's and Interstate's unbundled power sales and open-access transmission tariff. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 7.

Edison requests an effective date of December 31, 1996, for Amendment No.

6, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Interstate and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Edison Company

[Docket No. ER97–1049–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 1 to the Interconnection Agreement between Edison and Central Illinois Light Company (Central Illinois). Amendment No. 1 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Central Illinois' unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 33.

Edison requests an effective date of December 31, 1996, for Amendment No. 1, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Central Illinois and the Illinois Commerce Commission.

Comment date: January 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Commonwealth Edison Company

[Docket No. ER97–1050–000]

Take notice that on December 31, 1996, Commonwealth Edison Company (Edison), submitted a Notice of Cancellation, dated December 30, 1996, to cancel Edison's FERC Rate Schedule No. 38, effective date September 29, 1989. Edison's FERC Rate Schedule No. 38 is a Power Sales Agreement, dated December 31, 1988, between the Illinois Municipal Electric Agency (IMEA) and Edison which provided for IMEA to purchase power and energy from Edison. The Commission has previously designated the Power Sales Agreement as Edison's FERC Rate Schedule No. 38.

Edison requests an effective date of December 31, 1996, for the Notice of Cancellation, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon IMEA and the Illinois Commerce Commission.

Comment date: January 30, 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. 97–1622 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2322–322]

Duke Power Company; Notice of Availability of Environmental Assessment

January 16, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed Duke Power Company's application requesting Commission authorization to: (1) Grant an easement to the City of Camden, South Carolina (Camden) to construct raw water withdrawal facilities on 1.47 acres of land within the boundary of the Catawba-Wateree Project, and (2) allow Camden to withdraw up to 12 million gallons per day (mgd) of water from Lake Wateree. The proposed raw water intake facility would be constructed near the Eagles Nest Subdivision on the southeast shore of Lake Wateree in Kershaw County, South Carolina.

The staff of OHL's Division of Licensing and Compliance has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the Commission's staff has analyzed the environmental impacts of the proposed project and has concluded that approval of the licensee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426 or by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–1626 Filed 1–22–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5679–7]

Project XL Draft Final Project Agreement for HADCO Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) Regions I and II are announcing the availability of, and soliciting comments on, the draft Final Project Agreement developed for HADCO Corporation under EPA's Project XL initiative.

DATES: Comments must be submitted on or before February 24, 1997; public hearing, February 12, 1997, 12:30 p.m.; requests to attend the hearing must be received on or before February 11, 1997.

ADDRESSES: Written comments should be addressed or delivered to Mr. James Sullivan, U.S. EPA Region II, Mail Code DECA-RCB, 290 Broadway, New York, NY 10007–1866. A copy of any comments should also be sent to Regulatory Reinvention Pilot Projects, FRL–5197–9, Water Docket, Mail Code 4101, U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

The public hearing will be held at HADCO Corporation, 1200 Taylor Road, Owego, New York 13827. Requests to attend the hearing should be made to Mr. James Sullivan, EPA Region 2, (212) 637–4138.

The FPA is available for review Monday through Friday, except legal holidays, at the following locations. (Hours of operation for each location can be obtained by calling the numbers provided).

1. Derry, NH Public Library, 64 East Broadway, Derry, NH, (603) 432–6140 (Cheryl Lynch, Reference Desk)
2. Aaron Cutler Memorial Library, 269 Charles Bancroft Highway, Hudson, NH, (603) 424–4044 (Claudia Danielson, Librarian)
3. Kelley Library, 234 Main St, Salem, NH (603) 898–7064, (Deborah Berlin, Reference Department)
4. Colburn Free Library, 275 Main St, Owego, NY (607) 687–3520, (Christine Burroughs, Librarian)

5. NYS DEC, 50 Wolf Road, Albany, NY, (518) 457–2553 (Mark Moroukian), or (518) 485–8988 (Larry Nadler)
6. NH DES, 6 Hazen Drive, Concord, NH (603) 271–2942, (Kenneth Marschner)
7. US EPA Region I Library, One Congress Street, 11th Floor, Boston, MA (888) 372–5427
8. US EPA Region II Library, 290 Broadway, 16th Floor, New York, NY, (212) 637–3185

FOR FURTHER INFORMATION CONTACT: Kenneth Rota, EPA Region I, (617) 565–3349; Jim Sullivan, EPA Region 2, (212) 637–4138; or Lisa Hunter, EPA Headquarters, (202) 260–4744.

SUPPLEMENTARY INFORMATION: HADCO is one of the first facilities accepted into EPA's Project XL program. EPA created Project XL in 1995 as an initiative providing regulatory flexibility for industry to achieve environmental performance that is superior to what would be achieved through compliance with existing and reasonably anticipated future regulations. The HADCO Final Project Agreement (FPA) was developed by EPA, the New Hampshire Department of Environmental Services (NH DES), the New York State Department of Environmental Conservation (NYS DEC), and HADCO Corporation (''the parties'). The FPA is the document that memorializes the parties'' intentions concerning Project XL for the HADCO facilities in Owego, NY; Hudson, NH; Derry, NH and Salem, NH.

This XL project concerns the classification under RCRA Subtitle C of wastewater treatment (WWT) sludge generated from printed wire board manufacturing facilities (SIC 3672). This WWT sludge is presently classified as a listed hazardous waste, having the waste code F006, pursuant to regulations promulgated under the Resource Conservation and Recovery Act (40 CFR 261.31(a)). Because of this hazardous waste designation, HADCO, and others in the PWB industry, must currently ship this waste to a separate facility licensed to handle hazardous wastes before it can be reclaimed. The project seeks to demonstrate that (a) classifying HADCO's WWT sludge as an F006 waste pursuant to Subtitle C is not necessary to protect human health and the environment, (b) the WWT sludge can be safely reclaimed without all of the strict regulatory controls imposed by RCRA Subtitle C; and (c) a conditional delisting or solid waste variance will yield substantial economic and environmental benefits.

The HADCO FPA details a procedure through which HADCO will extensively test its sludge generated from the treatment of wastewater associated with circuit board manufacture. This data will be reviewed by EPA, NH DES and NYS DEC, in order to determine if such data supports removal of the sludge from regulation as a hazardous waste, as defined in the Resource Conservation and Recovery Act. Such a determination by EPA, NH DES, and NYS DEC is wholly contingent upon HADCO shipping the sludge off-site for reclamation of copper contained in the sludge. The four (4) HADCO facilities that are involved in this project collectively generate approximately 600 tons per year of this sludge.

HADCO has agreed to direct any cost savings realized towards the reclamation of non-hazardous copper containing dusts that are currently land filled. If no reclamation occurs, the project would be terminated. HADCO must also consider the installation of sludge driers to reduce sludge volume at its New Hampshire facilities, if feasible.

This draft FPA provides an overview of the parties' intentions under the XL agreement. The public hearing on February 12, 1997, is being held at HADCO's facility in Owego, New York, to provide additional opportunity for public comment at the HADCO facility included in this project that is most remote from the HADCO Corporation headquarters in New Hampshire. The parties to the agreement will consider any public comments received at the hearing and during this 30-day public comment period, modify the agreement if necessary, and determine whether to sign a final agreement. If a final agreement is reached, any legal mechanisms required to implement the agreement will be noticed publicly in accordance with all state and federal regulations.

In addition to the EPA contacts listed in the section entitled ''For Further Information Contact,'' above, questions concerning Project XL and the HADCO project may also be directed to: Ken Marschner, NH DES, (603) 271–2943, Mark Moroukian, NYS DEC, (518) 457–2553, or Lee Wilmot, HADCO Corporation, (603) 896–2424. General information about Project XL may be obtained by accessing EPA's internet site for Project XL, at http://www.epa.gov/Project XL. A copy of the HADCO FPA is posted at this location.

Dated: January 16, 1997.

Jon Kessler,

Director, Emerging Sectors and Strategies Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 97–1642 Filed 1–22–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5680–1]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a series of public meetings for purposes of information exchange on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water, including an Interim Enhanced Surface Water Treatment Rule, a long-term Enhanced Surface Water Treatment Rule, a Stage 1 Disinfectants/Disinfection Byproducts Rule and a Stage 2 Disinfectants/Disinfection Byproducts Rule. The Agency is developing this set of rules to take into account risk trade-offs between microbial contaminants and chemical byproducts of disinfection processes.

This series of meetings is anticipated to continue through spring and may also include meetings at later dates during this year. EPA is hereby providing notice of and inviting interested members of the public to participate in the meetings. As with all previous meetings in this series, EPA is instituting an open door policy to allow members of the public to attend these meetings. To assist EPA in managing limitations on conference room seating, members of the public who are interested in attending meetings are requested to contact Elizabeth Corr of EPA's Office of Ground Water and Drinking Water. Ms. Corr's phone number and e-mail address are provided in the final paragraph of this Notice.

As part of this series, a public meeting is scheduled for January 28 and 29 at the office of RESOLVE, 2828 Pennsylvania Avenue, NW., Washington, DC, that will include a broad discussion of issues related to the development of the Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfectants/Disinfection Byproducts Rule. This meeting will include a summary of technical discussions for purposes of providing information and analysis to stakeholders to allow them to reach individual conclusions as to their roles and positions regarding development of the rules. The meeting will also include discussion of EPA's schedule for development of the rules and options for proceeding. The January 28 and 29 meeting will be preceded by a public meeting on January 27 on technical issues related to drinking water treatment processes with emphasis on enhanced coagulation and predisinfection.

For additional information about these or other meetings in this series or to be included on the mailing list to receive notice of further meetings in this series, members of the public are requested to contact Elizabeth Corr of EPA's Office of Ground Water and Drinking Water at (202) 260–8907 or by e-mail at corr.elizabeth@epamail.epa.gov.

Dated: January 21, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–1755 Filed 1–22–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5680–2]

National Advisory Council for Environmental Policy and Technology-Total Maximum Daily Load Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and related water issues.

DATES: The three day public meeting will be held on Wednesday, February 19–21, 1997, in Galveston, Texas at the Galveston Island Hilton Hotel, 5400 Seawall Boulevard, Galveston, Texas. All sessions are scheduled for the Crystal Salon, Sections B and C. The meeting on Wednesday, February 19, 1997, begins at 1:00 p.m. with adjournment scheduled for 5:00 p.m. The meeting on Thursday, February 20, 1997, begins at 9:00 p.m. with adjournment scheduled for 3:00 p.m. The closing day of the meeting is Friday, February 21, 1997 from 9:00 a.m. until 5:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on Wednesday, February 19, 1997, from 7:30–9:00 p.m. The second will occur on Thursday, February 20, 1997, from 3:30–5:00 p.m.

FUTURE MEETING DATES: The Committee has scheduled additional meetings for the following dates and locations:

June 11–13, 1997 in Wisconsin (Madison or Milwaukee)

September 3–5, 1997 in Portland, Oregon

January 21–23, 1998 in Salt Lake City, Utah

ADDRESSES: Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Official, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Corinne S. Wellish, Designated Federal Official for the Total Maximum Daily Load Committee at 202–260–0740.

Dated: January 15, 1997.

Corinne S. Wellish,

Designated Federal Official.

[FR Doc. 97–1645 Filed 1–22 97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5679–8]

Science Advisory Board Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) of the Science Advisory Board (SAB) will meet on February 13–14, 1997 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington D.C. 20007. The hotel telephone number is (202) 338–4600. The meeting will start at 9:00 a.m. and end no later than 5:00 p.m. (Eastern Time) each day. The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis.

PURPOSE OF THE MEETING: The main purpose of the meeting is to discuss and review the EPA's Proposed Guidelines for Carcinogen Risk Assessment (EPA/600/P–92/003C, April 1996). The Committee's review of the Guidelines will include the following issues: (a) hazard characterization; (b) information requirements necessary to depart from defaults; (c) dose response assessment; (d) margin of exposure (MoE) analysis; (e) human data; (f) NRC recommendations for tumor data analysis; and (g) susceptibility factors for human variability.

FOR FURTHER INFORMATION: PLEASE NOTE THAT THIS DOCUMENTATION IS NOT AVAILABLE FROM THE SAB. The Proposed Guidelines were published in their entirety in the Federal Register on April 23, 1996 [61(79):17960–18011]. Electronic, disk, and paper copies are being made available as follows: (a) An electronic version is available for download through EPA's Office of Research and Development home page on the Internet at http://www.epa.gov/ORD/WebPubs/carcinogen ; (b) An electronic version also is available for download from EPA's Technology Transfer Network (TTN)/National Air Toxic's Clearinghouse (NATICH). The TTN is a network of electronic bulletin boards developed and operated by EPA's Office of Air Quality Planning and Standards. The service is free except for the cost of the phone call. Dial 919–541–5742 for data transfer of up to 14,400 bits per second. The TTN also is available on the Internet at TELENET ttnbbs.rtpnc.epa.gov. For more information on the operation of the TTN, contact the systems operator at 919–541–5384; (c) To obtain a 3.5'' disk in WordPerfect 5.1 format, contact ORD Publications Technology Transfer and Support Division, National Risk Management Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268 (telephone: 513–569–7562; fax: 513–569–7566). Please provide your name, mailing address, document title, and the following EPA document number (EPA/600/P–92/003); (d) A paper copy is available for review at the EPA's Headquarters Library (ORD's Public Information Shelf), 401 M Street, S.W., Washington, DC 20460, between the hours of 10:00 a.m. and 2:00 p.m., Monday through Friday, except for Federal holidays, and at all EPA regional and laboratory libraries; and (e) Paper copies have been made available to the U.S. Government Depository Libraries. Through the Depository Library program, government publications are provided to over 50 regional depositories throughout the United States and its territories. An additional 1,350 depositories in the system choose to receive select publications of interest to meet local needs. Please check with the depository library closest to you; (f) Paper copies are available for purchase

from the National Technical Information Service (NTIS) 5285 Port Royal Road, Springfield, VA 22161 (telephone: 703–487–4650; fax: 703–321–8547). Please provide the following number when ordering (PB96–157599). The cost is $35.

Members of the public desiring additional technical information about the Proposed Guidelines should contact Dr. Jeanette Wiltse, US EPA (4304), 401 M Street, SW, Washington DC 20460, telephone (202) 260–7317, fax (202) 260–1036, or Internet at: wiltse.jeanette@epamail.epa.gov

Members of the public desiring additional information about the meeting, including a draft agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, telephone (202) 260–8114, fax (202) 260–7118, or Internet at: winston.mary@epamail.epa.gov Anyone wishing to make an oral presentation at the meeting must contact Mr. Samuel Rondberg, Designated Federal Official for the EHC, in writing at the above address no later than 4:00 p.m., February 5, 1997 via fax (202) 260–7118 or via Internet at: rondberg.sam@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Committee and the interested public. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Mr. Rondberg may be contacted by telephone at (202) 260–2559.

Dated: January 13, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–1643 Filed 1–22 97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 97–88]

Federal-State Joint Board on Universal Service: Staff Workshops on Proxy Cost Models

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 14 and 15, 1997, the federal and state staff of the Federal-State Joint Board on Universal Service conducted workshops regarding the selection of a proxy cost model. The purpose of the notice is to allow interested parties to file comments on the discussions at the workshops or to supplement the record with regard to issues raised at the workshops.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau,at (202) 530–6023.

SUPPLEMENTARY INFORMATION:

1. On January 14 and 15, 1997, the staff of the Federal-State Joint Board on universal service conducted workshops relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism. The focus of the workshops was the three proxy cost models that have been submitted for consideration at the workshops: (1) The Benchmark Cost Proxy Model (BCPM), submitted by U S West, Sprint, and Pacific Bell; (2) the Hatfield Model, Version 2.2, Release 2, developed by Hatfield Associates, submitted by AT&T Corp. and MCI Telecommunications Corp.; and (3) the Telecom Economic Cost Model, developed by Ben Johnson Associates, Inc, submitted by the New Jersey Division of the Ratepayer Advocate.

2. Interested parties may wish to comment on the discussions in the workshops or to supplement the record with regard to issues raised at the workshops. Commenters are requested to provide, as a preface to their comments, a brief summary not to exceed three single-spaced pages in total. The comments and comment summary should be filed on or before January 24, 1997. Commenters must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments should reference CC Docket No. 96–45. Commenters must also serve comments on the Federal-State Joint Board and Joint Board staff in accordance with the attached service list. Commenters should also send four copies to Sheryl Todd, Universal Service Branch, Accounting an Audits Division, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. In addition, commenters should send one copy of their comments to the Commission's copy contractor, International Transcription Service, Inc., Room 140, 2100 M Street, NW., Washington, DC 20037. Comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

3. Parties are also asked to submit comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd, Universal Service Branch, Accounting an Audits Division, Common Carrier Bureau, 2100 M Street, NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, and date of submission. The diskette should be accompanied by a cover letter.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 97–1606 Filed 1–22–97; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 90–571; DA 96–2158]

Telecommunications Relay Services; FCC Form 431

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (Order), CC Docket No. 90–571, adopted December 17, 1996, and released December 20, 1996, the Commission calculated the contribution factor for the period April 26, 1997 through March 26, 1998 for the Telecommunications Relay Services (TRS) Fund, and approved the TRS payment formula for the 1997 calendar year. The Commission also directed the National Exchange Carrier Association (NECA), the TRS Fund Administrator, to take certain actions to remedy a projected shortfall in the 1996 TRS Fund. In addition, the Commission adopted the 1997 TRS Fund Worksheet, FCC Form 431, subject to approval by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Andy Firth, Network Services Division, Common Carrier Bureau, (202) 418–1898 voice, (202) 418–2224 TTY, or

James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 418–0948.

SUPPLEMENTARY INFORMATION: 1. The above actions were taken pursuant to § 64.604(c)(4)(iii) of the Commission's Rules, 47 CFR 64.604(c)(4)(iii). Pursuant to the Order, and subject to approval by OMB, the 1997 TRS Fund Worksheet, FCC Form 431, shall be effective for the period April 26, 1997 through March 26, 1998. All subject carriers are required to file the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Commission's rules provide that the TRS Fund Worksheet shall be published in the Federal Register. See 47 CFR 64.604(c)(4)(iii)(B).

2. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project (3060–0536), Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, D.C. 20503.

Federal Communications Commission.

Geraldine Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–1607 Filed 1–22–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission, Billing Code: 6715–01–M.

* * * * *

DATE & TIME: Tuesday, January 28, 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.

* * * * *

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, January 30, 1997 at 10:00 a.m. Meeting Open to the Public.

This Meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–1735 Filed 1–21–97; 11:43 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 232—011564.

Title: Concorde/Nordana Line Slot Charter and Sailing Agreement

Parties:

Concorde Line (''Concorde'')
Nordana Line AS (''Nordana'')

Snyopsis: The Proposed Agreement would permit Concorde to charter space to Nordana aboard Concorde's vessels in the trade between United States Gulf of Mexico ports, and inland U.S. points via such ports, and ports and inland points in Guatemala, Honduras, Nicaragua, and El Salvador. The parties may also agree upon Concorde's sailing schedule and ports to be served in the Agreement trade.

Agreement No.: 224–002550–003.

Title: Port of New Orleans/Sea-Land Terminal Lease Agreement.

Parties:

The Board of Commissioners of the Port of New Orleans (''Port'')
Sea-Land Service, Inc.

Synposis: The proposed agreement modification establishes a procedure among the tenants who lease terminals along the waterway at France Road for allowing berthing of each others' vessels at different berths.

Agreement No.: 224–200983–001.

Title: Port of San Diego-Tenth Avenue Cold Storage Company Operating Contract.

Parties:

San Diego Unified Port District (''District'')

Tenth Avenue Cold Storage Company.

Synopsis: Under the proposed agreement, the District retains Tenth Avenue Cold Storage Company as an independent contractor to operate and maintain the District's cool/cold storage facility at its Tenth Avenue Marine Terminal.

Dated January 17, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–1632 Filed 1–22–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Edwin and Mittis Bowers, Palacios, Texas; to acquire an additional .18 percent, for a total of 14.95 percent of the voting shares of City State Bancshares, Inc., Palacios, Texas, and thereby indirectly acquire City State Bank, Palacios, Texas.

Board of Governors of the Federal Reserve System, January 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1583 Filed 1–22–97; 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). 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 February 15, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Commercial Bancshares, Inc., West Liberty, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank, Warren, Pennsylvania.

2. Northwest Bancorp, MHC, Warren, Pennsylvania; to merge with Northwest Bancorp, Inc., Warren, Pennsylvania, and thereby indirectly acquire Northwest Savings Bank, Warren, Pennsylvania.

In connection with this application, Northwest Bancorp, Inc., has also applied to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Savings Bank, Warren, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Newnan Holdings, Inc., Newnan, Georgia; to merge with Tara Bankshares Corporation, Riverdale, Georgia, and thereby indirectly acquire Tara State Bank, Riverdale, Georgia.

Board of Governors of the Federal Reserve System, January 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1582 Filed 1–22–97; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, January 27, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1714 Filed 1–22–97; 4:58 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Advisory Committee Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following advisory committee scheduled to meet during the month of February 1997:

Name: Health Services Research Review Subcommittee.

Date and Time: February 19, 1997, 8:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Susquehanna/Severn Conference Room, Bethesda, Maryland 20814.

Open February 19, 1997, 8:00 a.m. to 8:15 a.m. Closed for remainder of meeting.

Purpose: This Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on February 19, from 8:00 a.m. to 8:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 13, 1997.

Clifton R. Gaus,

Administrator.

[FR Doc. 97–1599 Filed 1–22–97; 8:45 am]

BILLING CODE 4160–00–M

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.-3 p.m., February 7, 1997.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters To Be Discussed: Agenda items will include updates from CDC Director, David Satcher, M.D., Ph.D., followed by committee discussion on developing the next generation of public health professionals and on CDC's role in genetics and disease prevention.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

Dated: January 15, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1615 Filed 1–22–97; 8:45 am]

BILLING CODE 4163–18–P

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Dates: 7 p.m.–9 p.m., February 6, 1997. 9 a.m.–5 p.m., February 7, 1997.

Place: Doubletree Suites, 16500 Southcenter Parkway, Seattle, Washington 98188, telephone 206/575–8220.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study.

The Committee will review development of the study protocol and recommend changes of scientific merit to CDC, and advise on the conduct of a full-scale epidemiologic study using the approved protocol. During the conduct of the full-scale epidemiologic study, the Committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Committee will discuss the progress and updates on the status of various components of the Hanford Thyroid Disease Study being conducted by the Fred Hutchinson Cancer Research Center. Agenda items include: National Center for Environmental Health (NCEH) activities on the progress of current studies, an update on the Native American component, and public involvement activities. On February 6, at 7 p.m., a public session will be held to update the public on the status of the Hanford Thyroid Disease Study, and to allow those directly affected by the study to voice their opinions and concerns.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: January 15, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–1614 Filed 1–22–97; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

Submitted for Collection of Public Comment: Submission for OMB Review

AGENCY: Health Care Financing Administration, HHS [HCFA–8003]

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Extension, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Home and Community-Based Services Waiver Requests; *Form No.:* HCFA–8003; *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost & utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements; *Frequency:* Other—When a State requests a waiver or amendment to a waiver; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 140; *Total Annual Hours:* 8,200.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 15, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–1587 Filed 1–22–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted, as required by the Paperwork Reduction Act, to the Office of Management and Budget (OMB) for emergency review and approval by January 24, 1997. The Department is

soliciting public comments on the subject proposal.

DATES: The due date for comments is: January 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed ''Native American Housing Block Grant Program—Notice of Transition Requirements and Negotiated Rulemaking'' [Docket No. FR–4170–N–02]. HUD seeks to implement portions of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996), which requires HUD to publish a notice establishing any requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with NAHASDA. The information collection requirements of the notice concern the submission of Indian housing plans (IHPs), a prerequisite to funding under the new program. The requirements of the notice are for transition purposes only, and thus, are temporary in nature. The final requirements will be contained in regulations that are under development.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 USC Chapter 35):

(1) Title of the information collection proposal:

Native American Housing Block Grant Program—Notice of Transition Requirements and Negotiated Rulemaking

(2) Summary of the collection of information:

The collection of information presents transition requirements for the preparation and submission by, or on behalf of, Indian tribes of Indian Housing Plans (IHPs), which are a prerequisite for any distribution of funds under NAHASDA. In general, the IHP must contain a description of the housing needs of the tribe, planned activities to address those needs, and a description of how the activities will be carried out. The IHP is required by statute to have two main components, a 5-year plan and a 1-year plan.

(3) Description of the need for the information and its proposed use:

NAHASDA eliminates several separate funding programs for Indian housing and establishes instead a single Indian Housing Block Grant Program, to be effective beginning with FY 1998. Section 106 of NAHASDA requires HUD to establish any requirements necessary to provide for the transition from the provision of assistance under the eliminated programs to the provision of assistance under the new law. In order to assure that assistance for Indian housing activities is not interrupted, IHPs must be prepared and submitted well before FY 1998 funds are made available, and this collection of information provides the temporary requirements necessary for the preparation of the first IHPs under the new program. Permanent requirements will be contained in regulations developed to implement NAHASDA.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be Indian tribes or tribally designated housing entities selected by tribal governments to act on their behalf.

The estimated number of likely respondents is 350. As to frequency of responses, there will only be one response submitted under these temporary, transitional requirements. Permanent requirements will be included in program regulations to be developed, for which a separate information approval will be obtained.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Number of respondents: 350.

Burden hours per response: 120.

Frequency of responses: 1.

Total Estimated Burden Hours: 42,000.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 17, 1997.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

[FR Doc. 97–1716 Filed 1–21–97; 9:58 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–824228

Applicant: Betty Jo Young, West Fork, AK.

The applicant requests a permit to reexport and reimport tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–822708

Applicant: Steven Gruber, Miramar, FL.

The applicant requests a permit to import 8 Jamaican boas (*Epicrates subflavus*) held in captivity in Jamaica for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 17, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–1669 Filed 1–22 97; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of Threatened and Endangered Species by Weyerhaeuser Company on Portions of its Lands in Lane, Linn, Benton, and Douglas Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Weyerhaeuser Company has applied to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). They have also requested approval of an unlisted species agreement covering other species which may be found in the planning area. The application has been assigned U.S. Fish and Wildlife Service permit number PRT–823550 and National Marine Fisheries Service permit number P626. The Services also announce the availability of an Environmental Assessment (Assessment) for the proposed issuance of the incidental take permit. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, Assessment, and associated documents (see **ADDRESSES** below) should be received 60 days from the date of this publication.

ADDRESSES: Comments regarding the application, Assessment, and associated documents (a Habitat Conservation Plan [Plan] and Implementing Agreement) or requests for those documents, should be addressed to Curt Smitch, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C, Suite 101, Olympia, Washington 98501. Please refer to permit number PRT–823550 when submitting comments. Individuals seeking copies of the application package should immediately contact the above office.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Hirsh, U.S. Fish and Wildlife Service, or Mr. Steve Landino, National Marine Fisheries Service, at the above address; telephone (360) 534–9330.

SUPPLEMENTARY INFORMATION: Under section 9 of the Act and its implementing regulations, ''taking'' of threatened and endangered species is prohibited. However, the Services, under limited circumstances, may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are codified in 50 CFR 17.22 and 17.32 and 222.2.

The Weyerhaeuser Company has addressed, in its Plan, species conservation and ecosystem management on approximately 400,000 acres of land in the Willamette Valley and foothills of the Central Cascade Mountains and Coast Ranges of Oregon. The subject ownership occurs in two largely contiguous blocks with some portions in a ''checkerboard'' pattern with other Federal and non-Federal land. The proposed Plan would be implemented for 40 years with the Services retaining the option to extend the term for up to four additional ten-year periods.

The proposed Plan addresses, in three tiers, the species for which the Weyerhaeuser Company seeks coverage under section 10 of the Act. The first tier includes certain species currently listed or proposed for listing; those species are named below. The second tier includes presently unlisted species that are associated with habitats that are addressed through various measures in the proposed Plan. The third tier includes presently unlisted species that are associated with older, upland, interior forests. Tier 1 and 2 species would be covered upon approval of the Plan by the Services. Tier 3 species could become covered if the Weyerhaeuser Company can show that the proposed Plan benefits the species and those benefits have led to presence in the Plan area.

The Weyerhaeuser Company is requesting a permit for the incidental take of the northern spotted owl (*Strix occidentalis caurina*) which would occur as a result of timber harvest and related activities within the individual portions of the owl sites present on the subject property. There are currently more than 160 owl sites that impact Weyerhaeuser Company operations within the 400,000-acre planning area. The Weyerhaeuser Company plans to avoid the take of the marbled murrelet (*Brachyramphus marmoratus marmoratus*), but has included murrelets in the permit application in case some unanticipated incidental take occurs. The Weyerhaeuser Company has also included the Umpqua cutthroat trout (*Oncorhyncus clarki clarki*), American peregrine falcon (*Falco peregrinus*), Columbian whitetailed deer (*Odocoileus virginianus leucurus*), bald eagle (*Haliaeetus leucocephalus*), Aleutian Canada goose (*Branta canadensis leucopareia*), and Oregon chub (*Oregonichthys crameri*) in the permit application to cover circumstances where these species may occur on the subject property and could at some point be subject to take.

The Plan is designed to complement measures being implemented on Federal lands under the Northwest Forest Plan, and includes various forms of minimization and mitigation measures which are integral parts of the Plan. It includes a schedule for early successional forest types to be provided across the landscape during the entire course of plan implementation. Mitigation for other presently listed species and species proposed for listing include specific management prescriptions for those species. For example, the strategy for the northern spotted owl was developed to facilitate connectivity between the Federal Late Successional Reserves in the Oregon Cascades and Coast Ranges. In addition to the specific measures for listed and proposed species, the Plan proposes a comprehensive riparian management strategy, the protection of special biotope areas such as forested wetlands, mineral springs, talus slopes, and caves (among others), supplemental habitat protection for selected species of concern such as pond habitat for the northwestern pond turtle, and reproductive habitat around known nest sites for golden eagles and osprey.

Minimum interim prescriptions are provided for riparian and wetland areas, and prescription development through Watershed Analysis processes according to Washington State regulations will also be completed. Specific prescriptions will also be implemented for the management of areas, such as roads and steep slopes, that are vulnerable to degrading events.

The Assessment considers four alternatives, including the proposed Plan and the no-action alternatives. Under Alternative A, the no-action alternative, the Weyerhaeuser Company would avoid the take of any and all Federally listed species and no permit would be issued. Under Alternative C, conservation of the northern spotted owl and marbled murrelet would be implemented to minimize and mitigate

for the effects of authorized take of only those two species. Under Alternative D, the applicant would manage the ownership based on standards and guidelines for Matrix land under the Northwest Forest Plan. Alternative B, the Proposed Habitat Conservation Plan Alternative, would provide minimizing and mitigating measures for proposed take of the listed and currently proposed species mentioned above. In addition, protection for unlisted species would be provided through the retention of habitat structures from harvested stands into the subsequent rotation, buffering of habitat biotopes, supplemental habitat management, and through overall landscape level management goals.

Authority: 16 U.S.C. 1531–1544, and 4201–4245.

Dated: January 16, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–1601 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

Availability of Amended Environmental Assessment and Receipt of Application for Amendment To Previously Issued Incidental Take Permit From Sage Development Company, LLC, Daphne, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sage Development Company, LLC, (Sage) seeks an amendment to their previously issued incidental take permit (ITP), PRT–811416, from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (Act), as amended. The ITP authorizes for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 25.7-acre tract of land owned by Sage on the Fort Morgan Peninsula, Baldwin County, Alabama. Sage proposes to expand the original project, known as The Dunes, by 9.6 acres to occupy a total project area of 35.3 acres, and expand construction to include a total of 4 condominium complexes, 50 single family/duplex lots, their associated landscaped grounds and parking areas, recreational amenities, and dune walkover structures. The originally permitted project included 3 condominium complexes, and 38 single family/duplex lots.

The Service also announces the availability of a supplement to the May 15, 1996, environmental assessment (EA) and an amended habitat conservation plan (HCP) for the revised incidental take. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that re-issuing the ITP with the requested amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and amended HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the amended application, EA, and amended HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before February 24, 1997.

ADDRESSES: Persons wishing to review the amended application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jackson, Mississippi, Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit PRT–811416 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Will McDearman at the Jackson, Mississippi, Field Office (see **ADDRESSES** above), telephone: 601/965–4900.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge (BSNWR). The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the applicant's property reveal habitat occupied by ABM. The applicant's property contains designated critical habitat for the ABM. Expansion of the previously-permitted project may result in the death of, or injury to, ABM in excess of that previously expected. Habitat alterations due to expanded condominium placement and subsequent human habitation of the amended project may result in further reductions of available habitat for food, shelter, and reproduction.

The supplement to the May 15, 1996, EA considers the environmental consequences of several alternatives for the amended project. One action proposed is issuance of the amended ITP based upon submittal of the revised HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated ABM critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the revised HCP proposes to increase, in relative proportion compared to the original project, an endowment to acquire ABM habitat off-site or otherwise perform some other conservation measure for the ABM. The revised HCP provides additional funding for these mitigation measures. Another alternative is consideration of different project designs that further minimize permanent loss of ABM habitat. A third

alternative is no-action, or deny either request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of an amended ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA, HCP, and appropriate amendments. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an amended ITP would not have significant effects on the human environment in the project area.

2. The additional proposed take is incidental to an otherwise lawful activity.

3. The applicant has ensured that adequate additional funding will be provided to implement the measures proposed in the submitted revisions to the HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the amended ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the amended Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinions, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an amended ITP.

Dated: January 15, 1997.

Noreen K. Clough,

Regional Director.

[FR Doc. 97–1604 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Geospatial Positioning Accuracy Standards

ACTION: Notice; request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft Geospatial Positioning Accuracy Standards to be considered for adoption as FGDC standards. If adopted, the standards must be followed by all Federal agencies for geospatial data collected directly or indirectly, through grants, partnerships, or contracts.

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed standards. Comments are encouraged about the content, completeness, and usability of the proposed standard.

The FGDC anticipates that the proposed standards will be adopted as Federal Geographic Data Committee standards after updating or revision. The standards may be forwarded to voluntary standards bodies for adoption if interest warrants such actions.

DATES: Comments must be received on or before May 15, 1997.

CONTACT AND ADDRESSES: Requests for written copies of or review comments for the ''Geospatial Positioning Accuracy Standards'' should be addressed to Geospatial Positioning Accuracy Standards Review, FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet ''gdc@usgs.gov.'' The standard may be downloaded from this Internet address: ftp://www.fgdc.gov/pub/standards/Accuracy/.

SUPPLEMENTARY INFORMATION: The Geospatial Positioning Accuracy Standards provide a common methodology for reporting the horizontal and vertical accuracy of clearly defined features where the location is represented by a single point coordinate: examples are survey monuments; prominent landmarks, such as church spires, standpipes, radio towers, tall chimneys, and mountain peaks; and targeted photogrammetric control points. It facilitates the interoperability of spatial data by providing a consistent means for users to directly compare positional accuracies obtained by different methods for the same point. It addresses positional accuracy reporting and testing requirements for various spatial data applications. The document consists of the following parts:

Part 1, Reporting Methodology: The general accuracy reporting standard for the horizontal component is the radius of a circle of uncertainty, such that the true (theoretical) location of the point falls within the circle 95-percent of the time. The general accuracy reporting standard for the vertical component is a linear uncertainty value, such that the true (theoretical) location of the point falls within +/− of that linear uncertainty value 95-percent of the time. This reporting methodology is adopted in the subsequent parts of the draft standard.

Part 2, Standards for Geodetic Networks. Part 2 addresses accuracy reporting for geodetic surveys. Geodetic control surveys are usually performed to establish a basic control network from which supplemental surveying and mapping work are performed. Geodetic network surveys are distinguished by use of redundant, interconnected, permanently monumented control points that comprise the framework for the National Spatial Reference System (NSRS) or are often incorporated into the NSRS. This standard is intended to replace accuracy standards previously issued by the Federal Geodetic Data Subcommittee.

Part 3, National Standard for Spatial Data Accuracy. The National Standard for Spatial Data Accuracy (NSSDA) provides a common methodology for testing and reporting accuracy of maps and geospatial data derived from sources such as aerial photographs, satellite imagery, and maps. The NSSDA is intended to replace the United States National Map Accuracy Standards (U.S. Bureau of the Budget, 1947).

The NSRS may be used to reference mapping project control surveys to a common georeference system. The accuracy of geospatial data derived from project control surveys is expressed using the NSSDA. The NSSDA also may be related to the NSRS by using NSRS points as check points to test accuracy of geospatial data derived from aerial photographs, satellite imagery, maps, and other secondary sources.

Dated: January 14, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–1593 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the date, time, and schedule and initial agenda for meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: February 3, 1997, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: Holiday Inn, 1675 Sunset Drive, Rock Springs, WY.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topic for the meeting will be the GRBAC Final Report.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by January 31. The GRBAC will hear oral comments beginning at 2:00 pm on February 3. The GRBAC may establish a time limit for oral statements.

Dated January 21, 1997.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 97–1781 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–84–M

[MT–067–06–1020–00]

Lewistown District Resource Advisory Council Meeting; Montana

AGENCY: Lewistown District Office, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Resource Advisory Council will meet February 4 and 5 1997, in the upstairs meeting room in the Megahertz Building at 223 West Main in Lewistown, Montana.

The February 4 portion of the meeting will begin at 1 p.m. Throughout the afternoon the RAC will address the election of officers for 1997; discuss various off-road vehicle designations available for resolving land use issues; review the status of their suggestions for rangeland standards and guidelines; and view a video titled *''Landscape''* which discusses the consensus process. The meeting will adjourn around 5 p.m.

The February 5 portion of the meeting will begin at 8 a.m. Throughout the day the RAC will discuss the use of range improvement funds; the Lewistown District's annual work plan; district fire policies; hear public comments; prioritize issues the RAC would like to address; review how the group is functioning; and select their next meeting date.

There will be a public comment period at 11 a.m. during the February 5 meeting.

DATES: February 4 and 5, 1997.

LOCATION: The Megahertz Building, 223 West Main, Lewistown, MT.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period as detailed above.

Dated: January 8, 1997.

David L. Mari,

District Manager.

[FR Doc. 97–1586 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DN–M

[MT–070–97–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte District Office, Bureau of Land Management, D.O.I.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The council will convene at 9 a.m. Thursday, February 13, 1997. Issues that will be discussed include community based planning, review of abandoned mine priority list for the District, update on Upper Columbia River Basin Draft EIS and Law Enforcement Issues.

The meeting will be held at the District Office Conference Room, 106 North Parkmont, Butte, Montana.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388: telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: January 6, 1997.

James R. Owings,

District Manager.

[FR Doc. 97–1649 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DN–M

[OR–958–0777–54; GP6–0135; OR–19053, OR–19158, OR–19175]

Public Land Order No. 7230; Revocation of Executive Order Dated January 22, 1912, and Secretarial Orders Dated March 29, 1932, and March 17, 1944; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in their entirety, one Executive order and two Secretarial orders which withdrew 17,557.20 acres of National Forest System lands for the Bureau of Land Management's Powersite Reserve No. 240, and Powersite Classification Nos. 263 and 348. The lands are no longer needed for the purposes for which they were withdrawn. The lands remain closed to surface entry, mining, and mineral leasing by other overlapping withdrawals.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated January 22, 1912, which established Powersite Reserve No. 240, is hereby revoked in its entirety:

Willamette Meridian

Wallowa National Forest

T. 4 N., R. 49 E.,
Sec. 21, lot 2.

The area described contains 33.20 acres in Wallowa County.

2. The Secretarial Order dated March 29, 1932, which established Powersite Classification No. 263, is hereby revoked in its entirety:

Willamette Meridian

Wallowa-Whitman National Forest

T. 2 N., R. 48 E.,
Sec. 2, lots 1, 2, and 4, and SW¼NE¼ and NE¼SW¼;
Sec. 3, SE¼NE¼;
Sec. 9, SW¼NE¼, E½SW¼, and SE¼;
Sec. 10, lots 3 and 4, and NW¼NE¼ and NE¼SW¼;
Sec. 16, SW¼NW¼.
T. 3 N., R. 48 E.,
Sec. 12, S½NE¼, SE¼SW¼, and NW¼SE¼;
Sec. 13, SW¼NE¼, W½NW¼, N½SW¼, and NW¼SE¼;
Sec. 14, SE¼SW¼ and SW¼SE¼;
Sec. 23, NW¼NE¼, E½NW¼, and SW¼SE¼;
Sec. 25, W½NW¼ and NW¼SW¼;
Sec. 35, NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, and SW¼SE¼.
T. 4 N., R. 48 E.,
Sec. 24, lots 2 to 7, inclusive, E½SW¼, and S½SE¼ excluding Mineral Survey Nos. 507, 601, and 694;
Sec. 25, NE¼, E½NW¼, N½SE¼, and SE¼SE¼ excluding Mineral Survey Nos. 601, 723, 738, 747A, and 806.
T. 3 N., R. 49 E.,
Sec. 6, lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, and N½SE¼ excluding Mineral Survey Nos. 746 and 750;
Sec. 7, lots 1 and 4, NW¼NE¼NW¼, S½SE¼NW¼, and E½SW¼.
T. 4 N., R. 49 E.,
Sec. 30, lots 2, 3, and 4, and SE¼SW¼ excluding Mineral Survey Nos. 723, 738, and 807;
Sec. 31, lots 1, 2, and 3, E½NW¼, and W½SE¼ excluding Mineral Survey No. 730.
T. 5 S., R. 45 E., unsurveyed,
Secs. 11 to 14, inclusive, and
Secs. 23 to 28, inclusive, all lands within ¼ mile of North Fork Imnaha River below Middle Fork, and all lands within ¼ mile of South Fork below Cliff River.
T. 5 S., R. 46 E., unsurveyed,
Secs. 19 to 29 inclusive, all lands within ¼ mile of Imnaha River and Forks.
T. 5 S., R. 47 E., unsurveyed,
Secs. 19 to 27 inclusive, all lands within ¼ mile of Imnaha River.
T. 5 S., R. 48 E., unsurveyed,
Secs. 19 to 22, inclusive, and
Secs. 25 to 30, inclusive;
Sec. 23, all, excluding 112 acres in HES No. 91;
Sec. 24, all, excluding 78 acres in HES No. 222.

The areas described aggregate approximately 16,884 acres in Wallowa County.

3. The Secretarial Order dated March 17, 1944, which established Powersite Classification No. 348, is hereby revoked in its entirety:

Willamette Meridian

Whitman National Forest

T. 5 S., R. 47 E., unsurveyed,
Sec. 25, all lands lying more than ¼ mile from Imnaha River.
T. 5 S., R. 48 E., unsurveyed,
Sec. 31, N½N½.

The areas described aggregate approximately 640 acres in Wallowa County.

4. The lands described in paragraphs 1, 2, and 3 are included in the Eagle Cap and Hells Canyon Wilderness Areas, the Hells Canyon National Recreation Area, and the Imnaha Wild and Scenic River withdrawals and remain closed to such forms of disposition as may by law be made of National Forest System lands, including the mining and mineral leasing laws.

Dated: December 6, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–1650 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–33–P

[UTO80–07–1610–00]

Resource Management Plan for the Book Cliffs Conservation Initiative Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Coordinated Resource Management Plan/Environmental Impact Statement and Notice of Intent to amend the Book Cliffs Resource Management Plan.

SUMMARY: This notice is intended to inform the public of an intent to prepare a Coordinated Resource Management Plan/Environmental Impact Statement (CRMP/EIS) that addresses future management of lands within the Book Cliffs planning area, including the lands acquired by the Bureau of Land Management, within the Book Cliffs area of the Vernal District for the purpose of amending the Book Cliffs Resource Management Plan (RMP). Public comment will be actively solicited throughout the CRMP/EIS and amendment development processes.

SUPPLEMENTARY INFORMATION: In 1993, a cooperative effort was undertaken by the Utah Division of Wildlife Resources (UDWR), The Nature Conservancy (TNC), the Rocky Mountain Elk Foundation (RMEF), and the Bureau of Land Management (BLM). The objective of this cooperative effort was to take advantage of existing opportunities to create a balanced approach to the management of unique natural resources within the upper portion of the East Tavaputs Plateau, in southeastern Uintah County, Utah. The cooperative effort dealt with that portion of the Book Cliffs within the area between the Uintah-Ouray Indian Reservation trust lands to the west and the Utah-Colorado state line to the east, an area encompassing roughly 455,000 acres.

In 1993 and 1994, two private ranches then on the market within the area, were acquired by The Nature Conservancy (TNC) and the Rocky Mountain Elk Foundation (RMEF) with the intent of vesting the title to either the State of Utah or the United States. In 1994, the BLM was vested with title to 5,129 acres, about 53%, of these acquired lands. As public lands administered by the Bureau of Land Management, future management of these lands must be developed and incorporated into the existing Book Cliffs RMP. The Coordinated Resource Management Plan (CRMP) will developed by the BLM in concert with the UDWR, other State and Federal agencies, stakeholders, key interest groups, local government entities, and the general public.

At this time general planning issues to be addressed and certain assumptions to be presented include:

Assumptions	Concerns
• There will be a continued demand and competition for available forage by livestock, wildlife, and in some areas, wild horses.	How should forage be allocated between livestock, wildlife, and wild horses while achieving watershed and riparian goals?
• Recreational use will continue to increase.	What mix and level of recreational use can occur while maintaining the area's ''Frontier Mystique''?
• There is a need to improve the overall health of the land.	What will be the cumulative impact of resource uses (grazing, energy, and mineral development, recreation, related vehicle access, etc.) on desired condition of vegetative communities in critical habitats such as canyon bottoms, riparian areas, and crucial/critical big game ranges?
• Health, diverse wildlife populations desired.	What are the impacts upon current land uses such as livestock and mineral development as consideration is given for establishment of other native species such as Rocky Mountain bighorn sheep, moose, bison, sharptail grouse, wild turkey, and Colorado River Cutthroat Trout, and other fisheries?

Assumptions	Concerns
• Development and extraction of energy and mineral resources will continue, perhaps at an increased rate, depending on demand.	How best can mineral development continue, with the least amount of restrictions while restoring and maintaining fully functioning health ecosystems?
• The area is economically important to surrounding communities and the State of Utah.	How will future management prescriptions enhance or restrict economic development?
• There will continue to be a need for various degrees of access to accommodate public needs and demands.	What kind of public access should be provided to and on the area (Off Highway Vehicle travel, established roads, etc.)?
• Planning efforts will be consistent with the Governor's Open Space Policy.	How will Governor's Open Space Policy influence the planning process?

The CRMP, EIS and the RMP amendment will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act, and section 102 of the National Environmental Policy Act. This revision is necessary to update and expand the decisions in the existing land use plan. Decisions generated during this planning process will supersede affected land use planning decisions presented in the 1985 Book Cliffs RMP that affect lands within the CRMP area.

Public participation is being actively sought at this time to ensure the EIS addresses all issues, problems and concerns from those interested in the management of the public lands within the Book Cliffs area, including acquired lands. The development of the CRMP, EIS, and the RMP amendment is a public process and the public is invited and encouraged to assist in the identification of issues and the scope of the EIS and planning amendment. Public meetings will be held to discuss planning issues. The date, time, and location of these scoping meetings are: March 17, 1997, 7:00 p.m. to 9:00 p.m., in the John Wesley Powell Museum in Green River, Utah; March 18, 1997, 7:00 p.m. to 9:00 p.m., in the Department of Natural Resources Auditorium, Room 1040–1060, at 1594 West North Temple, Salt lake City, Utah; and March 26, 1997, 7:00 p.m. to 9:00 p.m. in the Western Park Conference Center 302 East 200 South in Vernal, Utah. These meetings also will be announced in local newspapers and through other local media.

Formal public participation will be requested for review of the preliminary and final CRMP, EIS, and RMP amendment during 1997. Notice of availability of these documents will be published at the appropriate times.

The documents will be prepared by an interdisciplinary team which includes specialists in rangeland, minerals, vegetation, riparian values, cultural resources, recreation, wildlife/fisheries habitats, realty, and special status animal and plant species. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Dean Evans, Resource Advisor, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 789–1362 or 781–4470, fax (801) 781–4410.

Dated: January 16, 1997.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–1603 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

December 30, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., December 30, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in four sheets) representing the dependent resurvey of a portion of the subdivisional lines, a portion of Homestead Entry Survey Number's 43, 106, 215, and mineral claims in sections 3 and 10, T. 3 S., R. 73 W., Sixth Principal Meridian, Group 998, Colorado, was accepted November 4, 1996.

The plat representing the metes-and-bounds survey of Tracts 48 and 49 in unsurveyed T. 2 S., R. 75 W., Sixth Principal Meridian, Group 1149, Colorado, was accepted December 11, 1996.

These surveys were required for the administrative purposes of the Forest Service.

The plat representing the entire record of the dependent resurvey of M.S. No. 12572, Don Quixote Lode, section 31, T. 44 N., R. 4 W., New Mexico Principal Meridian, Group 736, Colorado, was accepted November 27, 1996.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision-of-section survey of section 35, T. 13 S., R. 74 W., Sixth Principal Meridian, Group 1045, Colorado, was accepted December 19, 1996.

The plat representing the entire record of the dependent resurvey between sections 25 and 36, T. 46 N., R. 4 W., New Mexico Principal Meridian, Group 1056, Colorado, was accepted November 7, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 9, T. 1 S., R. 80 W., Sixth Principal Meridian, Group 1123, Colorado, was accepted December 3, 1996.

The plat representing the dependent resurvey of a portion of the north and east boundaries, a portion of the boundary between Jefferson and Clear Creek Counties, M.S. No. 9730, a portion of the subdivisional lines, and the subdivision survey of section 1, T. 4 S., R. 72 W., Sixth Principal Meridian, Group 1136, Colorado, was accepted December 12, 1996.

The supplemental plat creating new lots 1 through 6 in section 32 and new lots 1 through 6 in section 33 of T. 1 N., R. 80 W., Sixth Principal Meridian, Colorado, was accepted December 5, 1996.

These surveys were required for the administrative purposes of this Bureau.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–1584 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

Notice of Availability of the Final Development Concept Plan/ Environmental Impact Statement for South Side Denali, Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of availability of the Final Development Concept Plan/

Environmental Impact Statement for South Side Denali, Alaska.

SUMMARY: The National Park Service announces the availability of a Final Development Concept Plan/ Environmental Impact Statement (DCP/ EIS) for South Side Denali, Alaska. The document describes and analyzes the environmental impacts of a proposed action and two other action alternatives for providing opportunities for high quality, resource-based destination experiences on South Side Denali National Park and Preserve in Alaska, as well as information, orientation, and recreation services and facilities convenient to park visitors. A no action alternative also is evaluated.

DATES: A Record of Decision will be made no sooner than 30 days after the date of the Federal Register Notice issued by the Environmental Protection Agency accepting and announcing the availability of the final DCP/EIS. A Record of Decision is anticipated by late February 1997.

ADDRESSES: Copies of the Final South Side Denali DCP/EIS are available on request from: Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755.

Public reading copies of the final DCP/EIS will be available in the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street, Room 3424, Washington, DC 20240, telephone: (202) 208–6843.

Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503–2892, telephone: (907) 257–2650.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, Denali National Park and Preserve. Telephone: (907) 257–2651 FAX: (907) 257–2485.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, as lead federal agency, in cooperation with the State of Alaska, Matanuska-Susistna Borough, and Denali Borough, has prepared a final DCP/EIS for proposed visitor facilities and services on the South Side of Denali National Park and Preserve in Alaska.

The final DCP/EIS represents a cooperative planning effort that builds on previous planning for the region, including a draft DCP/EIS issued in 1993 and a revised draft DCP/EIS issued in March 1996, recommendations for the south side made by the Denali Task Force and adopted by the National Park System Advisory Board in December 1994, and public comment. The south side refers to an area that includes Denali National Park and Preserve land, Denali State Park land, and other lands to the south of the national park and preserve boundaries.

A proposed action, two other action alternatives, and a no action alternative are described and evaluated in the final DCP/EIS. The final DCP/EIS also sets the stage for establishing working partnerships for more detailed decision-making, funding, and phasing of appropriate visitor facilities and services on the south side.

Purpose, Vision, and Goals

The purpose of the final DCP/EIS is to identify and evaluate options for the south side of Denali that serve the following vision:

- Provide opportunities for high quality, resource-based, destination experiences and provide information, orientation, and recreation services and facilities convenient to park visitors.
- Develop facilities and access in a location and manner that minimizes impacts on resources, local lifestyles, and communities.
- Establish working partnerships for funding and phasing development as outlined in the concept plan.

In addition, a number of more specific goals are identified:

- Provide access to and a location for interpretation of the special qualities found in Denali National Park and Preserve and Denali State Park, including access to the spectacular alpine landscape on the south side of the Alaska Range.
- Offer a range of experiences and opportunities to meet the diverse needs of the traveling public, including information and orientation to the region; new or improved recreation facilities; enhanced state and national park interpretation; and shelter in bad weather.
- Ensure that, viewed as a whole, facilities and services benefit all visitors, including Alaska residents, independent travelers, and package tour travelers.
- Design and develop facilities and access improvements to support public use and understanding of the south side and its outstanding resources.
- Establish a research program and identify management needs to guide facility and road development.
- Facilitate orderly economic development in the region consistent with resource protection.
- Minimize and mitigate adverse effects on fish and wildlife resources, habitat, cultural resources, local rural quality of life, and existing public land and resource uses, including subsistence uses.
- Establish methods, responsibilities, and necessary steps to control unwanted secondary impacts of tourism and to minimize conflicts between different visitor groups.

While the final DCP/EIS evaluates the impacts of the proposed action and a range of alternatives, including a no-action alternative, it also sets the stage for establishing working partnerships for more detailed decision-making, funding, and phasing of appropriate visitor facilities and services on the south side. The final DCP/EIS emphasizes the importance of coordinated implementation and describes the commitments being made by the planning partners, individually and collectively. Most implementation tasks would occur under any of the action alternatives, although a few are associated with the proposed action only.

Proposed Action and Alternatives

General Policies and Actions

Several general policies and actions would be implemented under each action alternative. (An asterisk * indicates those actions that also would apply under the no-action alternative.) The policies would call for locating commercial facilities primarily on private lands; protecting the wild character of the south side; minimizing impacts on existing uses; adhering to the Alaska National Interest Lands Conservation Act, sections 1306 and 1307; and phasing development.

The following actions would be taken:

- Developing up to two additional roadside exhibits along the George Parks Highway
- Identifying and establishing watchable wildlife areas
- Developing self-guiding interpretive brochures
- Managing state rights-of-way to maintain safety and protect scenic values, including selective brushing along the George Parks Highway
- Reviewing and revising the Matanuska-Susitna Borough's Special Land Use District in Denali State Park to improve implementation and enforcement*
- Completing borough corridor management plans for the Petersville Road and portions of the George Parks Highway*
- Working together, as appropriate, to manage recreational activities and other uses of public lands on the south side* (In the no-action alternative, such efforts would continue, but would be less comprehensive and lower priority.)

- Supporting the maintenance of mining activities and working with the mining industry and individual claim holders to address mining issues in the project area*
- Considering state scenic byway designation for portions of the George Parks Highway, including the section in Denali State Park*
- Conducting research on the natural and cultural resources and human uses in the area in advance of development, as appropriate, on the south side* (In the no-action alternative, general information gathering would continue, but not at the pace, depth, or level of funding that would be anticipated if the site-specific developments described for the action alternatives were to be implemented, especially those along the Petersville Road.)
- Formally establishing a Denali South Side Plan Implementation Partnership to continue the cooperative partnership approach in implementing the development concept plan.

Proposed Action (Regional Strategy)

To provide a broad range of visitor opportunities, major facilities would be in the Tokositna area at the end of an upgraded and extended Petersville Road and at a location near Byers Lake along the George Parks Highway. A visitor center (up to 5,000 square feet) would be built in the Tokositna area of Denali State Park. The Petersville Road would be upgraded and extended from the Forks Roadhouse (about mile 19) to access this new facility. Up to 50 primitive recreational vehicle (RV) or tent campsites, a picnic area, up to four public use cabins, and some short hiking/interpretive trails (some leading into Denali National Park and Preserve) would also be developed in the Tokositna area. In cooperation and, where desirable, a partnership between the National Park Service, local communities, Alaska Native Claims Settlement Act Native corporations, and the state of Alaska would develop visitor facilities and services in the central development zone of Denali State Park, at Talkeetna, and at Broad Pass when the need and opportunity to do so are established. Consultation and coordination with local communities to define need and determine appropriate courses of action would be essential. For the central development zone, developments would entail constructing a visitor center (up to 3,000 square feet). In addition, the Byers Lake campground would be expanded by up to 25 sites or a new campground of up to 50 sites would be built elsewhere in the central development zone. Up to five primitive fly-in only campsites would be constructed at Chelatna Lake, as would up to two public use cabins and a hiking/interpretive trail and trailhead sign. The Dunkle Hills road could provide new public access opportunities in the Dunkle Hills/Broad Pass area, including access into Denali National Park and Preserve, pending resolution of land status/access issues.

Development would occur under a logical and cost-effective phasing scenario developed by a Denali south side plan implementation partnership, in consultation with the public.

Alternative A (Large-Scale Visitor Facility along the George Parks Highway)

All facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. One visitor center (up to 13,000 square feet) would be built in either the northern, central, or southern development zone of Denali State Park. The Byers Lake campground would be expanded by up to 25 sites or a new campground of up to 50 sites would be built elsewhere in the central development zone. Short hiking/interpretive trails would be developed around the visitor center. No public use cabins would be constructed.

Alternative B (Small-Scale Visitor Facility along the George Parks Highway)

Under alternative B, all facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. One small visitor center (up to 1,500 square feet) would be built in either the northern, central, or southern development zone of Denali State Park. A small campground (up to 25 sites) would be constructed in the central development zone along the George Parks Highway. Short hiking/interpretive trails would be developed near the visitor center. No public use cabins would be constructed.

Alternative C (No Action)

Management activity and the current low level of backcountry visitation would continue. Under alternative C, all facilities would be located in Denali State Park along the George Parks Highway. No facilities would be constructed in the Tokositna area, in the Dunkle Hills, or near Chelatna Lake. The Petersville Road would not be upgraded or extended beyond mile 19 under this alternative. A 320-square-foot visitor contact station would be built by the state near the Alaska Veterans Memorial in the central development zone of Denali State Park. A short trail to the Chulitna River would be developed by the state in the southern development zone of the state park. The Matanuska-Susitna Borough would likely construct a snowmachine user parking area and associated sanitary facilities near the Forks Roadhouse along the Petersville Road. An existing privately built (trespass) cabin near Chelatna Lake would be converted to public use. In addition, four public use cabins may be developed by the state on the east side of the Chulitna River in Denali State Park. Development of campgrounds or other visitor facilities on the south side would not be anticipated by the state, the National Park Service, or the boroughs.

Changes Made Between the Revised Draft and Final DCP/EIS

In response to public comments and cooperative planning partner discussions, several changes were made between publication of the revised draft DCP/EIS (March 1996) and completion of the final DCP/EIS. The major changes are summarized as follows.

Purpose and Need

This section was updated to more explicitly describe the partners' vision for south side development and recreational opportunities and to state the need for visitor facilities and services more clearly.

Direction for the Plan

This section was modified to clearly state the vision, goals, and objectives that guide the plan.

Elements Common to All Action Alternatives

Additional detail is provided clarifying the general policies and actions that would be implemented under each action alternative and the no-action alternative. For example, additional text is included to emphasize partner support of continued mining in the study area.

Implementation of the Development Concept Plan

This section was revised to provide clarification and additional information about plan implementation, including collective and individual partner commitments to ensure continued partnership, continued and

strengthened public consultation and involvement, coordination on related plans, and appropriate measures to minimize or avoid adverse impacts.

Two key commitments added are as follows:

- Ensure that additional or revised land management plans and controls are in effect before major development occurs.
- Assess the progress of plan implementation after three years in light of funding availability, results of wildlife research, and progress on identified mitigation strategies, and adjust priorities or management emphasis as needed.

Alternatives, Including the Proposed Action

The proposed action was revised based on public input and cooperative planning partner discussions. Language was added to clarify the objectives for development in the Tokositna area and along the George Parks Highway. The size of the Tokositna visitor center was reduced from a maximum of 13,000 square feet to a maximum of 5,000 square feet, with associated changes in visitor center functions and reductions in visitor and administrative space, parking, and employee housing. The capacity of the picnic facility in the vicinity of the Tokositna visitor center was increased from 25 to 50 people and now includes uncovered as well as covered areas for tables.

The proposed action also now concentrates on an upgrade and extension of the Petersville Road only from the Forks Roadhouse (mile 19) to the Tokositna site, because the road is generally usable for recreation development in its current state to mile 19, and it is assumed that the first 19 miles would be maintained and upgraded by the state regardless of actions proposed by this DCP/EIS. The road would also now include appropriately sited bicycle and pedestrian enhancements (not included in the revised draft DCP/EIS).

Statements have been added noting that the visitor centers and public use cabins would be designed and built for year-round use (though, initially, only a portion of the Tokositna visitor center would be open to the public in the winter).

The need for phasing and funding strategies are reemphasized, but most details regarding phasing of proposed developments were removed from the text; these would be determined during subsequent implementation planning activities.

The no-action alternative (alternative C) was revised slightly in that the proposed Matanuska-Susitna Borough development of a snowmachine user facility near the Forks Roadhouse on the Petersville Road has been corrected to show only a parking area and sanitary facilities. The trail to the Chulitna River is described in more detail and the location changed from the central development zone to the southern development zone of Denali State Park. Construction of four public use cabins on the east side of the Chulitna River in Denali State Park also has been added to the list of actions.

The mitigating measure related to regulating motorized activities on the Curry-Kesugi Ridge and in the Troublesome Creek drainage of Denali State Park was deleted.

Affected Environment

This section was revised and updated to reflect new information received since the revised draft DCP/EIS was published and to better describe some resource conditions to address questions raised through public comments on the revised draft DCP/EIS.

Environmental Consequences

The impact sections for each of the development alternatives were revised to reflect changes made to the proposed action and no-action alternatives. Additionally, the impact analyses for all alternatives assume land use controls would be in place prior to major development; however, where it makes a difference in the analysis, a description of the impacts is provided given the situation that these controls are not implemented. Visitation predictions under all alternatives except alternative B have been reduced and relevant impact sections rewritten accordingly. Completion of visitor center facilities would not occur prior to year 2000 as assumed in the revised draft; this is now assumed to take place no sooner than 2002 in the final DCP/EIS.

The responsible official for the Record of Decision on the proposed actions is the National Park Service field director in Alaska.

Dated: January 14, 1997.

Judith Gottlieb,

Acting Field Director, Alaska Field Office.

[FR Doc. 97–1636 Filed 1–22–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757–759 (Preliminary)]

Collated Roofing Nails From China, Korea, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the U.S. International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Korea, and Taiwan of collated roofing nails,[2] provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Collated roofing nails are nails made of steel, having a length of 13/16 inch to 1–13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

or their representatives, who are parties to the investigations.

Background

On November 26, 1996, a petition was filed with the Commission and the Department of Commerce by the Paslode Division of Illinois Tool Works Inc., Vernon Hills, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of collated roofing nails from China, Korea, and Taiwan. Accordingly, effective November 26, 1996, the Commission instituted antidumping Investigations Nos. 731–TA–757–759 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 4, 1996 (61 FR 64364). The conference was held in Washington, DC, on December 17, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 10, 1997. The views of the Commission are contained in USITC Publication 3010 (January 1997) entitled ''Collated Roofing Nails from China, Korea, and Taiwan: Investigations Nos. 731–TA–757–759 (Preliminary).''

Issued: January 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1640 Filed 1–22–97; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–334]

Notice of Commission Determination to Review in Part an Initial Determination; Schedule for the Filing of Written Submissions on the Issue Under Review, and on Remedy, the Public Interest, and Bonding

In the Matter of certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination (ID) issued by the presiding administrative law judge (ALJ) on December 2, 1996, in the above-captioned investigation. The ID found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On December 12, 1991, Modine Manufacturing Co. filed a complaint with the Commission alleging a violation of section 337 by respondents Showa Aluminum Corporation, Showa Aluminum Corporation of America, Mitsubishi Motors Corporation, Mitsubishi Motors Sales of America, Mitsubishi Heavy Industries, Ltd., and Mitsubishi Heavy Industries America, Inc. (collectively referred to herein as respondents). Modine alleged that the respondents had infringed claims of Modine's patent, U.S. Letters Patent 4,998,580 (the '580 patent). The investigation was assigned an ALJ, who determined that there was no infringement, either literally or under the doctrine of equivalents, by the respondents. The ALJ further determined that the patent was invalid and unenforceable due to inequitable conduct. On July 30, 1993, the Commission reversed the ALJ's findings of invalidity and inequitable conduct, but adopted her findings and conclusions on the infringement issues.

Modine appealed the Commission's finding of no infringement, and thus no violation of section 337, to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). In the same appeal, the respondents challenged the Commission's findings upholding the validity and enforceability of the '580 patent. On February 5, 1996, the Federal Circuit reversed the Commission's claim interpretation and remanded the investigation to the Commission for redetermination of the issues of literal infringement and infringement under the doctrine of equivalents. *Modine Manufacturing Co.* v. *U.S.I.T.C.*, 75 F.3d 1545, 1549 (Fed. Cir. 1996). The court affirmed the Commission's determination in all other respects. *Id.*

On May 31, 1996, the Commission issued an order remanding the Condensers investigation to the Office of Administrative Law Judges. The order provided that the presiding ALJ conduct further proceedings in accordance with the Federal Circuit's decision in *Modine* and issue an ID on violation, preferably within six months. The Commission's order also directed the ALJ to issue a recommended determination (RD) on the issues of remedy and bonding two weeks after the ID issued. On December 2, 1996, the ALJ issued an ID finding a violation of section 337 by respondents. On December 12, 1996, respondents and the Commission investigative attorney (IA) filed separate petitions for review. Complainant Modine filed a petition for review contingent on the Commission's decision either to grant another party's petition for review or to review the ID on its own motion. All parties filed responses to each petition on December 19, 1996. The ALJ issued his RD on remedy and bonding on December 16, 1996.

Having examined the record in this investigation, including the ID, the Commission has determined to review the reasoning supporting the ALJ's finding that the proper estoppel point for the Cat condenser is 0.04822 inch. The Commission has determined not to review the ID in all other respects. On review, the Commission will consider whether the 0.04822 inch measurement is properly considered law of the case, given that the Commission's previous finding that the Cat condenser's hydraulic diameter was 0.04822 inch was affirmed by the Federal Circuit when it affirmed the Commission's findings on the scope and content of the prior art. *Modine*, 75 F. 3d at 1549.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion in In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are

subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issue under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including, where necessary, references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the December 16, 1996, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 30, 1997. Reply submissions must be filed no later than the close of business on February 6, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.45–.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.45–.51).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: January 16, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1638 Filed 1–22 97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–749 (Final)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–749 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of persulfates from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 11, 1996, by FMC Corporation, Chicago, IL.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO

[1] For purposes of this investigation, Commerce has defined the subject merchandise as persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$.

issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 1, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 14, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 6, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 8, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 8, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 22, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 22, 1997. On June 10, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 12, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–1639 Filed 1–22–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to the Rivers and Harbors Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Providence Harbour View Inc.*, Civil No. 97–008P (D.R.I.), was lodged with the United States District Court for the District of Rhode Island on January 7, 1997.

The Consent Decree concerns alleged violations of section 10 of the Rivers and Harbors Act (''RHA''), 33 U.S.C. 403, resulting from the defendant's discharge of fill material, performance of unauthorized work and placement of structures, including riprap, pilings, and floating docks, in the waters of the Providence Harbor, Rhode Island, navigable waters of the United States, without the required permits. As part of the Consent Decree, defendant will be required to pay $40,000 as disgorgement of economic benefit and to submit an after-the-fact permit application to the United States Army Corps of Engineers within 90 days of the entry of the Consent Decree. Defendant has also agreed to abide by regulations for the permit programs under the RHA and section 404 of the Clean Water Act, 33 U.S.C. 1344.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Michael P. Iannotti, Assistant U.S. Attorney, 10 Dorrance Street, Tenth Floor, Providence, Rhode Island 02903, and should refer to *United States* v. *Providence Harbour View, Inc.*, C.A. No. 97–008P (D.R.I.).

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the District of Rhode Island, Kennedy Plaza, Providence, Rhode Island 02903.

Michael P. Iannotti,

Assistant U.S. Attorney.

[FR Doc. 97–1591 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–07–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed Consent Decree between the United States and Stratton Georgoulis was lodged on January 6, 1997, with the United States District Court for the Northern District of Iowa. The Consent Decree resolves *United States* v. *TIC Investment Corporation, et al,* No. 91–2065 (N.D. Iowa), a civil action filed by the United States against Stratton Georgoulis, TIC Investment Corporation and TIC United Corporation under Sections 104(e) and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9604(e) & 9607. The United States brought this action to recover $576,337.18 in unreimbursed response costs at the White Farm Equipment Dump Site (''the Site''), following the entry of a Consent Decree with Allied Products Corporation (''Allied'') under which Allied voluntarily performed EPA's selected remedial action for the Site and reimbursed the United States for its costs of overseeing Allied's

completion of the remedy. The United States also sought a penalty from the defendants under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), based on the defendants' alleged unreasonable failure to comply with written information requests served upon them by EPA.

Under the Consent Decree, Georgoulis will reimburse the United States for $530,000 of its unreimbursed costs at the Site, and pay a $100,000 civil penalty to resolve the United States' claims for the defendants' alleged violations of Section 104(e) of CERCLA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *TIC Investment Corporation, et al.,* DOJ Ref. #90–11–2–665a.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 400, Hach Building, 401 First Street, S.E., Cedar Rapids, Iowa 52401; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 98105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–1592 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–15–M

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2), and Title 41, Code of Federal Regulations, Section 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the continuance of the Criminal Justice Information Services (CJIS) Advisory Policy Board is in the public interest, in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of the renewal of its charter, scheduled for December 15, 1996.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of Federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations (i.e., the International Association of Chiefs of Police, the Major Cities Chiefs, the National Sheriffs' Association, the National District Attorneys Association, and the American Probation and Parole Association). All members of the Board will be appointed by the FBI Director.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Dated: November 2, 1996.

Louis J. Freeh,

Director.

[FR Doc. 97–1594 Filed 1–22–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32, 709; NAFTA–01224]

Penn Mould Industries, Incorporated, Washington, Pennsylvania; Notice of Negative Determination on Reconsideration

On November 27, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner, American Flint Glass Workers Union, AFL–CIO, presented evidence that the Department's survey of the subject firm customers was incomplete. This notice was published in the Federal Register on December 13, 1996 (61 FR 65599).

The Department's initial denial of TAA for workers of Penn Mould Industries was because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that layoffs were attributable to a change in the manufacturing process of glass molds at the Washington, Pennsylvania plant.

The Department's initial denial of NAFTA–TAA for workers of Penn Mould Industries was because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act were not met. The subject firm did not import glass forming molds, or shift production to Mexico or Canada. The investigation revealed that layoffs were attributable to a process change in the manufacturing of glass forming molds.

The petitioner provided data on U.S. imports of glass containers to support their claim that workers producing glass forming molds are adversely affected by increased imports. The Department concurs that there is an aggregate increase in imports of glass containers from Mexico and Canada and other foreign sources. However, in order to determine worker eligibility for TAA or NAFTA–TAA, the Department must examine imports of products like or directly competitive with those articles produced at the Washington production facility. In this case, the products produced at Washington were glass forming molds. Glass containers cannot be considered like or directly competitive with the end products produced and sold at the Washington plant.

The petitioner claims that Penn Mould was a captive producer of glass forming molds for its parent company, Ball-Foster Glass Container, Inc. On July 1, 1996, Penn Mould was sold to Ross Mould, Inc. and the Washington, Pennsylvania facility became a commercial producer of glass forming molds. Consequently, the customer base expanded.

The Department conducted a survey of the major customer of Penn Mould Industries, Inc., formerly Penn Mould. Findings of the survey revealed that from 1994 through September 1996, the customer, accounting for the predominate proportion of sales, did not import glass forming molds from Canada, Mexico or other foreign sources.

The petitioner further alleges that workers of another domestic company producing glass forming molds was certified eligible to apply for NAFTA–TAA. Review of that case showed that the workers were certified based on increased company imports of the product.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and NAFTA–TAA for workers and former workers of Penn Mould Industries, Inc., Washington, Pennsylvania.

Signed at Washington, D.C., this 27th day of December 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1666 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,360]

AA Production, Incorporated; 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 July 17, 1996, applicable to all workers of AA Production, Incorporated located in Lubbock, Texas. The notice was published in the Federal Register on August 6, 1996 (61 FR 40852).

At the request of the State agency, the Department reviewed the worker certification. New findings show that the Department inadvertently set the impact date at May 8, 1995. The workers at the subject firm were covered under an earlier certification, TA–W–29, 693, which expired April 29, 1996. The Department is amending the certification for workers of AA Production, Incorporated to set the impact date at April 29, 1996.

The amended notice applicable to TA–W–32,360 is hereby issued as follows:

''All workers of AA Production, Incorporated, Lubbock, Texas, who became totally or partially separated from employment on or after April 29, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1663 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,271, 271A & 271B]

Manhattan Shirt Company, A Division of Salant Corporation; 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 June 27, 1996, applicable to all workers of Manhattan Shirt Company, a Division of Salant Corporation located in Americus, Georgia.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the sales offices of the subject firm in New York, New York and Clark, New Jersey. The workers at the New York and New Jersey locations provide sales and support services to the Manhattan Shirt Company production facility in Americus, Georgia.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the sales and support service staff of Manhattan Shirt Company, A Division of Salant Corporation, New York, New York and Clark, New Jersey.

The amended notice applicable to TA–W–32,271 is hereby issued as follows:

''All workers of Manhattan Shirt Company, a division of Salant Corporation, Americus, Georgia (TA–W–32,271); and sales and support service workers of Manhattan Shirt Company, a Division of Salant Corporation, New York, New York (TA–W–32,271A) and Clark, New Jersey (TA–W–32,271B) who became totally or partially separated from employment on or after April 16, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1662 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,739]

Mission Plastics of DeQueen; DeQueen, AR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Mission Plastics of DeQueen, DeQueen, Arkansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–32,739; Mission Plastics of DeQueen, DeQueen, Arkansas (January 10, 1997)

Signed at Washington, D.C. this 13th day of January, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1658 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,159]

Olympus America Inc.; Rio Rancho, NM; 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 11, 1996, applicable to all workers of Olympus America Inc. located in Rio Rancho, New Mexico. The notice was published in the Federal Register on July 3, 1996 (61 FR 34875).

At the request of the State agency, the Department reviewed the worker certification. New findings show that all workers of the Rio Rancho production facility of Olympus America were separated from employment when the plant closed on September 30, 1996. Workers supporting the production of medical light sources at the subject firm were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover all workers of Olympus America, Inc., Rio Rancho, New Mexico.

The amended notice applicable to TA–W–32,159 is hereby issued as follows:

''All workers of Olympus America, Inc., Rio Rancho, New Mexico, who became totally or partially separated from employment on or after March 22, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 8th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1661 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,791 and 791A]

River Heights Inc.; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance on November 8, 1996, applicable to all workers of River Heights Inc. located in Crump, Tennessee. The notice was published in the Federal Register on November 27, 1996 (61 FR 60309).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The new findings show that when the determination was issued, the Department inadvertently omitted workers of the Selmer, Tennessee location of River Heights Inc. which closed May 1996. The workers were engaged in employment related to the production of knit shirts. Accordingly, the Department is amending the worker certification to include workers at River Heights Inc., Selmer, Tennessee.

The amended notice applicable to TA–W–32,791 is hereby issued as follows:

All workers of River Heights Inc., Crump, Tennessee (TA–W–32,791) and Selmer, Tennessee (TA–W–32,791A) who became totally or partially separated from employment on or after September 30, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1659 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,736]

Roxanne of Pennsylvania, Wilkes-Barre, Pennsylvania; 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 November 22, 1996, applicable to all workers of Roxanne of Pennsylvania, located in Wilkes-Barre, Pennsylvania. The notice was published in the Federal Register on December 24, 1996 (61 FR 68758).

At the request of the State agency, the Department reviewed the worker certification. New findings show that the Department incorrectly set the impact date at August 27, 1995. The workers at the subject firm were covered under an earlier certification, TA–W–29,776A, which expired June 8, 1996. The Department is amending the certification for workers of Roxanne of Pennsylvania to set the impact date at June 8, 1996.

The amended notice applicable to TA–W–32, 736 is hereby issued as follows:

''All workers of Roxanne of Pennsylvania, Wilkes-Barre, Pennsylvania, who became totally or partially separated from employment on or after June 8, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1664 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than February 3, 1997.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than February 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 23rd day of December, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 12/23/96

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
33,036	S.D. Warren (Wkrs)	Westbrook, ME	12/04/96	Coated and Specialty Paper.
33,037	Blue Bird Fabrics Corp (Wkrs)	York, PA	12/04/96	Woven Fabrics.
33,038	Metra Health (Wkrs)	Milwaukee, WI	12/04/96	Claim Processing.
33,039	Brunswick Marine (Wkrs)	Nappenee, IN	12/02/96	Fishing and Recreational Boats.
33,040	CWS Fashions (Co.)	Lenoir, NC	12/05/96	Cut and Sew Children's Activewear.
33,041	Roederstein Electronics (Co.)	Statesville, NC	12/09/96	Plastic Film Capacitors.
33,042	Komatsu America (IAMAW)	Galion, OH	12/10/96	Spindles, Wheels.

PETITIONS INSTITUTED ON 12/23/96—Continued

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
33,043	United Technologies (IBEW)	Zanesville, OH	12/06/96	Automotive Wiring Harnesses.
33,044	Butler Sales Agency, Inc. (Co.)	Eau Claire, WI	12/04/96	Sales Organization for US Fluorescent.
33,045	Union City Body (UAW)	Union City, IN	12/09/96	Delivery Vans.
33,046	Kalina Sportswear, Inc. (Co.)	Hammonton, NJ	12/09/96	Ladies' Jackets.
33,047	Lance Garment (Co.)	Redbay, AL	12/12/96	Men's Casual Shirts.
33,048	Hamilton Beach (Co.)	Washington, NC	11/27/96	Electronic Houseware.
33,049	Washington Public Power (IBEW)	Richland, WA	11/22/96	Electricity.
33,050	Ithaca Industries (Co.)	Thomasville, GA	12/04/96	Ladies' Underwear.

[FR Doc. 97–1665 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–33,026]

Sportswear Associates, Incorporated, Clay Sportswear Division (AKA About Sportswear) Moss, Tennessee; 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 Sportswear Associates, Incorporated, Clay Sportswear Division, Moss, Tennessee.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–32,870). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 20th day of December, 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1667 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—01258–01258A]

Amended Negative Determination Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Negative Determination for NAFTA-Transitional Adjustment Assistance on November 8, 1996, applicable to all workers of River Heights Inc. located in Crump, Tennessee. The negative determination was published in the Federal Register on November 27, 1996 (61 FR 60310).

At the request of the State agency, the Department reviewed the determination for workers of the subject firm. The new findings show that when the determination was issued, the Department inadvertently omitted workers of the Selmer, Tennessee location of River Heights Inc. which closed May 1996. The workers were engaged in employment related to the production of knit shirts. Accordingly, the Department is amending the negative determination to include workers at River Heights Inc., Selmer, Tennessee.

The amended notice applicable to NAFTA–01258 is hereby issued as follows:

''All workers of River Heights Inc., Crump, Tennessee (NAFTA–01258) and Selmer, Tennessee (NAFTA–01258A), are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, D.C., this 9th day of January 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–1660 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Proposed Collection; Comment Request

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 Standards Administration is soliciting comments concerning two (2) information collections: the proposed extension of (1) Optional Use Payroll Form Under the Davis-Bacon Act, WH–347 and (2) Requests for Medical Reports, LS–158, LS–415, and LS–525. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 25, 1997. The Department of Labor is particularly interested in comments which:

*evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*enhance the quality, utility and 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 submissions of responses.

ADDRESSES: For the Davis-Bacon form submission, contact Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–6375.

For the Longshore medical reports submission, contact Ms. Margaret J.

Sherrill at the same office address above, telephone (202) 219–7601. (The telephone numbers are not toll-free; FAX 202–219–6592.)

SUPPLEMENTARY INFORMATION:

I. Background

The Copeland Act (40 U.S.C. 276c) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to ''furnish weekly, statement with respect to the wages paid each employee during the preceding week.'' Section 5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, provides that contractors submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project. Form WH–347, Optional Use Payroll Form, was developed for contractor use in meeting these payroll requirements. It is a report form requiring basic payroll information to be furnished by all covered employers each week that any work covered by the Davis-Bacon and Related Acts is performed. The completed form is submitted weekly to the contracting agency or copies of the contractor's payroll containing all the required information may be submitted instead.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to enable contractors and subcontractors (using optional form, WH–347) to certify their payrolls, attesting that proper wage rates and fringe benefits have been paid to their employees performing work on contracts covered by Davis-Bacon and Related Acts. If this information was not collected, contracting officials and Wage and Hour investigative staff would be unable to verify that legal rates have been paid and whether employees have been properly classified for the work they perform.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Optional Use Payroll Form Under the Davis-Bacon Act

OMB Number: 1215–0149

Affected Public: Business or other for-profit; individuals or households; Federal government; State, Local or Tribal government

Total Respondents: 113,022

Frequency: Weekly

Total Responses: 10,398,024

Average Time Per Response for Reporting: 56 minutes

Estimated Total Burden Hours: 9,700,000

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $363,931

I. Background

The Longshore and Harbor Workers' Compensation Act, as amended provides benefits to workers injured in maritime employment. In addition, several Acts extend Longshore Act coverage to certain other employees. The Secretary of labor is authorized, under the Act, to make rules and regulations to administer the Act and its extensions. Section 7(b) of the Act (20 CFR 702.408) requires supervision of the medical care rendered to injured employees, require periodic reports as to the medical care being rendered, and provides authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished to an injured worker.

Forms LS–158, LS–415, and LS–525 are used to request impartial medical examinations pursuant to the provisions of Section 7(a) and 7(e) of the Act. The LS–158 and LS–415 are used to request an impartial physical examination of the employee (LS–158), and for the repair of artificial limbs issued to beneficiaries (LS–415). The form LS–525 is used for examinations involving audiometric testing otologic evaluation, and is forwarded to the physician by the program. Completed forms are used to assist in evaluating workers' claims for benefits.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to provide the Office of Workers' Compensation Program with detailed medical evaluation to make decisions to award or continue compensation payments or benefits to Longshore workers. If the information was not collected, claimants would not be able to file for and receive Longshore benefits stipulated in the Act and amendments.

Type of Review: Extension

Agency: Employment Standards Administration

Titles: Request for Medical Examination and Report; Request for Artificial Limb or Repairs; and, Request for an Examination of Employee's Hearing Ability (form letter).

OMB Number: 1215–0106

Affected Public: Business or other for-profit; individuals or households

Total Respondents: 2,520

Frequency: On occasion

Total Responses: 2,520

Average Time per Response: 30 minutes

Estimated Burden Hours: 1,260

Form	Respondents	Responses	Burden hours
LS–158	1,000	1,000	500
LS–415	20	20	10
LS–525	1,500	1,500	750
Total	2,520	2,520	1,260

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $882.00

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: January 17, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–1668 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Minnesota State Standards; Notice of Approval

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for

the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On June 8, 1973, notice was published in the Federal Register (38 FR 15076) of the approval of the Minnesota plan and the adoption of Subpart N of Part 1952 containing the decision. The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By a letter dated December 13, 1993, the State submitted State Standards which are comparable to Occupational Exposure to 4,4'-Methylenedianiline (MDA); Approval of Information Collection Requirements, as published in the Federal Register (57 FR 49649) on November 3, 1992; Control of Hazardous Energy Sources (Lockout/Tagout); Supplemental Statement of Reasons, as published in the Federal Register (58 FR 16612) on March 30, 1993; Occupational Exposure to Cadmium; Corrections and Amendments to Final Rule, as published in the Federal Register (58 FR 21778) on April 23, 1993; and Lead Exposure in Construction; Interim Final Rule, as published in the Federal Register (58 FR 26590) on May 4, 1993. The order of adoption was published in the State Register (18 S.R. 1065) on October 11, 1993, pursuant to Minnesota Statute 182.655 (1992), and went into effect on October 16, 1993. By a letter dated August 4, 1994, the State submitted State Standards which are comparable to Safety Standards for General Industry and Construction; Technical Amendments, as published in the Federal Register (58 FR 35306) on June 30, 1993; Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment, as published in the Federal Register (59 FR 4320) on January 31, 1994; Occupational Safety and Health Standards for Cadmium in Shipyard Employment and Construction; Final Rule—Miscellaneous Corrections and Technical Amendments, as published in the Federal Register (59 FR 146) on January 3, 1994; and Occupational Exposure to Lead in Construction; Interim Final Rule—Approval of Information Collection Requirements, as published in the Federal Register (58 FR 34218) on June 24, 1993. The letter also served to incorporate into Minnesota Rules the redesignation of the regulatory text of the general industry standards that have been identified as applicable to construction work as published in the Federal Register (58 FR 35076) and corrected in the Federal Register (58 FR 40468) on July 28, 1993. The order of adoption was published in the State Register (19 S.R. 187) on July 25, 1994, pursuant to Minnesota Statute 182.655 (1992), and went into effect on July 30, 1994, with the exception of 1910.269(a)(2) which was effective January 31, 1995. By a letter dated November 17, 1994, the State submitted State Standards which are comparable to Grain Handling Facilities; Final Decision Statement, as published in the Federal Register (59 FR 15339) on April 1, 1994; Personal Protective Equipment for General Industry; Final Rule, as published in the Federal Register (59 FR 16334) on April 6, 1994; and Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Final Rule—Stay of Enforcement of Certain Provision and Correction, as published in the Federal Register (59 FR 33658) on June 30, 1994. The order of adoption was published in the State Register (19 S.R. 887) on October 24, 1994, pursuant to Minnesota Statute 182.655 (1992), and went into effect on October 29, 1994.

By a letter dated January 18, 1995, the State submitted State Standards which are comparable to Occupational Exposure to Asbestos in Construction (1926.1101), General Industry (1910.1001), and Shipyard Employment (1915.1001), as published in the Federal Register (59 FR 40964) on August 10, 1994; Retention of DOT Markings, Placards, and Labels (1910.1201, 1915.100, 1917.29, 1918.100, and 1926.61), as published in the Federal Register (59 FR 36695) on July 19, 1994; Safety Standard for Fall Protection in Construction (1926, Subpart M), as published in the Federal Register (59 FR 40672) on August 9, 1994; Amendments to the Hazardous Waste Operations and Emergency Response Standard (1910.120 and 1926.65), as published in the Federal Register (59 FR 43268) on August 22, 1994; and Confined and Enclosed Spaces and other Dangerous Atmospheres in Shipyard Employments, as published in the Federal Register (59 FR 37816) on July 25, 1994. The order of adoption was published in the State Register (19 S.R. 1459) on January 3, 1995, pursuant to Minnesota Statute 182.655 (1992), and went into effect on January 8, 1995, with the exception of the Fall Protection in Construction Standard which was effective February 6, 1995. By a letter dated March 27, 1995, the State submitted a State Standard which is comparable to Logging Operations, Final Rule, as published in the Federal Register (59 FR 51672) on October 12, 1994. The order of adoption was published in the State Register (19 S.R. 1900) on March 13, 1995, pursuant to Minnesota Statute 182.655 (1992), and went into effect on March 18, 1995. These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings.

Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and amendments are identical to the Federal standards and accordingly are approved.

Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, Room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155; and the Directorate of Federal-State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210. For electronic copies of this Federal Register notice, contact OSHA's Web Page at http://www.osha.gov/.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good

cause exists for not publishing the supplement to the Minnesota State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Chicago, Illinois this 4th day of November 1996.

Sandra J. Taylor,

Acting Regional Administrator.

[FR Doc. 97–1565 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–26–P

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the Federal Register (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to a Federal standard change, the State submitted by letter dated March 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a State standard identical to the Federal standards 29 CFR 1910.1201, 29 CFR 1915.100, 29 CFR 1917.29, 29 CFR 1918.100 and 29 CFR 1926.61, Retention of DOT Markings, Placards and Labels, published in the Federal Register (59 FR 36695) on July 19, 1994. The State standard was adopted on January 18, 1995, effective March 10, 1995, under Washington Administrative Order 94–19.

In response to Federal and State initiated standard changes, the State submitted by a letter dated December 20, 1991, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, State standard amendments comparable to 1910.1025, Lead, published in the Federal Register (56 FR 24686) on May 31, 1991. The minor State initiated amendments included the incorporation of the appendices and a summary of employer responsibility regarding the lead standard provisions. The change was adopted in Administrative Order 91–07 on November 22, 1991, effective December 24, 1991.

In response to a new Federal standard, the State submitted by letter dated November 17, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard comparable to the Federal standard 29 CFR 1926.62, Lead Exposure in Construction; Interim Final Rule, published in the Federal Register (58 FR 26590) on May 4, 1993. The State standard was adopted on October 29, 1993, effective December 10, 1993, under Washington Administrative Order 93–07. The State requires each employer to protect his/her own employees rather than for contractors on multi-contractor worksites to make arrangements among themselves. Other minor differences include correction of errors and deletion of the word ''interim''.

On its own initiative, the State submitted by letter dated March 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a State standard amendment comparable to 29 CFR 1910.1025, Lead. The amendments add a new non-mandatory Appendix E to the previously approved WAC 296–62–07521, Lead standard. The State amendments were adopted on January 30, 1995, effective March 3, 1995, under Washington Administrative Order 94–15.

On its own initiative, the State has submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment which prohibits the use of 4x29 inch wire rope in any maritime ''running rigging''. The State standard is comparable to 29 CFR 1917.43, Miscellaneous Auxiliary Gear. The change was adopted in Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

On its own initiative, the State has submitted by letter dated February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, amendments to the previously approved General Safety and Health Standards, WAC 296–24, which incorporated some of the Washington Industrial Safety and Health Administration (WISHA) Regional Directives (WRD) into appropriate standards. The significant State standard amendments are: WAC 296–24–15001(7), guarding of food waste disposal equipment: WAC 296–24–16517 additional requirements for the guarding and labeling of radial saws; WAC 296–24–20503(5), specific conditions that are required to be followed when operating sewing machines; WAC 296–24–550, requires means of egress for all buildings to be in accordance with the 1985 National Fire Code, (NFPA); WAC 296–24–78007(6), specific construction requirements for Jacob's ladders; WAC 296–24–82503, additional requirements for swinging scaffolds, use of screw shackles, hooks on blocks and lifelines size. The State amendments were adopted on January 11, 1990, effective February 26, 1990, under Washington Administrative Order 89–20.

On its own initiative, the State submitted by letter dated February 8, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, amendments to the previously approved WAC 296–155–950, Rollover Protective Structures for Material Handling Equipment. The significant state standard amendment, which incorporated a Washington Industrial Safety and Health Administration (WISHA) Regional Directive (WRD), references the 1980 Society of Automotive Engineers (SAE) test criteria. The State amendments were adopted on January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18.

On its own initiative, the State submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.243(d)(1)(i) and 29 CFR 1910.243(d)(3)(iv), Guarding of Portable Powered Tools. The State standard was amended to adopt the 1985 edition of ANSI A10.3, Safety Requirements for Power Actuated Fastening Systems. The State amendments were adopted May

20, 1991, effective June 20, 1991, under Washington Administrative Order 91–01.

On its own initiative, the State submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910, General Safety and Health Standards. The State standard at WAC 296–24 was amended to add gender neutral language and make other housekeeping changes. The State amendments were adopted July 20, 1994, effective September 20, 1994, under Washington Administrative Order 94–07.

On its own initiative, the State submitted by letter dated January 4, 1993, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.201(a)(3) and 29 CFR 1926.210(a)(4), Signaling. The State standard was amended to adopt: current edition of ANSI D6.1, Uniform Traffic Control Devices; approved training every three years; and flaggers must have in their possession a certificate verifying required training. The State amendments were adopted December 11, 1992, effective January 15, 1993, under Washington Administrative Order 92–15.

On its own initiative, the State submitted by letter dated October 22, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.200(g)(2) and 29 CFR 1926.200(h)(1)(i), Accident Prevention Signs and Tags. The State standard was amended to not only require signs, but to clarify that all traffic control signs and devices used in construction must be made and installed according to the 1988 edition of ANSI D6.1, Uniform Traffic Control Devices for Street and Highways. The State amendments were adopted December 11, 1992, effective January 15, 1993, under Washington Administrative Order 92–15; and were adopted September 22, 1993, effective November 1, 1993, under Washington Administrative Order 93–04.

On its own initiative, the State submitted by letter dated October 26, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to the previously approved WAC 296–306–020, Serious Injury Reporting. The amendments were to incorporate the April 1, 1994 Federal reporting requirements in 29 CFR 1904.8, which reduced the reporting time from 24 to 8 hours, into the State of Washington's vertical Agriculture standard. The State amendments were adopted on September 30, 1994, effective November 20, 1994, under Washington Administrative Order 94–16.

On its own initiative, the State submitted by letter dated October 14, 1992, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to the previously approved State standard, WAC 296–78–515, Management's Responsibility. The amendments incorporated the April 1, 1994 Federal reporting requirements in 29 CFR 1904.8 into the State of Washington's Sawmills and Woodworking Operations standard. The State amendments were adopted on September 30, 1994, effective November 20, 1994, under Washington Administrative Order 94–16.

In response to Federal and State initiated standard changes, the State submitted by a letter dated June 20, 1991, from Joseph A. Dear, Director to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1926.100(c), Head Protection. In response to a U.S. Supreme Court decision, which denied relief to any individual from the obligation to comply with a neutral, generally applicable regulatory law, the State eliminated language that gave an exemption for wearing hard hats to Old Order Amish and Sikh Dharma Brotherhood. The amendment was adopted in Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

On its own initiative, the State submitted by letter dated June 20, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, State standard amendments to WAC 296–62–07540, Formaldehyde. This standard was originally approved in the Federal Register (57 FR 12947) on April 14, 1992. The State initiated amendments add WAC references comparable to those in the Federal Formaldehyde standard. The State standard amendments were adopted under Washington Administrative Order 91–01 on May 20, 1991, effective June 20, 1991.

In response to Federal standard changes, the State submitted by letter dated November 30, 1992, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, corrections to the State standard at WAC 296–62–07540 comparable to corrections to the Federal standard, 29 CFR 1910.1048, Formaldehyde, as published in the Federal Register (57 FR 22290) on May 27, 1992, (57 FR 24701) on June 10, 1992, and (57 FR 27160) on June 18, 1992. The State corrections are contained in Administratsive Order 92–13, adopted November 10, 1992, effective December 18, 1992.

All of the administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. These standards changes have been incorporated as part of the State plan.

2. Decision

OSHA has determined that the State standard amendments for Miscellaneous Auxiliary Gear, General Safety and Health Standards (1990), Rollover Protective Structures for Material Handling Equipment, Guarding of Portable Power Tools, Signaling, and Accident Prevention Signs and Tags are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. These amendments have been in effect since at least November, 1993. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA has also determined that the differences between the State and Federal amendments for Lead, Lead in Construction, General Safety and Health Standards (1994), Serious Injury Reporting, Management's Responsibility, Head Protection and Formaldehyde are minimal and that the State amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. In addition, OSHA has determined that the State amendment for Retention of DOT Markings, Placards and Labels is identical to the comparable Federal standard, and therefore approves the amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington

98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which were promulgated in accordance with the Federal law, including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective January 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 10th day of December 1996.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 97–1564 Filed 1–22–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–006)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee.

DATES: February 11, 1997, 8 a.m. to 5 p.m.; February 12, 1997, 8 a.m. to 5 p.m.; February 13, 1997, 8 a.m. to 2 p.m.

ADDRESSES: Nassau Bay Hilton, 3000 NASA Road 1, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. the agenda for the meeting is as follows:

—Station program update
—Science and technology utilization plans and requirements
—Microgravity environment and vibration isolation
—Telescience requirements and communications capabilities
—Plans for the Office of Life and Microgravity Sciences and Applications Advisory Committee reorganization
—Other topics related to the scientific, technologies, and commercial utilization of the Space Station may be included in the meeting discussions.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 14, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–1621 Filed 1–22–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would replace Surveillance Requirements 3.8.1.14 and 3.8.1.15 until the SONGS Unit 3 Cycle 9 refueling outage (currently scheduled to begin on April 5, 1997), with surveillance requirements that were in force when these surveillances were last performed.

The exigent circumstances for this TS amendment request exist due to the recent discovery of the inappropriate crediting of previous test results to the post-Technical Specification Improvement Program SRs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the Technical Specifications (TSs) prior to the Technical Specification Improvement Program (TSIP).

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the previous (pre-TSIP) TS.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would temporarily replace Surveillance Requirements (SRs) SR 3.8.1.14 and 3.8.1.15 with the SRs that had existed for this testing in the previous (pre-TSIP) TS. Acceptance of the pre-TSIP test, using higher generator output, would not deleteriously impact any margin of safety. The generator output of the Emergency Diesel Generator (EDG) is manually adjusted during the SRs by the operator conducting the test. Imposing the post-TSIP upper limit is less severe on the equipment since this ensures the generator output is at a lower level during the test. Similarly, operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of January 1997.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1611 Filed 1–22–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, Type C tests, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, to the extent that a one-time extension would be allowed for conducting Type C local leak rate tests (LLRTs) on containment isolation valves. Appendix J to 10 CFR Part 50 requires these tests to be performed at intervals no greater than 2 years. Indian Point 3 is operating under an existing exemption that allows Type C tests to be conducted at intervals of no greater than 30 months. The proposed amendment to this exemption would extend the current test interval by 4½ months.

The Need for the Proposed Action

The proposed action would allow the licensee to complete the current operating cycle without a shutdown to conduct a Type C LLRT. The licensee commenced operating on 24-month fuel cycles, as opposed to the previous 18-month fuel cycles, starting with fuel cycle 9 in August 1992. The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, indicate that Type C LLRTs must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee would have to shut down Indian Point Nuclear Generating Unit No. 3 and enter an outage before the scheduled end of each fuel cycle.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18-months. Consequently, the NRC staff issued Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle.'' This generic letter provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate a 24-month fuel cycle. The licensee's letters of July 17, 1992, and December 23, 1992, which requested the existing exemption, followed the guidance of Generic Letter 91–04. An exemption allowing the licensee to extend the interval for Type C LLRts was issued on February 19, 1993.

Type C testing for containment isolation valves was performed during the Restart and Continuous Improvement outage; however, due to the length of this outage the 30-month time interval will expire for some of the containment isolation valves prior to the next refueling outage scheduled for spring 1997. The requested amendment to the exemption provides for a one-time extension of up to 4 months so that valve testing may be done during the next refueling outage. Deferral of valve testing will not be used to extend plant operation beyond May 31, 1997.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed amendment to the existing exemption does not increase the probability or consequences of accidents previously analyzed and it does not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous LLRTs performed at Indian Point Nuclear Generating Unit No. 3, and has provided the methodology used in extrapolating the previous LLRT data to the proposed 34.5-month interval. The requested exemption is also based on increasing the margin to the allowed combined leakage rate limit by 25 percent. The licensee has provided a sound basis for concluding that the containment leakage rate would be maintained within acceptable limits with a maximum LLRT interval of 30 months. The NRC staff has determined the licensee's actions are consistent with the guidance provided in Generic Letter 91–04.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as

defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on December 12, 1996, the staff consulted with the New York State official, Heidi Voelk, of the New York State Energy Research and Development Authority regarding the environmental impact of the proposed action. The state official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 1, 1996, as supplemented by letter dated December 5, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 16th day of January 1997.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–1610 Filed 1–22–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 5–8, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, February 5, 1997

1:00 p.m.–1:15 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

1:15 p.m.–2:45 p.m.: Design-Bases Verification (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and of the industry regarding the acceptance criteria to be used by the staff in judging the adequacy of the design-bases information provided by the licensees in response to the 10 CFR 50.54(f) letter issued to all licensees in October 1996.

3:00 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. It will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program, and a proposed report on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals.

Thursday, February 6, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:00 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal Hydraulic Phenomena Subcommittee regarding matters discussed during the December 18–19, 1996 Subcommittee meeting, and comments on the future scope and direction of the Subcommittee's review of the Westinghouse AP600 Test and Analysis Program.

9:00 a.m.–9:30 a.m.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Instrumentation and Control Systems and Computers Subcommittee regarding the ACRS review of the National Academy of Sciences/National Research Council Phase 2 study on digital instrumentation and control systems.

9:30 a.m.–10:15 a.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:30 a.m.–12:00 Noon: Shutdown Operations Risk (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding issues associated with shutdown operations risk.

Representatives of the nuclear industry will participate, as appropriate.

1:00 p.m.–1:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the December 19, 1996 EDO response to ACRS comments included in its November 22, 1996 letter regarding NRC programs for the Risk-Based Analysis of Reactor Operating Experience.

1:30 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also continue to discuss a proposed ACRS report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

Friday, February 7, 1997

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: Risk-Informed, Performance-Based Regulation and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Standard Review Plan Sections and Regulatory Guides for risk-informed, performance-based regulation, and related matters.

10:45 a.m.–12:15 p.m.: AEOD Spent Fuel Pool Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the Office for Analysis and Evaluation of Operational Data (AEOD) regarding the results of the study performed by AEOD on the adequacy of spent fuel pool designs.

Representatives of the nuclear industry will participate, as appropriate.

1:15 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

Saturday, February 8, 1997

8:30 a.m.–9:00 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:00 a.m.–1:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting. It will also continue to discuss a proposed report to Congress on the NRC Safety Research Program, as well as proposed reports on Risk-Based Regulatory Acceptance Criteria for Site-Specific Application of Safety Goals, and Human Performance Program Plan.

1:30 p.m.–2:00 p.m.: Strategic Planning (Open)—The Committee will continue its discussion of items of significant importance to NRC, including rebaselining of the Committee activities for FY 1997.

[Note: The meeting could terminate earlier than scheduled, if the work of the Committee is completed.]

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1996 (61 FR 51310). In accordance with these procedures, oral or written statements may be presented by members of the public; electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

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 Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. est.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC Main Menu.'' Direct Dial Access number to FedWorld is (800) 303–9672 or ftp.fedworld. These documents and the meeting agenda are also available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

The ACRS meeting dates for Calendar Year 1997 are provided below:

ACRS meeting No.	1997 ACRS meeting dates
439	March 6–8, 1997.
440	April 3–5, 1997.
441	May 1–3, 1997.
442	June 11–13, 1997.
443	July 9–11, 1997.
	No August meeting.
444	September 3–5, 1997.
445	October 2–4, 1997.
446	November 6–8, 1997.
447	December 4–6, 1997.

Dated: January 16, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–1605 Filed 1–22– 97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment; Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15g–3	SEC File No. 270–346	OMB Control No. 3235–0392
Rule 15g–4	SEC File No. 270–347	OMB Control No. 3235–0393
Rule 15g–5	SEC File No. 270–348	OMB Control No. 3235–0394
Rule 15g–6	SEC File No. 270–349	OMB Control No. 3235–0395
Rule 15g–7(a)	SEC File No. 270–350	OMB Control No. 3235–0396
Rule 17Ac2–1 and Form TA–1	SEC File No. 270–95	OMB Control No. 3235–0084

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with

transactions in certain low-priced, over-the-counter securities. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rules 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–6 requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents incur an average burden of 90 hours annually to comply with the rule.

Rule 15g–7(a) would require brokers and dealers that effect transactions in penny stocks and are the only market makers with respect to such securities to disclose this fact in connection with such transactions. It is estimated that approximately 270 respondents would incur an average burden of 50 hours annually to comply with the rule.

Rule 17Ac2–1 and Form TA–1 is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that approximately 359 respondents will incur an average burden of 538.5 hours annually to comply with the rule and form.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: January 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1561 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22472; File No. 812–10402]

American Odyssey Funds, Inc., et al.

January 15, 1997.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

Applicant: American Odyssey Funds, Inc. (''AOF''), American Odyssey Funds Management, Inc. (''AOFMI''), and certain life insurance companies and their separate accounts investing now or in the future in AOF.

Relevant 1940 Act Sections: Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek exemptive relief to the extent necessary to permit shares of AOF to be sold to and held by separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside the separate account context (''Plans'').

Filing Date: The application was filed on October 16, 1996.

Hearing and Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. or February 10, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Christopher E. Palmer, Esq., Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicant's Representations

1. AOF is a Maryland corporation registered pursuant to the 1940 Act as an open-end, management investment company. AOF currently consists of six separate investment portfolios and may in the future issue shares of additional portfolios and/or multiple classes of shares of each portfolios (such existing and future portfolios and/or classes of shares of each, ''Funds'').

2. AOFMI, the investment adviser for AOF, is a corporation organized pursuant to the laws of New Jersey and is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. AOF has entered into agreements with subadviers who handle the day-to-day management of each individual Fund (the ''Subadvisers'').

3. Shares of the Funds are currently sold to separate accounts of The Travelers Insurance Company, which are registered as unit investment trusts pursuant to the 1940 Act in connection with the issuance of variable contracts.

4. AOF may offer shares of its existing and future Funds to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Travelers Group Inc. in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (''Contracts'').

5. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements

under the federal securities laws. The role of AOF with respect to the Separate Accounts and the Plans will be limited to that of offering its shares to the Separate Accounts and the Plans and fulfilling the conditions provided in the application.

6. AOF also offers shares to the trustees (or custodians) of Plans. The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws.

7. AOFMI will not act as an investment adviser to any of the Plans which will purchase shares of AOF. It is possible that any one of the Subadvisers may act as an investment adviser to the Plans which may invest in AOF. However, Applicants represent that none of the assets of any Plan advisory account managed by a Subadviser will be invested in AOF. The Subadvisers are not permitted to advise such Plans to invest in AOF.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and miles thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request that the Commission issue and order pursuant to Section 6(c) of the 1940 Act exemption them from Sections 9(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 63–3T(b)(15) thereunder to the extent necessary to permit shares of AOF to be offered and sold to, and held by: (1) Both variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies (''mixed funding''); (2) separate accounts of unaffiliated life insurance separate accounts) ''shared funding''); and (3) trustees of Plans

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 63–2(b)(15) under the 1940 Act provides partial exemptions from Section 9(a), 13(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 63–2(b)(15) and available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated or unaffiliated life insurance company. Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies.

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled premium variable life insurance contracts of flexible premium variable life insurance contracts, or both; or which also offer their share to variable annuity separate accounts of the life insurer of of an affiliated life insurance company'' (emphasis added). Thus, Rule 6e–(T)(b)(15) grants an exemption if the underlying management investment company engages in mixed funding, but not if it engages in share funding or sells its shares to Plans.

6. Applicants state that the current tax law permits AOF to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code (''Code'') imposes certain diversification requirements on the underlying assets of the Contracts invested in AOF. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirements, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Tres. Reg. § 1–817–5(f)(3)9iii).

7. The promulgation of Rules 63–2 and 63–3(T) preceded the issuance of these treasury regulations. Applicants state that, given the ten-current tax law, the sale of shares of the same investment company to both Separate Accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–3(b)(15) and 6e–3(T)(b)(15).

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide: (1) That the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (2) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants assert that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9, when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940

Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and share funding and sales to Plans. Applicants submit that sales to those entities do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have not involvement in the underlying fund.

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and (15(b) of the 1940 Act to the extent that these sections have been deemed by the Commission to require pass-through voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company, or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance may disregard the voting instructions of contract owners if the contract owners initiate any change is such insurance company's investment objectives, principal underwriter, or investment adviser provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

13. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment adviser or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemption necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of AOF shares to Plans will not have any impact on the relief requested in this regard. Shares of AOF sold to Plans will be held by the trustee(s) or custodian(s) of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA'') or applicable provisions of the Code. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions state in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans.

Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

15. Some Plans, however may provide participants with the right to give voting instructions. However, Applicants note that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, Applicants submit that the purchase of AOF shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or greater problem.

17. Applicants submit that shared funding by unaffiliated insurers, in this respect, is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for difference in state regulatory requirements. In any event, the conditions proposed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in AOF. This requirement will be provided for in agreements that

will be entered into by Participating Insurance Companies with respect to their participation in AOF.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund and no charge or penalty will be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Funds similarly will not increase the chance of conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Funds. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

21. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans, long-term investment, coincides with that of the Contracts and should not increase the potential for conflicts. Applicants state that each Fund will be managed to attempt to achieve the investment objective of the Fund, and not to favor or disfavor any particular Participating Insurance Company or type of Contract.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of AOF. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Funds serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Applicants assert that, therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem share of AOF at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that The Funds will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants submit that the ability of the Funds to sell their respective share directly to Plans does not create a ''senior security,'' as that term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans, or Contract owners under Contracts, the Plans and the Separate Accounts have rights only with respect to their respective share of AOF. They can redeem such shares only at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the Separate Accounts and the participants under the Plans with respect to the state insurance commissioner's veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their Separate Accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Plans can make the decision quickly and implement the redemption of their shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Fund.

28. Applicants submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of AOFMI and the Subadvisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets

available for investment by AOF, thereby promoting economies of scale, by permitting increased safety through greater diversification or by making the addition of new Funds more feasible. Therefore, making AOF available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors (''Board'') of the Funds shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended for: (a) A period of 45 days if the vacancy or vacancies may be filled by the remaining directors on the Board; (b) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all the Separate Accounts investing in the Funds and the Plan participants investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, AOFMI (or any other investment adviser of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of a Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies investing in the Funds under their agreements governing participation therein, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of the disinterested directors of such Board, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from AOF or any Fund and reinvesting such assets in a different investment medium, which may include another Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination that a material irreconcilable conflict exists and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants. For purposes of this Condition 4, a majority of the disinterested directors of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or AOFMI be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially and

adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by this Condition 4 to establish a new funding medium for such Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The determination by any Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from contract owners. Each Participating Insurance Company will also vote shares for which it has not received timely voting instructions from contract owners as well as shares which the Participating Insurance Company itself owns, in the same proportion as those shares for which voting instructions from contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Funds. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict of interest, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) AOF is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in AOF and the interests of Plans investing in AOF may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund) and, in particular, each Fund will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by the application summarized in this notice, then the Funds and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent that such rules are applicable.

11. The Participants, at least annually, will submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may fully carry out the obligations imposed upon them by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participants to provide these reports, materials, and data upon the reasonable request of the Boards, shall be a contractual obligation of all Participants under their agreements governing their participation in the Funds.

12. If a Plan should ever become a holder of ten percent or more of the assets of a Fund, such Plan will execute a participation agreement with the applicable Fund. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1558 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 27, 1997.

A closed meeting will be held on Tuesday, January 28, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 28, 1997, at 10:00 a.m., will be:

Injunction of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 21, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–1819 Filed 1–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38169; File No. SR–CBOE–96–72]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to RAES Order Size for Interest Rate Options

January 14, 1997.

On November 26, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 23.7, ''RAES,'' to increase the maximum size of interest rate option orders eligible for entry into the CBOE's Retail Automated Execution System (''RAES'') from 10 or fewer contracts to 100 or fewer contracts.

The proposed rule change was published for comment in the Federal Register on December 12, 1996.[3] No comments were received on the proposal.[4]

The CBOE proposed to amend CBOE Rule 23.7(ii) to increase the maximum size of orders in CBOE interest rate options which are eligible for execution through RAES from 10 or fewer contracts to 100 or fewer contracts. The proposed increase in the maximum size of RAES-eligible interest rate option orders will apply to all classes of interest rate options.[5]

The proposed rule change is designed to allow the Exchange to compete effectively with other markets that trade interest rate derivatives.[6] According to the CBOE, much of the trading in interest rate derivatives currently occurs in markets where transaction sizes are larger than are eligible for automatic execution through RAES at the CBOE.

Specifically, the CBOE notes that because the TYX interest rate contract offered to the CBOE represents approximately one-tenth (1/10th) of the value of the underlying government securities, the current eligible order limit of ten contracts is essentially equivalent in value to only one U.S. Treasury Bond option. The Exchange believes that the proposed increase in the maximum size of orders for CBOE interest rate options, such as the TYX, that are eligible for execution through RAES (essentially a ''10-lot'' in the Treasury Bonds themselves), will provide a more meaningful limit for institutional customers.

The CBOE believes that the proposed rule change will not impose any significant burdens on the operation and capacity of RAES, but instead will increase the efficiency of the Exchange's operations by expanding the number of orders that are eligible for automatic execution and by reducing manual processing. Finally, the CBOE believes that the rule change will not have a negative impact on the capacity, security or integrity of RAES.

By expanding the maximum size of orders in CBOE interest rate options which are eligible for execution through RAES from 10 or fewer contracts to 100 or fewer contracts, the Exchange believes that the proposed rule change will better serve the needs of the CBOE's public customers and the Exchange members who make a market for such customers. The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and Section 11A.[7] Specifically, the Commission finds that the CBOE's proposal will facilitate transaction in securities and protect investors and the public interest.[8] The Commission believes that providing for the automatic execution of larger customer orders in interest rate options will provide for more efficient handling and reporting of orders in interest rate options, thereby improving order processing and turnaround time.[9] In addition, the Commission believes that public customers may benefit from the proposal because their interest rate option orders for up to 100 contracts may be executed automatically at the displayed market quote. Public customers also will have the benefit of receiving nearly instantaneous executions and confirmations for interest rate option orders of up to 100 contracts.

The CBOE has stated that the proposal will allow the Exchange to compete more effectively with other markets that trade interest rate derivatives. Accordingly, the Commission believes that the proposal may help the CBOE to attract order flow, thereby increasing the depth and liquidity of the CBOE's market for interest rate options, to the benefit of all market participants. In addition, the proposal may benefit investors by providing them with additional financial products with which to implement their trading strategies.

The Commission notes that it has approved proposals by other options exchanges allowing comparable increases in the number of option contracts eligible for automatic execution.[10]

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1996).

[3] See Securities Exchange Act Release No. 38022 (December 5, 1996), 61 FR 65422.

[4] The CBOE supplemented its proposals with a letter explaining that the proposed rule change is designed to encourage customer demand in interest rate options and to allow the CBOE to compete effectively with markets for other interest rate derivatives, which fill orders to a depth of 100 contracts. See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Yvonne Fraticelli, Attorney, Options and Derivatives Regulation, Division of Market Regulation (''Division''), Commission, dated December 13, 1996 (''December 13 Letter'').

[5] Currently, the CBOE offers four interest rate options, including the following: IRX (3-month Treasury Bill); FVX (5-year Treasury Note); TNX (10-year Treasury Note); and TYX (30-year Treasury Bond).

[6] See December 13 Letter, *supra* note 4.

[7] 15 U.S.C. 78f and 78k–1 (1988).

[8] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] The CBOE expects that, initially, the increased RAES order size eligibility will be utilized only for TYX options. Telephone conversation between Debora E. Barnes, Senior Attorney, CBOE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, on January 13, 1997.

[10] See *e.g.,* Securities Exchange Act Release Nos. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (order approving File No. SR–PHLX–95–39) (increasing the maximum automatic execution order size eligibility for public customer orders for all equity and index options to 50 contracts); 33476 (January 13, 1994), 59 FR 3140 (January 20, 1994) (order approving File No. SR–Amex–93–33) (increasing the size of Japan Index option orders eligible for automatic execution to 99 contracts); 30290 (January 27, 1992), 57 FR 4072 (February 3, 1992) (order approving File No. SR–Amex–91–27)

Continued

In addition, the Commission has approved a CBOE proposal to increase to 100 the firm quote contract size minimum applicable to Designated Primary Market Makers in classes of interest rate options for which Public Automated Routing System (''PAR'') workstations are available.[11] The Commission believes that the CBOE's current proposal is consistent with the Exchange's earlier proposal to increase the firm quote contract size for classes of interest rate options for which PAR workstations are available.

Finally, based on representations from the CBOE, the Commission believes that increasing the size of the interest rate option orders eligible for execution through RAES will not expose the CBOE's options markets to risk of failure or operational breakdown. In particular, the CBOE represents that the proposal will not impose significant burdens on the operation and capacity of RAES, nor will it have a negative impact on the security or integrity of RAES.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–96–72) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1560 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38175; File No. SR–NASD–96–55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 of Proposed Rule Change Relating to Primary Market Maker Standards

January 15, 1997.

I. Introduction

On December 23, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder[2] a proposed rule change to waive the Nasdaq Primary Market Maker standards for the remainder of the current pilot period of the Nasdaq Short Sale Rule.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 38091 (December 27, 1996), 62 FR 778 (January 6, 1997) (''Notice of Proposed Rule Change'').[4] On January 10, 1997, the NASD submitted Amendment No. 1 to waive the Nasdaq Primary Market Maker standards on a phase-in schedule.[5] This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The NASD has proposed to suspend the use of the Primary Nasdaq Market Maker (''PMM'') qualification criteria found in Rule 4612 (a) and (b) of the Nasdaq market maker Requirements of the NASD Rules. Under existing Rule 4612, a registered Nasdaq market maker may be deemed to be a PMM in a National Market Security if the market maker meets two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a PMM if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month. The PMM qualification criteria is reviewed by Nasdaq to determine which Nasdaq market makers will receive the PMM designation. The PMM designation allows a Nasdaq market maker to avail itself of the short sale exemption under NASD Rule 3350(c)(1). The NASD has proposed, on a phase-in basis, to suspend the PMM qualification criteria for Nasdaq National Market (''NNM'') securities and, accordingly, deem all registered market makers in such securities a PMM.

III. Discussion

In August 1996, the Commission adopted a new rule and amendments to an existing rule that are scheduled to go into effect on January 20, 1997.[6] Upon commencement of the Order Execution Rules, over-the-counter (''OTC'') market makers will be representing certain customer limit orders in their quotations and frequently executing customer limit orders in a manner very different from today. Moreover, under an amendment to the Quote Rule, electronic communications networks (''ECNs'') will be entering quotations and executions in the Nasdaq Stock Market in a manner which heretofore was reserved for registered market makers.[7] The Commission has acknowledged that the Order Execution Rules represent a major change in the way OTC market makers display and execute orders in the Nasdaq Stock Market.

While the Order Execution Rules are anticipated to contribute to more vigorous quotation competition, the additional quotations will alter the data used in determining the PMM designation. A quote reflecting a customer limit order will be indistinguishable from a proprietary quote of a market maker. Inclusion of customer limit orders in a market maker's quote can narrow the market maker's spread, as well as the number of quotation changes the market maker effects. The display of ECN prices into the Nasdaq montage, which also will

---

(providing for automatic execution of public customer orders of up to 100 MidCap 400 Index option contracts); 25950 (July 28, 1988), 53 FR 29293 (August 3, 1988) (order approving File No. SR–Amex–87–20) (increasing the number of Institutional Index options eligible for automatic execution to 100 contracts).

[11] See Securities Exchange Act Release No. 34876 (October 21, 1994), 59 FR 54226 (October 28, 1994) (order approving File No. SR–CBOE–94–17).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 1, 1996, the Commission extended the pilot period of the NASD Short Sale Rule, Rule 3350, through October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996) 61 FR 57934 (November 8, 1996).

[4] The Nasdaq Board has unanimously approved the filing of the proposed rule change regarding the suspension of Primary Market Maker standards. See Letter to Holly Smith, Associate Director, Division of Market Regulation, SEC, from Eugene A. Lopez, the Nasdaq Stock Market, Inc., dated January 9, 1997.

[5] See Letter to Holly Smith, Associate Director, Division of Market Regulation, SEC, from Robert E. Aber, The Nasdaq Stock Market, Inc., dated January 14, 1997.

[6] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) adopting Rule 11Ac1–4 (''Limit Order Display Rule'') and amendments to Rule 11Ac1–1 (''Quote Rule'') (collectively the ''Order Execution Rules''). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (revising the effective date of the Order Execution Rules until January 20, 1997).

[7] Rule 11Ac1–1(c)(5) requires a market maker to display in its quote any better priced order the market maker places into an electronic communications network (''ECN Amendment''). Alternatively, the ECN Amendment provides an exception to the market maker's display obligation that depends upon the ECN itself displaying its best-priced orders, entered therein by a market maker or specialist, and allowing brokers and dealers to access such orders (''ECN Display Amendment'').

include customer limit orders, will further influence the data that Nasdaq calculates in determining a market maker's status as a PMM.

As a result, the quote conditions on which the PMM standards are based will change significantly and will no longer reliably reflect the quality of the market provided by the market maker, making the current PMM standards unpredictable for market makers. Without such PMM designation, a Nasdaq market maker is not permitted to effect a short sale in a NNM Security at or below the current best bid when the current best bid displayed by Nasdaq is below the preceding best bid in the security.[8]

The inability of a market maker to predict and obtain the PMM designation, and therefore sell short as part of its bona fide market making activity, may cause the withdrawal of some market makers thereby reducing liquidity and continuity in the market. Moreover, the Commission believes that a market maker could be deterred from accepting customer limit orders by the risk of losing its PMM designation, which consequently could impede the effectiveness of the Limit Order Display Rule. The Commission further believes that the continued use of the PMM qualification criteria, when the data used is not an accurate assessment of the maket marker's own independent quotation, would be inequitable and cause an unintended burden on competition. The Commission concludes that the suspension of the current NASD PMM qualification criteria on a temporary basis is consistent with the Act, and for the smooth implementation of the Order Execution Rules.

The Order Execution Rules contain phase-in periods to ensure an orderly transition and to permit market participants an opportunity to obtain experience over a manageable set of securities.[9] Consequently, the suspension of PMM qualification criteria will also operate on a phase-in schedule that parallels the phase-in period of the ECN Amendment. On the first business day of the month following each phase-in period of the ECN amendment, the PMM qualification criteria will be suspended and all registered Nasdaq market makers in such securities will be designated a PMM. For example, on February 3, 1997 all Nasdaq registered market makers in the first fifty securities being phased-in under the ECN Amendment, effective January 20, 1997, will be a designated PMM.[10] The Commission expects the NASD to develop new standards as soon as practicable after the Order Execution Rules become effective. As a result, the Commission is approving the rule change on a pilot basis through July 1, 1997.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–55 and should be submitted [insert date 21 days from date of publication].

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market. The Commission further believes that maintaining the existing PMM qualification criteria beyond January 20, 1997 will likely frustrate the operation of the Order Execution Rules. Accordingly, the Commission finds good cause for approving the proposed rule change and Amendment No. 1 to suspend the PMM qualification criteria prior to the thirtieth day after date of publication of notice of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (NASD–96–55) be and hereby is approved, with the first phase-in effective February 1, 1997, until July 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1559 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

[8] See NASD Rule 3350.

[9] See Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996), 38110 (January 2, 1997); 62 FR 1279 (January 9, 1997); and 38139 (January 8, 1997) (outlining the phase-in dates for the Limit Order Display Rule and the ECN Amendment).

[10] See Letter from S. William Broka, Senior Vice President, Trading & Market Service, The Nasdaq Stock Market, Inc., dated December 23, 1996.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 300.30–3(a)(12) (1996).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1996, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Acting Agency Clearance Officer no later than March 24, 1997.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend a currently approved collection of information (OMB control number 3316–0100).

Title of Information Collection: Comparison of Factors Influencing Minority and Non-minority Representation in State and Federal Natural Resource Professions.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local

governments, Federal agencies or employees.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 500.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: TVA is cooperating with 22 other Federal and state agencies to investigate selected factors which may influence minority and non-minority representation in state and Federal agency natural resource professions. A survey of natural resource professions in the Southeastern United States will be conducted to determine (1) the diversity in the workforce and job responsibilities, (2) factors that promote or preclude job satisfaction, (3) educational backgrounds attained and needed by inservice professions, and (4) conceptual framework for career selection by and retention of minorities in natural resource professions. Results of the study may provide strategies for state and Federal agencies to refine minority recruitment and retention programs, personnel planning, and career counseling.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 97–1585 Filed 1–22–97; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 1996 [FR 61, page 54833].

DATES: Comments must be submitted on or before February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Suspected Unapproved Part Notification.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0552.

Form Number: FAA Form 8120–11.

Affected Public: Manufacturers, repair station operators, owner/operators.

Abstract: The information collected on the FAA Form 8120–11 will be reported by manufacturers, repair station operators, owner/operators, or the general public who wish to report suspected unapproved parts to the FAA. The notification information is collected, correlated, and used to determine if an unapproved part investigation is in fact warranted.

Estimated Annual Burden: The total annual burden is 60 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 16, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–1581 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Maglev Study Advisory Committee; Notice of Second Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of second meeting of the Maglev Study Advisory Committee.

SUMMARY: As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and 41 CFR 101–6.1015(b), the Federal Railroad Administration (FRA) gives notice of the second meeting of the Maglev Study Advisory Committee (''MSAC''). The purpose of the meeting is to advise DOT/FRA on the Congressionally mandated study of the near-term applications of maglev technology in the United States.

DATES: The second meeting of the MSAC is scheduled for 8:30 a.m. EST on Thursday, February 6, 1997. Adjournment is expected prior to 5:00 pm. Decisions with respect to future meetings will be made at this meeting, and from time to time thereafter. Notice of future meetings will be published in the Federal Register.

ADDRESSES: The second meeting of the MSAC will be held in the 7th floor Conference Room at FRA Headquarters, 1120 Vermont Avenue NW, Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Those with special needs should inform Mr. Mongini 5 days in advance of the meeting so that appropriate facilities can be provided.

FOR FURTHER INFORMATION CONTACT: Arrigo Mongini, Deputy Associate Administrator for Railroad Development, FRA RDV–2, 400 7th Street, S.W., Washington, D.C. 20590, (202)–632–3286.

Jolene M. Molitoris,

Administrator.

[FR Doc. 97–1555 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–06–P

Surface Transportation Board

[STB Finance Docket No. 33335]

Reading Blue Mountain and Northern Railroad Company; Corporate Family Transaction Exemption; East Mahanoy & Hazleton Railroad Company

Reading Blue Mountain and Northern Railroad Company (RBMN) and East Mahanoy & Hazleton Railroad Company (EMHR),[1] Class III railroads, have jointly filed a verified notice of exemption. The

[1] RBMN and EMHR are wholly owned by Andrew M. Muller, Jr. RBMN owns and operates approximately 235 miles of rail line in the Commonwealth of Pennsylvania. EMHR owns and operates approximately 10 miles of rail line in the Commonwealth of Pennsylvania. The lines of RBMN and EMHR connect through overhead trackage rights over lines owned by Consolidated Rail Corporation.

exempt transaction is a merger of EMHR into RBMN.

The earliest the transaction could be consummated was January 9, 1997, the effective date of the exemption (7 days after the exemption was filed).

EMHR is currently not handling any traffic. If traffic becomes available and operations are resumed on the EMHR lines, RBMN represents that it will be able to handle such operations. The merger will reduce administrative expenses associated with managing two corporate entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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 reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33335, 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 Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: January 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–1612 Filed 1–22–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Data Management

OMB Number: 1505–0018.

Form Number: Treasury International Capital Form BL–2/BL–2(SA).

Type of Review: Extension.

Title: Custody Liabilities of Reporting Bank, Brokers and Dealers to Foreigners, Payable in Dollars.

Description: Form BL–2/BL–2(SA) is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on international capital movements, including data on the custody liabilities of banks, dollar claims of U.S. banks, other depository institutions, brokers and dealers, *vis-a-vis* foreigners, payable in dollars.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 5 hours each.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 9,000 hours.

OMB Number: 1505–0020.

Form Number: Treasury International Capital Form BQ–2.

Type of Review: Extension.

Title: Treasury International Capital Form BQ–2, Part 1—Liabilities to, and Claims.

Description: Form BQ–2 is required by law (22 USC 95a, 22 USC 286f and 3103). It is designed to collect timely and reliable information on U.S. international capital movements, including data on liabilities and claims, payable in foreign currencies, of banks, other depository institutions, brokers and dealers, and their domestic customers *vis-a-vis* foreigners.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 290.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 4,640 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1566 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Foreign Assets Control

OMB Number: 1505–0151.

Form Number: None.

Type of Review: Extension.

Title: UNITA (Angola) Sanctions Regulations.

Description: The UNITA (Angola) Sanctions Regulations implement the President's declaration of a national emergency, E.O. 12865, September 26, 1993, and imposition of sanctions against the National Union for the Total Independence of Angola.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 10 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1567 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0206.

Form Number: ATF F 5110.41.

Type of Review: Extension.

Title: Miscellaneous Requests and Notices for Distilled Spirits plants.

Description: The information provided by applicants assists ATF in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant operations. However, both statutes and regulations allow variances from regulations, and this information gives data to permit a variance.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 70,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,000 hours.

OMB Number: 1512–0523.

Form Number: ATF F 5300.27.

Type of Review: Extension.

Title: Certification of Compliance wit State and Local Law.

Description: Applicants for a Federal firearms license will submit a certification that they are in compliance with State and local laws and that they have provided notification of his intent to conduct a firearms business to the chief law enforcement officer in the locality of the business premises.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 70,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,000 hours.

OMB Number: 1512–0524.

Form Number: ATF F 5300.27.

Type of Review: Extension.

Title: Federal Firearms Licensee Theft/Loss Report.

Description: Thefts or losses of firearms from the inventory or collection of a Federal firearms licensee must be reported to the Secretary of Treasury and the appropriate local authorities within 48 hours of discovery. This form contains the minimum information necessary for ATF to initiate criminal investigations.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 24 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,600 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1568 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Submission to OMB for Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Announcement 96– Tip Reporting Alternative Commitment (Hairstyling Industry).

Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 15 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 47,733 hours.

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Announcement 96– Tip Rate Determination Agreement (Gaming Industry).

Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper: 43 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 4,342 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1569 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0736.
Regulation Project Number: LR–274–81 Final.
Type of Review: Extension.
Title: Accounting for Long-Term Contracts.
Description: These recordkeeping requirements are necessary to determine whether the taxpayer properly allocates indirect contract costs to extended period long-term contracts under the regulations. The recordkeeping requirement is effective for taxable years beginning after 1982. The information will be used to verify the taxpayer's allocations of some indirect costs.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 10 hours, 1 minute.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 10,010 hours.
OMB Number: 1545–1049.
Regulation Project Number: IA–7–88 Final, T.D. 8379.
Type of Review: Extension.
Title: Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.
Description: The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 4.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–1570 Filed 1–22–97; 8:45 am]
BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0430.
Form Number: IRS Form 4810.
Type of Review: Extension.
Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Description: Form 4810 is used to request a prompt assessment under Internal Revenue Code (IRC) 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.
Respondents: Business or other for-profit, Individuals or households, Farms, Federal Government.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion, Other (as necessary).
Estimated Total Recordkeeping Burden: 2,000 hours.
OMB Number: 1545–1120.
Regulation Project Number: CO–18–90 Final.
Type of Review: Extension.
Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.
Description: The final regulations provide rules for the treatment of options under Internal Revenue Code (IRC) section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 75,150.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 56 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 220,575 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–1571 Filed 1–22–97; 8:45 am]
BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

January 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1221.
Regulation Project Number: EE–147–87 Final.
Type of Review: Extension.
Title: Qualified Separate Lines of Business.
Description: The affected public includes employers who maintain qualified employee retirement plans. Where applicable, the employer must furnish notice to the IRS that the employer treats itself as operating qualified separate lines of business and some may request an IRS determination that such lines satisfy administrative scrutiny.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 685.
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours, 55 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,443 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–1572 Filed 1–22–97; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report.

DATES: Written comments should be received on or before March 24, 1977 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report.

OMB Number: 1512–0030.

Form Number: ATF F 4483–A (5300.11).

Abstract: ATF collects this data for the purposes of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801–5872) are met.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,016.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 762.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1539 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Licensed Firearms Dealers Records of Acquisition, Disposition, and Supporting Data.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Licensed Firearms Dealers Records of Acquisition, Disposition, and Supporting Data.

OMB Number: 1512–0490.

Form Number: ATF F 4473 LV Parts I & II (5300.24, 5300.25).

Recordkeeping Requirement ID Number: ATF REC 7570/2.

Abstract: This form is used by low volume firearms dealers to record acquisition and disposition of firearms and to determine the eligibility of transferees to receive firearms. It becomes part of a licensee's permanent record and may be used to trace firearms. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 92,750.

Estimated Time Per Respondent: 6 minutes per form and 5 minutes for the dealer to keep each record.

Estimated Total Annual Burden Hours: 171,588.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1540 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Product Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

OMB Number: 1512–0059.

Form Number: ATF F 5120.29.

Abstract: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions for the labeling and manufacturing. The form is also used to audit a product.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,200.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1541 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notices Relating To Payment of Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.

OMB Number: 1512–0512.

Abstract: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1 hour.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1542 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Records and Monthly Report of Production Operations.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Records and Monthly Report of Production Operations.

OMB Number: 1512–0205.

Form Number: ATF F 5110.40.

Recordkeeping Requirement ID Number: ATF REC 5110.40.

Abstract: The information collected is used to account for the proprietor's tax liability, adequacy of the bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,600.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1543 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants Warehousing Records and Reports.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Barry Fields, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants Warehousing Records and Reports.

OMB Number: 1512–0192.

Form Number: ATF F 5110.11.

Recordkeeping Requirement ID Number: ATF REC 5110/02.

Abstract: The information collected is used to account for proprietor's tax ability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention requirement for this information collection is three years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,520.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1544 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Wines Exported.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION

Title: Drawback on Wines Exported.

OMB Number: 1512–0082.

Form Number: ATF F 1582–A (5120.24).

Abstract: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 900.

Estimated Time Per Respondent: 1 hour and 7 minutes.

Estimated Total Annual Burden Hours: 2025.

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 information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1545 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Make and Register a Firearm.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Elvenia A. Jones-Ard, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Application to Make and Register a Firearm.

OMB Number: 1512–0024.

Form Number: ATF F 1 (5320.1).

Abstract: The form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility for approval of the request.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1271.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 5084.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1546 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978).

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION

Title: Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978).

OMB Number: 1512–0038.

Form Number: ATF F 5030.6.

Abstract: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other-profit.

Estimated Number of Respondents: 2000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 500.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1547 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Tax-Free Alcohol.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol.

OMB Number: 1512–0335.

Recordkeeping Requirement ID Number: ATF REC 5150/4.

Abstract: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4444.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2222.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1548 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Relating to Wine.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Relating to Wine

OMB Number: 1512–0292

Recordkeeping Requirement ID Number: ATF REC 5120/2

Abstract: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1650.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 825.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1549 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed Of.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8310.

SUPPLEMENTARY INFORMATION:

Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed Of

OMB Number: 1512–0247.

Recordkeeping Requirement ID Number: ATF REC 5000/2.

Abstract: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law. The record retention requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1550 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Release and Receipt of Imported Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Scott Mendoza, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War

OMB Number: 1512–0019.

Form Number: ATF F 6A (5330.3C).

Abstract: The information collection is needed to verify importation of firearms, ammunition and implements of war. ATF F 6A (5330.3C) is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 8,000.

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 cost of operation, maintenance, and purchase of services to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1551 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8320.

SUPPLEMENTARY INFORMATION:

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Abstract: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 8,000.

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 qualilty, 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 service to provide information.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1552 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

Applications—Volatile Fruit-Flavor Concentrate Plants.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–6993.

SUPPLEMENTARY INFORMATION:

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

OMB Number: 1512–0046.

Form Number: ATF F 27–G.

Recordkeeping Requirement ID Number: ATF REC 5520/2.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. The record retention requirement for this information collection is 98 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1553 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Renewal of Explosives License or Permit.

DATES: Written comments should be received on or before March 24, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Renewal of Explosives License or Permit.

OMB Number: 1512–0131.

Form Number: ATF F 5400.14/5400.15, Part III.

Abstract: This information collection is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 825.

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.

Dated: January 8, 1997.

John W. Magaw,

Director.

[FR Doc. 97–1554 Filed 1–22–97; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

[T.D. 97–4]

IRS Interest Rates Used To Calculate Interest on Overpayments and Underpayments of Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the Internal Revenue Service interest rates used, since July 1, 1975, to calculate interest on overdue accounts and refunds of Customs duties. This notice also advises the public that for the quarter beginning January 1, 1997, the interest rates will not change from the 8 percent for overpayments and 9 percent for underpayments established July 1, 1996. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harry Bunn, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1252.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter. The rates of interest for the second quarter of fiscal year (FY) 1997 (the period of January 1–March 31, 1997) will continue to remain the same as those that were published for the quarter beginning July 1, 1996: 8 percent for overpayments and 9 percent for underpayments. These rates will remain in effect through March 31, 1997, and are subject to change for the third quarter of FY–1997 (the period of April 1–June 30, 1997).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, since July 1, 1975 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)
070175	013176	9	9
020176	013178	7	7
020178	013180	6	6
020180	013182	12	12
020182	123182	20	20
010183	063083	16	16
070183	123184	11	11
010185	063085	13	13
070185	123185	11	11
010186	063086	10	10
070186	123186	9	9
010187	093087	9	8
100187	123187	10	9
010188	033188	11	10
040188	093088	10	9
100188	033189	11	10
040189	093089	12	11
100189	033191	11	10
040191	123191	10	9
010192	033192	9	8
040192	093092	8	7
100192	063094	7	6
070194	093094	8	7
100194	033195	9	8
040195	063095	10	9
070195	033196	9	8
040196	063096	8	7
070196	033197	9	8

Dated: January 15, 1997.

George J. Weise,

Commissioner of Customs.

[FR Doc. 97–1556 Filed 1–22–97; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 62, No. 15
Thursday, January 23, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Chapter XXV

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

Health Insurance Portability

Correction

In proposed rule document 96–33293, beginning on page 68697, in the issue of Monday December 30, 1997, make the following correction.

On page 68697, in the second column, in the second line from the bottom, the HCFA e-mail address ''iritf@fhcfa.gov'' should read ''iritf@hfca.gov''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

[Docket No. 96M–0311]

Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)

Correction

In notice document 96–24448 beginning on page 49920 in the issue of Monday, September 23, 1996 make the following corrections:

1. On page 49920, in the second column, under SUPPLEMENTARY INFORMATION in the third line, ''germ'' should read ''term''.

2. On page 49925, in the second column, in paragraph *3.5. Individual Source Animal Screening and Qualification*, in the first line, ''indivudal'' should read ''individual''.

3. On page 49931, in the first column, in the first line, ''Macques'' should read ''Macaques''.

4. On the same page, in the same column, in reference number 48, in the first line, ''Phllips-Conroy'', should read ''Phillips-Conroy''.

5. On the same page, in the second column, in reference number 56, in the fourth line, ''Transplanation'' should read ''Transplantation''.

BILLING CODE 1505–01–D

Federal Register

Thursday
January 23, 1997

Part II

Department of Housing and Urban Development

Fiscal Year 1997 Portfolio Reengineering Demonstration Program Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4162–N–01]

Fiscal Year 1997 Portfolio Reengineering Demonstration Program Guidelines

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Demonstration Program and Initial Guidelines.

SUMMARY: This Notice provides initial guidelines to implement a Demonstration Program authorized by the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (Pub. L. No 104–204, 110 Stat. 2874, approved September 26, 1996) (''HUD FY 1997 Appropriations Act''). The Demonstration Program is directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above market rents. The Demonstration Program is intended to explore various approaches for restructuring mortgages and taking other related actions in order to reduce the risk to the FHA insurance fund and lower subsidy costs while preserving housing affordability and availability.

FOR FURTHER INFORMATION CONTACT: George C. Dipman, Demonstration Program Coordinator, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4000; Room 6106; Telephone (202) 708–3321. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY). Internet address: PRE@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The proposed information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Department has requested emergency clearance of the collection of information described below:

(1) *Title of the Information collection proposal:* Fiscal Year 1997 Portfolio Reengineering Demonstration Program.

(2) *Summary of the collection of information:* Each owner would submit to HUD, the owner's request to participate. An owner that is not within the jurisdiction of a Designee also may submit a request to HUD to proceed under the alternative processing in Section VIII.

Thereafter, each owner would submit to HUD, a Designee, or a lender (under alternative processing), as appropriate, the following information: documents necessary to perform the underwriting; modifications to proposed Restructuring Commitments, and information relating to any appeal of a Restructuring Commitment, and evidence of having sent appropriate notices. The owner's must notify tenants, units of general local government, and, in certain cases, lenders at key points in the process.

Under Designee Processing, each prospective Designee would submit to HUD a letter of interest together with evidence of its ability to meet the selection criteria (see Section VII.A.). If selected the Designee would submit a management plan detailing how it will carry out restructurings. If the Designee operates under the fee for service approach, it must submit to HUD, for each project, a detailed Business Plan containing the information specified in Section VII.B.1.a.(1) STAGE I. For a Designee operating under the joint venture approach, submissions to HUD on specific projects, in general, will be certifications and representations.

Under Alternative Processing, each lender/servicer would submit to HUD a Business Plan detailing the terms of the restructuring proposal.

(3) *Description of the need for the information and its proposed use:* The owner's request to participate is needed to initiate processing and to provide information necessary to ensure that the project meets statutory eligibility requirements to participate in the Demonstration Program. Notices to tenants, to units of general local government, and to lenders are intended to comply with statutory requirement for such notification and to obtain information that may provide for more informed decision making.

(4) *Description of the likely respondents, and proposed frequency of the response to the collection of information:* Respondents will be (1) certain owners of FHA-insured projects that have expiring project-based Section 8 contracts; (2) State housing finance agencies, housing agencies and nonprofits; and (3) FHA-approved lenders and servicers. The estimated number of respondents and frequency of the response is set out in the table in paragraph (5), below.

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:*

Information Collection	Number of respondents	Responses per respondent	Total Annual responses	Hours per response	Total hours	Guideline reference
Owner's request to participate	275	1	275	.5	137	VI.A.
Owner's notice to tenants, local governments, and lenders of intent to participate.	275	3	725	1.0	725	VI.D.
Owner-supplied information relating to underwriting	275	3	725	2.0	1,450	VI.F.
Owner's summary to tenants, local governments, and lenders of Restructuring Commitment.	275	3	725	1.5	1,088	V.H.
Owner's request to modify Restructuring Commitment	100	1	100	1.0	100	VI.I.
Owner's summary to tenants, local governments, and lenders of substantial modifications to Restructuring Commitment.	100	3	300	2.75	825	VI.K.
Owner's notice to HUD of appeal of Restructuring Commitment.	100	1	100	1.0	100	V.L.
Owner's summary to tenants, local governments, and lenders of the appeal of Restructuring Commitment.	100	3	300	1.0	300	V.L.
Letter of interest to participate as a Designee	25	1	25	1.0	25	V.II.A.
Information to demonstrate qualification as Designee	25	1	25	2.0	50	V.II.A.
Designee Management Plan	25	1	25	8.0	200	VII.A.
Designee Business Plan	25	1	25	40.0	1,000	VII.B.I.
Lender/Servicer Business Plan	75	1	75	40.0	3,000	VIII.

Information Collection	Number of respondents	Responses per respondent	Total Annual responses	Hours per response	Total hours	Guideline reference
Total annual burden					9,000	

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within seven (7) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4162) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

II. Introduction

A. Background

Over 800,000 housing units in approximately 8,500 projects have been financed with FHA-insured loans and supported by project-based Section 8 housing assistance payment (HAP) contracts. In many cases, these HAP contracts currently provide for rents which substantially exceed the rents received by comparable unassisted units in the local market. Starting in Fiscal Year (''FY'') 1996, those Section 8 contracts began to expire, and Congress and the Administration provided one-year extensions of expiring contracts at a cost of over $200 million. While annual HAP contract extensions for these projects maintain an important housing resource, they come at great expense. Every year more contracts expire, compounding the cost of annual extensions. In ten years, the annual cost of renewing Section 8 contracts rises to approximately $7 billion, about one-third of HUD's current budget. If, however, the Section 8 assistance is reduced or eliminated, there is an increased likelihood that these projects will be unable to continue to meet their financial obligations including operating expenses, debt service payments, current and future capital needs.

The FY 1997 renewal authority limits renewals of most Section 8 project-based assistance contracts expiring in FY 1997 to 120% of Fair Market Rents and authorizes participation in an optional Demonstration Program by owners with properties that have FHA-insured mortgages whose rents are subject to the required reduction. The Demonstration Program will explore approaches to restructuring the debt secured by these properties while minimizing adverse impacts on tenants, owners and communities.

These Program Guidelines describe the authority given to HUD under the Demonstration Program and explain how HUD plans to implement the Program. As the Department works with owners on restructuring project loans and as questions arise from affected parties, HUD may periodically provide additions and clarifications to these Guidelines.

B. Legislative Authority

The Section 8 Contract Renewal Authority and this Portfolio Reengineering Demonstration Program are authorized by sections 211 and 212, respectively, of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1996) (''HUD FY 1997 Appropriations Act'').

Section 212 also repealed the demonstration program authorized by section 210 of Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) (''HUD FY 96 Appropriations Act''). Amounts made available under section 210, however, remain available through FY 1997 and the FY 1997 Demonstration Program does not nullify any agreements or proposals that have been considered under the FY 1996 Demonstration Program. Proposals submitted under the FY 1996 Demonstration Program that were received by the Department prior to September 25, 1996 will continue to be processed by HUD. The Department is implementing the FY 1996 Demonstration Program under notices published at 61 FR 34664, July 2, 1996 and 61 FR 28757, July 25, 1996.

C. Outline of Notice

The remaining sections of the Guidelines provide the following information:

Section III. explains section 211 of the HUD FY 1997 Appropriations Act regarding renewals of up to one year for Section 8 contracts expiring during FY 1997 as they relate to the Demonstration Program.

Section IV. provides an overview of the goals of the Demonstration Program provided for in section 212 of the HUD FY 1997 Appropriations Act, clarifies eligible and ineligible projects and gives specific substantive guidance on restructuring.

Section V. discusses additional Demonstration Matters, such as, required consents, additional restructuring tools, and others.

Section VI. sets forth the procedures which owners seeking to participate in the Demonstration Program will be required to follow and explains HUD processing.

Section VII. provides guidance relating to the anticipated use of Designees in the Demonstration Program.

Section VIII. provides guidance on Alternative Processing by lenders making new loans and by mortgagees or loan servicers where the existing FHA-insured loan is retained.

Section IX. addresses other provisions of the Demonstration Program legislation such as participation of projects with post-FY 1997 expirations and sunshine provisions.

Section X. contains HUD's findings and certifications.

The following is a table of contents for these Program Guidelines:

Table of Contents

III. Section 8 Renewal Authority

A. Summary of Section 211 as It Relates to the Demonstration Program

The Section 8 renewal authority and its implementation are fully described in Housing Notice H 96–89, dated October 15, 1996. The renewal authority, as it relates to the Demonstration Program, is summarized below.

The FY 1997 renewal authority limits HAP contract renewals of most Section 8 project-based assistance contracts expiring in FY 1997 to 120% of Fair Market Rents and authorizes participation in an optional Demonstration Program by owners with properties that have FHA-insured mortgages whose rents are subject to the required reduction. The Demonstration Program will explore approaches to restructuring the debt secured by these properties while creating the least disruption to tenants, owners and communities.

B. Renewals of Section 8 Contracts With Rents Currently Above 120% of Fair Market Rents (FMR)

In general, owners of FHA-insured multifamily projects with Section 8 contracts that expire in FY 1997 and whose rents in the aggregate exceed 120% of FMR, have two options for continuing in the Section 8 program:

(1) They can request that the contract be renewed for one year at gross rents, in the aggregate, not to exceed 120% of FMR; or

(2) They can participate in the Demonstration Program.

''FMR'' are the Fair Market Rents (FMR) for the Section 8 Housing Assistance Payments Program. They are provided for specific geographic areas of the country, for dwelling units of varying sizes and are published in the Federal Register at least annually.

''In the aggregate'' means that the comparison of Section 8 rent to FMR is examined not unit-by-unit but for the Section 8-assisted units for the project as a whole. Specifically, the total rent revenue at 100% occupancy for the Section 8-assisted units in the project using current gross rents (contract rents plus the utility allowance, if applicable) must exceed the total rent revenue at 100% occupancy for the Section 8-assisted units in the project using 120% of the FMR for each unit.

Owners who choose Option (1) should refer to Housing Notice H 96–89 dated October 15, 1996, which describes in detail the terms under which HUD will provide one-year extensions for expiring Section 8 contracts and to the memorandum from Assistant Secretary

for Housing—Federal Housing Commissioner dated November 1, 1996, entitled ''Clarifications of Procedures for Project-Based Section 8 Contracts Expiring in Fiscal Year 1997.''

Owners who select Option (2) should refer to the discussion in Sections IV. to IX. for further guidance.

IV. Demonstration Program

A. Purpose/Goals

The purpose of the Demonstration Program is to test approaches that retain the critical affordable housing resource represented by the supply of FHA-insured Section 8 assisted housing and maintain it in good physical and financial condition, while at the same time reducing the cost of the ongoing Federal subsidy. In carrying out the Demonstration Program, HUD will work with willing owners and lenders to reduce both Section 8 rents and operating expenses to true market levels, and also provide for the project's capital improvement needs.

The Demonstration Program will attempt to minimize involuntary displacement of tenants, adverse tax consequences to owners, and adverse effects on neighborhoods and communities, to maintain existing affordable housing stock in a decent, safe, and sanitary condition, and to encourage responsible ownership and management of property, in the least costly fashion. In determining how best to restructure a project, HUD and the owner will look for ways to balance these competing goals.

B. Eligible Projects

1. General Eligibility

For a project to be eligible for the Demonstration Program, the owners must agree to participate. The projects must be subject to an FHA-insured mortgage and supported by project-based Section 8 HAP contracts with rent levels which, in the aggregate, exceed 120% of FMR. Preference will be given to projects with contracts expiring in FY 1997.

2. Projects with Mix of Assisted and Unassisted Units

A project will be eligible for the Demonstration Program regardless of whether all or only some of the units in the project are covered by a project-based Section 8 HAP contract.

3. Projects with Multiple Section 8 Contracts

A project with multiple Section 8 contracts, one or more of which expires in FY 1997 and meets the requirements for the Demonstration Program, is eligible to participate in the Demonstration Program, and will also be given preference over other projects whose contracts expire after FY 1997.

4. Projects with Public Financing

A project with primary financing that was provided by a public agency and is FHA-insured and that has a HAP contract expiring in FY 1997 is eligible to participate in the Demonstration Program with the consent of the appropriate Housing Finance Agency and the owner.

C. Ineligible Projects

1. Projects without FHA-Insured Loans

A project that does not have an FHA-insured loan will not be eligible to participate in the Demonstration Program. Some examples include: (i) A project whose FHA-insured loan has been assigned to HUD (ii) a project that is HUD-owned, (iii) a project financed solely with conventional financing, or (iv) a project with a direct HUD loan.

2. Projects that Fail to Meet HQS Standards

A project that is otherwise eligible to participate in the Demonstration Program will be deemed ineligible if the project contains units which fail to meet Housing Quality Standards (HQS) at contract expiration and the owner has received adequate notice thereof and has been given the opportunity to cure HQS deficiencies in accordance with Chapter 6 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing.

3. Disqualified Owners

HUD also will not permit the owner to participate in the Demonstration Program if HUD determines that the owner of the multifamily housing project has engaged in materially adverse financial or managerial actions or omissions with regard to the project (or with regard to other similar projects if HUD determines that such actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by HUD). Material adverse financial actions or omissions are any action or omission which lead to either owner default (monetary or technical), or a violation of one or more of the contractual obligations under the project's Regulatory Agreement or Section 8 HAP Contract. Violations may include, but are not limited to, submission of false statements or certifications to HUD, diversion of project funds, unauthorized distributions, and documented project mismanagement. HUD may renew the contract of a disqualified owner if the project is sold to a qualified purchaser.

D. Transfer of Projects Disqualified From the Demonstration Program

When an owner or purchaser that is ineligible for the Demonstration Program for reasons described in Section IV.C. 2. and 3. wishes to voluntarily sell or transfer the property, the procedures that should be followed to facilitate the voluntary sale or transfer are described in Section V.H. To facilitate a transfer to a qualified purchaser, HUD may renew and transfer assistance that has not been renewed in the case of disqualified projects.

E. Demonstration Approaches/ Underwriting

This section sets forth the approaches by which projects in the Demonstration Program will be restructured and describes the underwriting procedures to be employed.

1. Mandatory Demonstration Approaches

Under the Demonstration Program, HUD must utilize one or more of the following demonstration approaches (the ''Mandatory Demonstration Approaches'') with respect to each eligible project: (a) Mortgage Restructuring, (b) Debt Forgiveness, or (c) Budget-Based Rents. Other demonstration actions may be used with one or more of the Mandatory Demonstration Approaches.

HUD will determine which of the Mandatory Demonstration Approaches is appropriate based upon, among other things, a calculation of the adjusted, i.e., market-based, net operating income (''NOI'') generated by the applicable project. In those cases in which the NOI is positive, the Mortgage Restructuring or Debt Forgiveness approaches generally will be used. If the NOI is negative, the Budget-Based Rents approach generally will be used.

Further, HUD will determine what constitutes the Supportable Debt by applying a 1.10 or greater debt service coverage ratio, at the interest rate and term approved by HUD, to the adjusted NOI. HUD may require that the term and/or interest rate on the first mortgage loan be modified, subject to the consent of the mortgagee.

The Supportable Debt may be adjusted, as necessary, to provide the minimum Owner's Distribution, as described in Sections IV.E.1.a.(3) and IV.E.1.b.(2), and/or to accommodate the payment of debt service on a rehabilitation loan. The Supportable Debt may, at HUD's option, also be adjusted if the security for the existing

FHA-insured loan includes vacant land or other non-income producing assets with additional market value.

a. Mortgage Restructuring. Under the Mortgage Restructuring approach, the existing FHA-insured mortgage loan is divided into two parts: (i) A performing first mortgage loan, and (ii) a second mortgage loan payable out of Net Cash Flow.

In most instances, the Mortgage Restructuring shall be accomplished by a partial or full prepayment of the existing FHA-insured mortgage loan.

(1) Supportable First Mortgage Loan. The amount of the unpaid principal balance (''UPB'') of the supportable first mortgage loan after restructuring shall equal the Supportable Debt. The term Restructured First Mortgage as defined in this section is meant to be used only as a means of sizing the Second Mortgage Loan. It is not to be confused with the Supportable Debt, which is the amount of the adjusted, performing first mortgage loan. The Restructured First Mortgage Loan shall equal the Supportable Debt *plus* (i) All contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (ii) all excess funds in the project's reserve for replacement account, and (iii) all funds in the project's residual receipts account and any other escrows and reserves, as determined by HUD, *minus* (ii) the rehabilitation costs approved by HUD, and (iii) the transaction costs approved by HUD.

(2) Second Mortgage Loan. Unless otherwise required by HUD, the initial unpaid principal balance of the second mortgage loan will equal:

(a) The outstanding balance of the existing FHA-insured mortgage loans(s); *minus*

(b) The amount of the Restructured First Mortgage. Unless otherwise required by HUD, the second mortgage loan will bear interest at a rate not to exceed the long term applicable Federal rate, as set forth pursuant to section 1274(d) of the Internal Revenue Code of 1986 (26 U.S.C. 1274(d)). Principal and interest on the second mortgage loan will be payable out of Net Cash Flow (discussed below), and unpaid interest will accrue. The second mortgage loan will be due upon the sale of the project or the refinancing of the first mortgage loan. Other terms and conditions of the second mortgage loan will be established in the restructuring process. HUD may, at its option, forgive, extend, or allow the assumption of all or a part of the second mortgage loan.

(3) Use of Net Cash Flow. For purposes of the Mortgage Restructuring approach, ''Net Cash Flow'' means that portion of the NOI that remains after the payment of all required debt service payments on the first mortgage loan. Net Cash Flow shall be applied as follows: *First,* to payment to the holder of the first mortgage loan of any past due principal or interest, and required escrows and reserves, on such mortgage loan; *second,* to the extent of the remaining Net Cash Flow and after the owner has met the maintenance standards required by HUD, to payment to the owner of an annual owner's distribution of up to $25 per unit per month (the ''Owner's Distribution'') and, if applicable, to payment of an additional equity distribution to the owner equal to a cumulative 10% on any new cash equity invested by the owner in the project (the ''New Equity Distribution'') (Note: the proceeds from the sale of low-income housing tax credits (''LIHTCs''), and the balances of any residual receipts accounts and capital reserves, are excluded from consideration for purposes of determining the amount of the New Equity Distribution); and *third,* to the extent of the remaining Net Cash Flow, to be distributed equally between the owner and HUD. In the event of new equity investment by the owner in connection with a restructuring, HUD may waive some or all of the distribution of cash flow to HUD.

(4) Funding Rehabilitation Costs. Rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Mortgage Restructuring. (Use of excess funds in the reserve account will be determined by the Demonstration Manager and will be net of funds required for the initial deposit to that account.) If rehabilitation costs exceed the amount of such available funds, the rehabilitation costs may be funded by (1) a contribution of cash equity from the owner's partners/investors, (2) the proceeds of a non-FHA-insured rehabilitation loan, and/or (3) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

b. Debt Forgiveness. The Debt Forgiveness approach will be used, for good cause and upon request by the owner, to forgive a certain portion of the outstanding balance of an existing FHA-insured loan. This approach shall be accomplished through a partial or full prepayment of the existing FHA-insured mortgage loan. Under this approach, the owner may choose to keep the reduced FHA-insured mortgage loan in place, or refinance such loan with new debt and/or new equity. HUD will consider the owner's proposals that address how the forgiven debt shall be treated.

(1) Amount of Debt Forgiveness. The amount of the debt that will be forgiven pursuant to the Debt Forgiveness Approach is equal to the *lesser* of (a) the maximum amount of debt forgiveness authorized under the 1997 Appropriations Act, as described in Section IV.E.1.b.(1) (a), and (b) the amount of debt forgiveness computed under the formula described in paragraph (b), below, of this Section IV.E.1.b.(1).

(a) *Statutory Maximum Amount of Debt Forgiveness.* Under the HUD FY 1997 Appropriations Act, the maximum amount of debt forgiveness is limited to that portion of the existing FHA-insured debt that exceeds the ''market value'' of the applicable project. The project's ''market value'' will be determined based upon an appraisal of the project's as-is value prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal will take into consideration, among other factors, the current market rents for unsubsidized units in the local market area, the project's current operating expenses, any necessary reserves for long term capital replacements, any necessary rehabilitation costs (see Section IV.E.2.b.(1)(c)), and any anticipated costs relating to the transition of the project to market rents.

(b) *Formula for Computation of Debt Forgiveness Subject to Statutory Maximum.* (i) *If the FHA-insured mortgage loan will be refinanced with non-FHA-insured financing,* the amount of debt forgiveness under this formula, unless otherwise required by HUD, will be:

(1) The sum of (a) the outstanding balance of the existing FHA-insured mortgage loan(s), (b) the rehabilitation costs approved by HUD, and (c) the transaction costs approved by HUD; *minus.*

(2) The sum of (a) the UPB of any new financing(s) approved by HUD, (b) all contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (c) all excess funds in the project's reserve for replacement account, all funds in the project's residual receipts account, and any other escrows and reserves, as determined by HUD.

(ii) *If the FHA-insured mortgage loan is retained or refinanced with another FHA-insured loan,* the amount of debt forgiveness under this formula, unless otherwise required by HUD, will equal:

(1) The sum of (a) the outstanding balance of the existing FHA-insured mortgage loan(s), (b) the rehabilitation costs approved by HUD, and (c) the transaction costs approved by HUD; *minus*

(2) The sum of (a) the Supportable Debt (if the existing FHA-insured loan is retained) or the UPB of the new FHA-insured financing(s), (b) all contributions made by the owner (and the owner's partners/investors) in connection with the restructuring, as determined by HUD, and (c) all excess funds in the project's reserve for replacement account, all funds in the project's residual receipts account, and any other escrows and reserves, as determined by HUD.

The formula for computing the amount of debt forgiveness may be further adjusted, at HUD's option, if the security for the existing FHA-insured loan includes vacant land or other non-income producing assets with additional market value.

(2) Use of Net Cash Flow. For purposes of the Debt Forgiveness approach, ''Net Cash Flow'' means that portion of the NOI that remains after the payment of all required debt service payments on the first mortgage loan and on the subordinate loan(s), if any. Net Cash Flow shall be applied as follows: *First,* to payment to the holder of the first mortgage loan and of any subordinate loans of any past due principal or interest, and required escrows and reserves, on such mortgage loan; *second,* to the extent of the remaining Net Cash Flow and after the owner has met the maintenance standards required by HUD, to payment to the owner of an annual owner's distribution of up to $25 per unit per month (the ''Owner's Distribution'') and, if applicable, to payment of an additional equity distribution to the owner equal to a cumulative 10% on any new cash equity invested by the owner in the project (the ''New Equity Distribution'') (Note: the proceeds from the sale of low-income housing tax credits (''LIHTCs''), and the balances of any residual receipts accounts and capital reserves, are excluded from consideration for purposes of determining the amount of the New Equity Distribution); and *third,* to the extent of the remaining Net Cash Flow, to be distributed equally between the owner and HUD. In the event of new equity investment by the owner in connection with a restructuring, HUD may waive some or all of the distribution of cash flow to HUD.

(3) Funding of Rehabilitation Costs. *If the FHA-insured mortgage loan will be refinanced with non-FHA-insured financing,* the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Debt Forgiveness. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (a) a contribution of cash equity from the owner's partners/investors, and/or (b) the proceeds of the non-FHA-insured refinancing loan, and (c) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

If the FHA-insured mortgage loan is retained or refinanced with another FHA-insured loan, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date of the Debt Forgiveness. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by (1) a contribution of cash equity from the owner's partners/investors, (2) the proceeds of a non-FHA-insured rehabilitation loan, (3) the proceeds of an FHA-insured rehabilitation loan, and/or (4) to the extent that other sources of funds are unavailable, through a loan or grant from HUD.

For owners who want to refinance the original FHA-insured loan, mortgage insurance from the following FHA programs may be provided:

(a) Section 223(f), acquisition and refinance with limited renovations—loan to value limit of 85 percent; or

(b) Section 223(a)(7), refinance of an insured loan to lower the interest rate and to fund rehabilitation costs—loan limit is up to the original insured principal amount.

c. Budget-Based Rents. The Budget-Based Rents approach will be used, in limited circumstances, to renew HAP contracts expiring in FY 1997 for a period of up to one year at budget-based rents not to exceed the rent levels in the expiring HAP contract.

(1) Application of Budget-Basing. The Budget-Based Rents approach is intended for projects in which the application of Mortgage Restructuring or Debt Forgiveness alone is infeasible. It is anticipated that the Budget-Based Rents approach will be used for the following types of projects:

(a) If the project has a negative adjusted NOI, that is, the adjustment of rents to market levels would not enable the project to pay its reasonable and necessary operating expenses. Reasonable operating expenses, for these purposes, will not include the Owner's Distribution or New Equity Distribution.

(b) If the project's market rents are higher than both 120% of the applicable FMRs and the gross rents (HAP contract rents plus any applicable utility allowance amounts), and restructuring may result in the displacement of tenants.

(2) Preference for Unique Projects. HUD may give a preference to processing under the Budget-Based Rents approach to certain unique projects, such as those designated for occupancy by elderly families and those located in rural areas.

(3) Calculation of Budget-Based Rents. Under the Budget-Based Rents approach, rents will be set at a level sufficient to support the aggregate amount of the applicable project's reasonable operating expenses, provided that such rents do not exceed the rents under the expiring HAP contract.

For purposes of the Budget-Based Rents approach, a project's reasonable operating expenses shall include:

(a) Reasonable and necessary operating expenses, including adequate annual contributions to the reserve for replacements account;

(b) A reasonable return to the owner, based on the Owner's Distribution; and

(c) Debt service payments that remain on the existing FHA-insured mortgage loan after principal reduction, if any.

The amount of the reasonable operating expenses (and contributions to the reserve for replacements account) will be determined based upon an appraisal of the project prepared in accordance with the USPAP and a physical needs assessment.

The rents set under the Budget-Based Rents Approach will be reevaluated each year prior to any further renewal of the HAP contract. Each annual HAP contract renewal is subject to Congressional appropriations.

(4) Funding of Rehabilitation Costs. Under the Budget-Based Rents approach, the HUD approved rehabilitation costs will be financed with funds available in the project's residual receipts account and excess funds in the project's reserve for replacements account, as of the date the Budget-Based Rents are implemented. If the rehabilitation costs exceed the amount of such funds, the rehabilitation costs may be funded by a contribution of cash equity from the owner's partners/investors. For projects with a negative NOI at market rents, HUD may supplement the funds available for rehabilitation with a grant of up to $5,000 per unit, which amount may be

increased in extraordinary circumstances.

2. Project Underwriting

a. Purpose. The purpose of demonstration project loan underwriting is to reduce annual section 8 contract renewal costs that result from subsidizing rents at above market levels. Projects in the Demonstration Program will be analyzed and restructured to bring their rents and expenses in line with the rents and expenses that are comparable to unassisted units in the local market area. The majority of projects will continue to receive project-based section 8 assistance *at those market levels* through one-year contract renewals, subject to annual appropriations. At the same time, FHA-insured first mortgages will be reduced to reflect changed project income.

b. Method. HUD will first estimate a project's net operating income (NOI) by deducting operating costs, including reserves for replacement, from market rents. The NOI will be used to determine the Supportable Debt; that debt may be adjusted downward to accommodate the cost of scheduled repairs and to provide the minimum Owner's Distribution. HUD will determine the amount of first mortgage principal reduction by subtracting the supportable mortgage and other sources of funds from the unpaid principal balance of the original mortgage.

For project loans restructured by HUD, project underwriting necessary for restructuring will be the responsibility of the Demonstration Manager, operating most often from selected HUD field offices and assisted by a Due Diligence Contractor. The Due Diligence Contractor will contract for appraisals, Physical Needs Assessments and any other reports as may be required by HUD.

Appraisals must meet the standards and procedures of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of The Appraisal Foundation, as modified by HUD. The appraisal will be the basis for determining market income and expenses.

(1) Determination of Adjusted Net Operating Income. The adjusted Net Operating Income (NOI) will be used to help determine which Demonstration Approach should be employed with respect to a particular project and to determine the size of the Supportable Debt. Computation of the adjusted Net Operating Income will require an analysis of the estimated income and expenses of each project after adjustment to market levels.

(a) Estimation of Income. To estimate the total income of a project, HUD will analyze: (a) The expected rental revenues to be generated from operation of the project at market rents; (b) the anticipated vacancy rate for the project; and (c) any other income (e.g., income from laundry and parking facilities) that is expected to be generated by the project. The determination of market rent will assume the project has been rehabilitated to meet the requirements of the Physical Needs Assessment as described in Section IV.E.2.b.(1)(c). Market rents, for the purpose of underwriting, are the rents achievable in the immediate vicinity for comparable unassisted units in good condition.

(b) Estimation of Expenses. For the purposes of project underwriting, total expenses will include: (1) Reasonable operating expenses; and (2) contributions to the reserve for replacement account.

(i) Operating Expenses. It is the intent of this Demonstration Program that project operations be reevaluated in order to reduce operating costs where possible. HUD will analyze ordinary and necessary operating expenses for the project. The analysis will consider, among other factors, historical operating statements, owner input, and standard expenses by type and market. Project expenses will be compared to FHA-insured mortgage portfolio averages, other market data and industry standards published regularly by entities, including, but not limited to, the Institute for Real Estate Management (IREM).

(ii) Reserves for Replacement. An allowance for scheduled contributions to the reserve for replacement account to fund ongoing capital needs will be included under gross expenses. The amount will be based on an inspection of the building and a schedule of improvements included in the Physical Needs Assessment.

(c) Determining the Level of Required Physical Improvements. In determining the level of physical improvements a property requires, HUD will direct a Due Diligence Contractor to inspect the project and complete a Physical Needs Assessment.

Participation in the Demonstration Program will not affect the responsibility of owners who undertake a rehabilitation program to comply with the accessibility requirements described at 24 CFR 8.23, Alterations of existing housing facilities, and 8.24, Existing housing programs, as applicable.

The Physical Needs Assessment will be done in accordance with the Fannie Mae (FNMA) Physical Needs Assessment Guidance to the Property Evaluator for the Delegated Underwriting and Servicing (DUS) Program, as may be modified by HUD. This guide instructs the property evaluator to examine the condition of the building, including all its systems and components, and provide (1) a description of significant repair and replacement needs, both immediate and long-term, and (2) a description of any significant issues affecting tenants' health and safety.

In addition, the Demonstration Manager will direct the Due Diligence Contractor to estimate the cost of any improvements necessary to enable the project to compete with similar but unsubsidized projects in its local market. The intent of physical improvement is not to reposition the property in the market place, but to create a product that is consistent with its original position in the market. In determining the amount of rehabilitation to be done, the Demonstration Manager will balance the need to enable the project to compete with similar but unassisted projects in its local market with the need to keep the rents as affordable as possible. The result should be a marketable project that competes on rents rather than on amenities.

(d) Determination of Net Operating Income. Net Operating Income (NOI) is the amount of project income that remains after all operating expenses, including the contribution to the replacement reserve, have been estimated. It is calculated by deducting total expenses from total income.

(2) Owner's Distribution from Net Cash Flow. In exchange for the payment it makes to reduce principal on the original mortgage, HUD will require owners to share Net Cash Flow dollar-for-dollar with HUD. As an incentive to maintain the property, however, the owner may receive an annual distribution of 100% of Net Cash Flow up to a ceiling equal to $25 per unit per month (''Owner's Distribution''); and also, where appropriate, a New Equity Distribution.

The Owner's Distribution, in all cases, will be subordinate to the first mortgage and will be paid only to the extent that the cash flow to pay it is available. Any unpaid distributions will not accrue. Further, the Owner's Distribution will be held in an escrow account and paid to the owner only after HUD or its representative inspects the project and finds that all units are in substantial compliance with maintenance standards set forth by HUD as part of the restructuring agreement. Any owner who fails to deposit all Net Cash Flow

to the retention account will waive its rights to future distributions.

In sizing the amount of supportable debt, HUD will make an adjustment so that Net Cash Flow on a pro forma basis is not less than $25 per unit per month. The adjustment will be made as follows:

If Net Cash Flow is equal to or greater than or equal to $25 dollars per unit per month, the distribution will not be deducted from debt service for the purpose of sizing the mortgage.

If Net Cash Flow is less than the distribution of $25 per unit per month, the difference between the distribution and Net Cash Flow will be deducted from the amount of projected debt service, thus reducing the size of the supportable loan and insuring the availability of the Owner's Distribution.

The Owner's Distribution must be earned and maintained thorough efficient management. It is not a guarantee. Adjustments to debt service and cash flow will be made only at initial underwriting; future adjustments to Owner's Distribution to offset rising operating costs will not be allowed by HUD. HUD, however, may make future adjustments to the $25 per unit per month ceiling to respond to inflation.

V. Additional Demonstration Program Matters

A. Required Consents

The implementation of one or more of the Mandatory Demonstration Approaches shall be subject to receipt of all necessary third party consents. The owner and/or HUD as appropriate, shall be responsible for obtaining the consents from necessary parties. Guidance on projects with Ginnie Mae Mortgage Backed Securities will be provided in the future.

B. Additional Restructuring Tools

In addition to the mandatory demonstration approaches described above, HUD has authority to take any of the following actions with respect to each project in the Demonstration Program:

1. Full or Partial Prepayment

With the prior consent of the insured mortgagee, HUD may choose to make a full or partial prepayment to the holder of the FHA-insured loan prior to the date of any defaults.

2. Sale or Transfer of HUD's Economic Interest

HUD may enter into contracts either to purchase reinsurance or to transfer to third parties HUD's economic interest in contracts of insurance or insurance premiums paid. HUD may not elect to do this for more than 5,000 units in the Demonstration Program during FY 1997. Any contract HUD executes under this paragraph shall require that associated units be maintained as low-income units for the life of the mortgage(s), unless HUD has waived this provision for good cause.

3. Credit Enhancement

HUD may provide new FHA multifamily mortgage insurance, contract for reinsurance or provide other credit enhancement alternatives. HUD may also retain the existing FHA insurance on a restructured supportable first mortgage loan, or permit the use of the multifamily risk-sharing mortgage programs, as provided under section 542 (b) and (c) of the Housing and Community Development Act of 1992 (Pub. L. No. 102–550; 106 Stat. 3794; 12 U.S.C. 1707 note), to the extent that appropriations or housing units are available. Unless otherwise agreed to by the project owner, not more than 25% of the units with expiring Section 8 contracts, in the aggregate, may be restructured during FY 1997 without FHA insurance.

4. Tenant-Based Section 8

With the consent of the owner of the project, and after consulting with tenants, HUD may substitute tenant-based Section 8 assistance for some or all of the units covered by a project's Section 8 rental assistance contract. This Section 8 tenant-based assistance, however, can be provided only where HUD has determined and certified that there is adequate, available, and affordable housing within the local area and that tenants will be able to use the Section 8 tenant-based assistance successfully.

HUD may make this substitution for not more than 10% of the aggregate number of units in projects restructured during any one fiscal year.

5. Removal of Restrictions

HUD, with the owner's consent and other parties' consent, as necessary, and after consulting with the tenants, may remove, modify or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or restriction that had previously been imposed or required by HUD which would interfere with the ability of the project to operate without above-market rents. HUD may also remove any limitations previously imposed by HUD with respect to the distribution of a project's Net Cash Flow. It is HUD's intention after restructuring to eliminate the limited dividend distribution requirements, should they be currently required, and associated collection of residual receipts.

6. Use of Accumulated Residual Receipts

HUD may require the owner to apply any accumulated residual receipts towards effecting the purposes of the Demonstration Program.

7. Payments by HUD

HUD may enter into such agreements, provide such concessions, incur such costs, make such grants (including grants to finance approved rehabilitation costs) and other payments, and provide other valuable consideration, as HUD determines are reasonably necessary in order to enable owners, lenders, servicers, third parties and other entities to participate in the Demonstration Program.

C. Structures to Address Tax Liability

Owners of projects undergoing restructuring may be exposed to tax consequences associated with cancellation of debt, and taxation of capital gains or ordinary income. It is the expressed desire of Congress that the Demonstration Program minimize, if possible, tax consequences to owners. Absent specific legislative relief, HUD will accept proposals from owners which include any tax motivated structure deemed by the owner to be acceptable to the Department of the Treasury that will limit or defer tax liability and which will not adversely affect a project's financial integrity or management.

D. Sources and Uses of Funds Under the Demonstration Program

1. Sources of Funds

The funds which HUD anticipates using in connection with an owner's participation in the Demonstration Program may include the following:

a. Funds in the project's residual receipts account;

b. Excess funds in the project's reserve for replacements fund;

c. New project financing, either FHA-insured or non-FHA-insured obtained by the owner;

d. New equity to be contributed by new or existing owners and partners/investors (including additional capital contributions);

e. New equity raised from a proposed sale or other disposition of the project (100% of the purchase price relating to any sale or other disposition must be supported by a third party USPAP appraisal);

f. New equity raised from the sale of low-income housing tax credits;

g. To the extent other sources of funds are not available, full or partial mortgage prepayments from HUD;

h. To the extent required, as determined by HUD, direct loans or grants from HUD; and

i. With respect to projects with Section 8 contracts expiring after FY 1997, the capitalized value of Section 8 project-based assistance in excess of market rents.

2. Uses of Funds

Subject to the approval of HUD and, where required, to mortgagee approval, the permitted uses of such funds will include the following:

a. Reduction or cancellation of existing FHA-insured debt and, where appropriate, other debt on the property approved by HUD, including a payment to an escrow account to be used for such purposes;

b. Payment of delinquent taxes, insurance premiums and/or other amounts owing with respect to the project, including amounts necessary to remove liens or judgments;

c. Payment of reasonable rehabilitation, renovation, maintenance or construction expenses necessary to meet the requirements of the Physical Needs Assessment;

d. Payment of reasonable legal and other transactional costs (including title, survey, appraisals, etc.);

e. Payment of reasonable fees and costs associated with obtaining new financing (including prepayment penalties, discounts, etc.);

f. Payments of reasonable oversight fees for nonprofits to cover reasonable pre-development costs; and

g. Relocation costs.

E. Affordability Requirements

1. Projects with Renewed or New HAP Contracts

Unless otherwise waived by HUD for good cause, each project owner participating in the Demonstration Program that is provided with a new or renewed HAP contract (other than any temporary renewal provided during the Demonstration Program processing period) will be required for a period of up to 20 years from the date of closing of the Demonstration Restructuring, to accept each offer by HUD to renew the project's HAP contract. The terms and conditions of the HAP contract renewals shall be set forth in: (a) The Restructuring Commitment (as described in Section VI.G.) between HUD and the owner, and/or (b) an amendment to the renewed HAP contract. All such renewals shall be subject to annual Congressional appropriations.

2. Projects without Renewed or New HAP Contracts

Unless otherwise waived by HUD for good cause, with respect to any project participating in the Demonstration Program that is not provided with a new or renewed HAP contract, the owner and HUD shall execute a Use Agreement in the same form as that described in Section V.E.1.; *provided, however,* that such Use Agreement shall also require the owner to accept Section 8 tenant-based certificates or vouchers from the project's existing tenants, to the extent such tenants choose to remain in the project, for a period, in the aggregate, of up to 20 years after the Demonstration Restructuring closing for the project occurs.

3. Long-Term Project Affordability

When the Mortgage Restructuring or Debt Forgiveness approaches are used, the project will be required to comply with affordability requirements established by HUD. Unless otherwise agreed to by HUD, the affordability requirements shall remain in effect for a minimum of 20 years from the date the Mortgage Restructuring or Debt Forgiveness is made effective. Affordability requirements shall be incorporated into a recorded Use Agreement.

If statutorily permitted by the section of the National Housing Act under which the mortgage is insured, the affordability requirements will be the same as those of the Low-Income Housing Tax Credit program, namely, the project shall be required to maintain: (a) At least 20% of the units in the project with families whose adjusted income does not exceed 50% of the area median income, or (b) at least 40% of the units in the project with families whose adjusted income does not exceed 60% of the area median income. Affordability requirements may be waived by HUD for good cause.

4. Affordability Waiver Authority for Designees

None of the affordability requirements in this Section V.E. may be waived by a Designee, except with express prior written approval of HUD.

F. Tenant Protections

If the owner has provided the required notice, any eligible family residing in a project-based Section 8 assisted unit that is covered by an expiring contract that is not renewed will be offered tenant-based assistance as provided in Housing Notice H 96–89 prior to the date on which the project-based HAP contract expires. If the owner chooses not to request a renewal and if proper notice was not given, the owner must permit the tenants assisted by the expiring Demonstration Agreement to remain in their units for the full notice period without increasing the tenant portion of the rent under the Demonstration Agreement. Public housing authorities will be allocated additional HAP contract authority on an annual basis in order to assure that families so affected will be provided tenant-based Section 8 contracts. Public housing authorities will be responsible for administering the issuance of these tenant-based Section 8 contracts.

G. Funding and Unit Limitations

The funding limitation for the Demonstration Program is set at $40,000,000. This amount is comprised of $30,000,000 made available under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, appropriated to remain available through September 30, 1997 and $10,000,000 appropriated under section 212 of the FHA Multifamily Demonstration Authority HUD 1997 Appropriations Act, appropriated to remain available until September 30, 1998. Total funds available are net of commitments made in the implementation of the FY 1996 Portfolio Reengineering Demonstration Program.

The $40,000,000 shall include any credit subsidy costs associated with providing direct loans or mortgage insurance as well as costs of modifying and restructuring loans held or guaranteed by the Federal Housing Administration.

H. Transfer of Projects

When the owner of a project in the Demonstration Program voluntarily transfers the property, HUD shall facilitate the transfer to tenant organizations, tenant-endorsed nonprofit organizations or public agency purchasers which are qualified to own and manage multifamily properties. HUD will give final approval to the selected purchaser upon the completion of the following selection process by the owner, and certification by the owner that this process has been followed. To facilitate a transfer to a qualified purchaser, HUD may transfer existing Section 8 project-based assistance to the purchaser or transferee. In the transfer of physical assets, demonstration project owners must follow the process below:

1. The owner shall notify potential qualified tenant organizations and experienced tenant-endorsed nonprofit organizations or public agency

purchasers of the availability of the project for sale by:

a. Mailing notices to eligible organizations;

b. Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

c. Mailing notices to clearinghouse networks; or

d. Using any other means of notification which HUD determines would be effective to notify potential qualified purchasers of the sale of the property.

2. For the 90-day period beginning on the date of receipt by HUD of a notice of intent to transfer physical assets, the owner may accept a bona fide offer only from:

a. A resident council intending to purchase the project and retain it as rental housing, certifying that it has the support of a majority of tenants;

b. A tax-exempt nonprofit organization that has a record of service over at least five years of providing quality low-income housing and which has the support of a majority of tenants; or

c. A qualified public agency.

3. During this 90-day period, although offers may be made by other prospective purchasers, these offers may not be accepted by the owner until the expiration of the 90-day period. If no bona fide offer to purchase the project is made by any of these groups and accepted by the owner at the end of the 90-day period, which period may be extended by HUD for good cause, the owner may accept an offer to purchase the project from any qualified purchaser.

VI. Demonstration Process

This section explains the Demonstration Program process that will be followed by HUD and project owners for eligible project loans. The Demonstration Program provides for both Designee Processing and Alternate Processing as well as direct HUD processing of Demonstration project loans.

In the case of Designee processing, initial intake and referral to the appropriate Designee is the responsibility of HUD and thereafter the Designee is responsible for project management. (See Section VII. for further information on Designee Processing.)

Owners seeking new first mortgage financing may bypass the majority of the HUD restructuring process and have the qualified lender perform the necessary underwriting and due diligence activities. In cases where the FHA loan is being retained, HUD may request the mortgagor or loan servicer to perform certain due diligence and underwriting of activities under certain conditions. (See Section VIII.)

The following describes the restructuring process to be implemented directly by HUD.

A. Owner's Request to Participate

To participate in the Demonstration Program, owners with Section 8 contracts due to expire in FY 1997 must complete, execute and return to HUD, no later than 45 days prior to the expiration of their Section 8 contract, a Request to Participate in the Demonstration Program (the Request to Participate). The Request to Participate should be in the form of a letter of interest which includes the name and address of the project and the date the Section 8 contract expires.

Owners with contracts expiring within 45 days of the date of publication of these Guidelines who, therefore, cannot provide the full 45 days of notice, must provide notice to HUD as soon as possible but not later than 45 days from the publication of these Guidelines. If the project has more than one Section 8 contract, the 45 days will be measured from the expiration date of the contract with the earliest expiration.

Owners who do not submit the above Request to Participate on or before the required deadlines will not be eligible to participate in the Demonstration Program, unless compliance with the deadlines is waived by HUD for good cause. This Request to Participate should be addressed to the Director of Multifamily Housing in the HUD field office with jurisdiction over the project.

B. Demonstration Agreement

Within ten business days of HUD's receipt of the owner's Request to Participate in the Demonstration Program, the field office Director of Multifamily Housing will prepare and send to the owner the following:

1. A Demonstration Agreement which: (a) Sets forth the Owner's obligation to proceed in good faith to negotiate a Restructuring Commitment with HUD within 180 calendar days after execution of the Demonstration Agreement; (b) sets forth the Owner's obligation to provide all documents and information reasonably requested by HUD in order to enable the project to participate in the Demonstration Program; and (c) requires the owner to certify that it has provided the notice to the tenants, the Affected Unit of Local Government and the lender(s), as required in Section VI.D.;

2. An Addendum to the Demonstration Agreement in the form of a Housing Assistance Payments Demonstration Renewal Contract, the form of which is included as Attachment 3(c) of the Housing Notice H 96–89 dated October 15, 1996 (the HAP Renewal Contract),

3. An attachment containing the name and address of the project, the Section 8 and FHA project numbers, the section of the National Housing Act under which the mortgage is insured, an owner or owner agent contact name, address and telephone and fax numbers, and unit type and rental information, consisting of contract rents, utility allowances, if any, and FMR's.

C. Execution of Demonstration Agreement

In order to participate in the Demonstration Program, the owner will be required to execute and deliver the Demonstration Agreement to the Director of Multifamily Housing in the HUD field office with jurisdiction, no later than 10 business days prior to the Section 8 contract expiration date. This deadline may be extended by the Demonstration Program Coordinator for good cause. HUD will execute the HAP Renewal Contract and Demonstration Agreement only after receipt of owner's evidence that proper notification to project tenants, the Affected Unit of Local Government and project lender(s) has been provided in accordance with Section VI.D.

HUD will assign a Demonstration Program Tracking Number to the project after execution of the Demonstration Agreement.

D. Delivery of Notice to Project Tenants, Affected Unit of Local Government and Lender(s)

Simultaneously with the delivery of the Request to Participate to HUD, the owner shall deliver notice of the owner's intention to participate in the Demonstration Program to: (a) The tenants residing in the project, (b) the chief official of the Affected Unit of Local Government having jurisdiction over the project, and (c) the mortgagee of the project's FHA-insured loan. The ''Affected Unit of Local Government'' is the smallest unit of general local government with jurisdiction in which the project is located.

Notification to project tenants must be accomplished by delivery of notices to each project tenant and by posting the notice in at least two conspicuous public places in each building for a minimum of three (3) consecutive calendar days. If a tenant organization of project tenants exists which officially represents all tenants, notice may be provided to the tenants' organization

rather than to each tenant individually, but notice must still be posted in all project buildings as described in this paragraph.

The notice to project tenants required under the Demonstration Program shall be in addition to the required one-year notice of Section 8 contract expiration required under the section 8(c)(9) of the United States Housing Act of 1937 and HUD Notice H 96–89.

The notice must also include:

1. A copy of the ''Request to Participate'' provided by the owner to HUD, including the date of the Section 8 contract expiration;

2. An explanation of tenant protections afforded.

3. A statement that project tenants, the Affected Unit of Local Government and lender(s) have the opportunity to provide written comment. They are particularly encouraged to provide written comments on the project's physical needs and property management.

4. A statement that comments should be sent to the Director of Multifamily Housing in the HUD field office with jurisdiction over the project and that written comments will be accepted for up to 45 days after the date of execution of the Demonstration Agreement.

5. A statement that prior to the start of preparation of the Physical Needs Assessment for the project by a Due Diligence Contractor, a preinspection meeting will be held on site and that up to 3 representatives each, of both project tenants and the Affected Unit of Local Government, and their technical consultants, if any, will be invited to this meeting. It should further indicate that the owner will provide a separate written 10 day notice of this meeting to the project lender(s), project tenants and to the chief official of the Affected Unit of Local Government. Any written comments received by the time of this meeting will be provided to the Due Diligence Contractor responsible for preparing the Physical Needs Assessment. The notice should advise that upon completion of the Physical Needs Assessment, one copy of the Assessment will be provided to the insured lender, project tenants and one copy to the chief official of the Affected Unit of Local Government.

6. A statement that the owner will provide the project lender(s), project tenants and the chief official of the Affected Unit of Local Government with a brief summary of HUD's Restructuring Commitment.

7. A statement that if the owner chooses to appeal the terms of a Restructuring Commitment, the owner will notify the project lender(s), project tenants and the chief official of the Affected Unit of Local Government in writing concurrently with its submission of the appeal to HUD. It will further advise these parties that they will have 20 days from the date of the appeal submission to provide written comments to HUD.

8. In instances where lender consent is needed, a request that the lender state its willingness to participate in the Demonstration Program.

9. A statement that the Affected Unit of Local Government is encouraged to apprise representatives of the local community and neighborhood of this notice.

Evidence that proper notice was provided must be sent to the Demonstration Manager.

E. Assignment of Restructuring Responsibility

Within 10 business days following HUD's receipt of the executed Demonstration Agreement from the owner, HUD will assign responsibility for the project either to a qualified Designee, whenever possible or, if there is no available Designee for the project location, to a HUD Demonstration Manager. (See Section VII. for Designee Processing.)

In the case of HUD processing, the Demonstration Manager will operate most often out of selected field offices and will be assisted by a Due Diligence Contractor who will contract for appraisals, Physical Needs Assessments and any other reports as may be required by HUD. The Demonstration Manager will be responsible for:

1. Working with the owner, a Due Diligence Contractor, project tenants, project Lender(s), the Affected Unit of Local Government, and others as necessary to accomplish the restructuring;

2. Determining which of the demonstration approaches are appropriate for restructuring the project loan;

3. Negotiating the terms and conditions of a Restructuring Commitment and related documents with the owner; and

4. Coordinating the preparation, processing and closing of the Restructuring Commitment and the related documents.

F. Due Diligence Period

Once the Demonstration Manager or the Designee is selected, the Due Diligence period will commence.

1. Pre-Restructuring Conference with Owner

Promptly following the execution of the Demonstration Agreement by HUD and the owner, the Demonstration Manager will meet with the owner to discuss the owner's views with respect to the appropriate level of debt, market rents, operating costs, capital needs, preference for debt forgiveness, any of the additional restructuring tools listed in Section V.B., and any other related matters. At this conference, the owner's restructuring proposal, if any, may be presented and given initial review.

2. Pre-Inspection Meeting at Project

Prior to the inspection of the property by a Due Diligence Contractor responsible for preparation of the Physical Needs Assessment, a pre-inspection meeting must be held on site. Participants will include, at a minimum, the HUD Demonstration Manager and Due Diligence Contractor, the owner or owner's representative, up to three representatives of the project tenants or their technical consultants, if any, and up to three representatives of the Affected Unit of Local Government. Local HUD field office representatives will also be invited to attend. The owner must provide a minimum of 10 days written notice of the meeting to project tenants, project lender(s), and the Affected Unit of Local Government.

3. Due Diligence/Underwriting

Promptly following the execution of the Demonstration Agreement by HUD, the Demonstration Manager and Due Diligence Contractor will work closely with the owner to obtain the required information and perform the underwriting necessary to negotiate a restructuring commitment. The Demonstration Manager and Due Diligence Contractor will analyze the project's market rents and expenses, determine Net Operating Income, estimate the project's market value, and obtain any other information regarding the financial, physical, environmental, or other condition of the property he/she needs to negotiate a restructuring commitment with the owner.

The owner must cooperate fully with the Demonstration Manager and Due Diligence Contractor during this process and must provide timely access to the property and to project documents as requested. In addition, within 14 calendar days of executing the Demonstration Agreement, the owner may submit to the Demonstration Manager a detailed estimate of project operating costs after restructuring is completed. Failure to cooperate is

grounds for terminating the Demonstration Agreement.

HUD intends to develop additional administrative guidance for determining market rents, operating expenses, the level of rehabilitation required, the use of replacement reserve account balances, and other such matters.

G. Preparation of HUD'S Restructuring Commitment

The Demonstration Manager, using the information produced during the Due Diligence phase of the Demonstration Process, will develop a Restructuring Commitment that utilizes one or more of the mortgage restructuring, forgiveness of debt, or budget-based rents approaches.

The Restructuring Commitment will be presented in writing to the owner and the owner will be provided 30 calendar days to accept the Commitment or to submit a counter proposal to the Demonstration Manager.

Any project rehabilitation or capital improvements financially supported or required by HUD must be processed in accordance with HUD's environmental review requirements in 24 CFR part 50, prior to HUD's presentation of the Restructuring Commitment. All projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1).

H. Notification of Project Tenants, Affected Unit of Local Government and Project Lender(s)

Upon receipt of the Restructuring Commitment, the owner shall deliver by mail a brief summary of the document to project tenants, the chief official of the Affected Unit of Local Government, and the lender(s), and submit evidence to the Demonstration Manager that proper notification was provided. If an organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually. The Affected Unit of Local Government shall be requested to provide this notification to any representatives of local communities and neighborhoods that it chooses to inform.

I. Owner Response to HUD'S Restructuring Commitment

Within 30 calendar days following the owner's receipt of HUD's Restructuring Commitment, the owner must either (i) execute the Restructuring Commitment (without modification) and return it to the Demonstration Manager; or (ii) notify the Demonstration Manager in writing of any modifications to the Restructuring Commitment that it requests prior to its execution. Should the owner accept the Restructuring Commitment, the execution of the commitment must be accompanied by any required third party consents. For example, these include the consent of the insured mortgagee and the consent of limited partners, if required under the terms of a limited partnership agreement.

J. Modification of Restructuring Commitment

The Demonstration Manager shall, promptly following its receipt from the owner of any modifications to the Restructuring Commitment, work closely with the owner to review and evaluate all such modifications, resolve any issues, and prepare and deliver to the owner a revised Restructuring Commitment which reflects those modifications acceptable to HUD. Final negotiation of a Restructuring Commitment shall occur during a period not to exceed 40 calendar days after the Demonstration Manager's receipt of the owner's modifications, unless extended by HUD for good cause.

K. Issuance of Restructuring Commitment After Modification

Upon receipt of the modified Restructuring Commitment, the owner, only if the changes are substantive and substantial, shall deliver a brief summary of the document to project tenants, the chief official of the Affected Unit of Local Government, and the lender(s) by mail and shall submit evidence to the Demonstration Manager that proper notification was provided. If a tenant organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually. The Affected Unit of Local Government shall be requested to provide this notification to any representatives of local communities and neighborhoods that it chooses to inform.

The owner will have 30 days from the date the Restructuring Commitment is delivered by HUD in which to execute that document and return it to HUD. This 30 day period may be extended by the Department.

L. Owner Appeal of Restructuring Commitment (if applicable)

If, for any reason, an owner desires to appeal the modified Restructuring Commitment issued by HUD, an appeal must be submitted in writing to the Director of Multifamily Housing or Director of Housing, in the local field office, within 10 calendar days of the issuance date of the modified Restructuring Commitment.

The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. The Department will issue a written determination within thirty (30) calendar days of the date of the appeal.

The owner must notify the project lender(s), project tenants and the chief official of the Affected Unit of Local Government in writing concurrently with its submission of the appeal to HUD. It will further advise that these parties will have 20 days from the date of the appeal submission to provide written comment to HUD. If an organization of project tenants exists, which officially represents all tenants, notice may be provided to the tenants' organization rather than to each tenant individually.

If the appeal process results in a mutually satisfactory conclusion, HUD and the owner will execute a final version of the revised Restructuring Commitment. If HUD denies the owner's appeal, HUD will so notify the owner in writing. Upon such notification, the owner may execute the Restructuring Commitment as last revised by HUD, or may choose not to participate in the Demonstration Program.

In cases where no restructuring agreement is reached and the Demonstration Agreement expires, the owner may request a one-year Contract renewal in accordance with section 211(b) of the HUD FY 1997 Appropriations Act, as implemented by Housing Notice H 96–89. In most cases, the rents under the one-year renewal Contract will be set at 120% of the applicable FMR. Section 211(b) (2) and (3) contain exemptions to the 120% limitation; if the project qualifies for one of these exemptions, rents would be maintained at current levels.

If the owner chooses not to request a renewal, and if the appropriate notice has been provided, HUD will provide tenant-based assistance to all eligible families in accordance with Housing Notice H 96–89.

If the owner chooses not to request a renewal and if proper notice was not given, the owner must permit the tenants assisted by the expiring Demonstration Agreement to remain in their units for the full notice period without increasing the tenant portion of the rent under the Demonstration Agreement.

M. Closing the Restructuring Transaction

Loan closing must occur within 60 days of execution of the Restructuring

Commitment. If necessary for closing, HUD will extend the HAP Renewal Contract by up to 60 calendar days. An additional extension period may be granted by HUD, if closing is delayed due to circumstances beyond the control of the owner. In no case may the HAP Contract be extended for more than 6 months if the Restructuring Commitment has not been executed.

The Demonstration Manager will be responsible for coordinating the closing. Where the restructuring involves new FHA-insured financing, the closing must be completed in accordance with FHA processing requirements.

VII. Designee Selection and Processing

HUD will provide qualified Designees the opportunity to enter into arrangements with HUD for restructuring Demonstration Program projects in their jurisdiction or service area. HUD will select qualified state housing finance agencies, housing agencies or nonprofit entities (Designees) to take responsibility for processing project restructuring under the Demonstration Program.

A. Selection Criteria to Determine Qualified Designees

HUD's selection of qualified Designees will be made based on the criteria listed in the following paragraph. Interested state and local housing participants must submit letters of interest to HUD on or before February 15, 1997, and should include the potential Designee's geographic area of jurisdiction and its qualifications. Applicants who are already approved as FHA risk sharing lenders are not required to submit qualifications. Letters of interest must be accompanied by a letter of support from the Chief Elected Official of the area(s) of jurisdiction. Credentials will be screened and applicants will be selected on or before April 1, 1997. HUD may resolicit public entity applicants on or about April 15, and make selections on or about May 31. HUD will accept late submissions only for areas that have not been assigned a Designee. However, for projects with Section 8 contracts that expire prior to February 15, 1997, on a case by case basis, HUD will assign these projects to Designees who have submitted Letters of Interest prior to February 15, 1997, for specific projects.

Nonprofit Designees will be selected through a formal Request for Qualification (RFQ) process. The RFQ will be published in early 1997.

The selection criteria on which the applicants will be rated are as follows:

1. Demonstrated experience with multifamily loan restructurings;

2. Demonstrated experience in multifamily financing, and asset/property management experience relating to affordable multifamily housing;

3. Demonstrated staff experience and capacity for managing a restructuring process for multifamily projects; and

4. A history of stable, financially sound, and responsible administrative performance.

These selection qualifications may be demonstrated either by the Designee applicant alone or in partnership with other entities with proven experience and capacity in this area. If a team approach is chosen, the Designee applicant must provide evidence of its ability to manage this type of team. Designee applicants are encouraged to develop partnerships with each other as well as with other private and public entities, including: (i) Financial institutions, (ii) mortgage servicers, (iii) the Federal National Mortgage Association, (iv) the Federal Home Loan Mortgage Corporation, (v) Federal Home Loan Banks, (vi) other state or local mortgage insurance companies or bank lending consortia, (vii) nonprofit and for-profit housing organizations.

In its selection, HUD will give preference to qualified Designees that have had positive previous association with specific projects that may seek restructuring.

Once a Designee is selected, it will then be responsible for processing all projects in the Demonstration Program in its area of jurisdiction, although in some circumstances, HUD and the Designee may agree to a more limited initial engagement. The Designee may choose to reject certain projects that represent extraordinary risk, which by mutual agreement can be retained by HUD. In the event the Designee rejects a project, responsibility for that project will be given to the Demonstration Manager. Until and unless a Designee is selected for an area, HUD will act as Designee.

The management plan setting forth the manner in which the Designee will carry out the restructuring must be approved by HUD and will be attached as a provision of the contract to be entered into by the Designee and HUD.

In the event that potential Designees with overlapping jurisdictions express interest and are determined to be qualified, they must first attempt to enter into an agreement as to how projects to be restructured will be allocated. This agreement must be executed by the Chief Elected Official of each jurisdiction. Until such time as agreement is reached, HUD will be responsible for processing demonstration projects in the affected service area.

In the event qualified nonprofit entities desire to operate in areas where state or local agencies are acting as Designees, the nonprofit will be required to enter into a cooperation agreement with the relevant Designee with jurisdiction prior to participating in restructuring in that jurisdiction. Where more than one nonprofit desires to operate in a single geographic area, HUD will allocate projects based on their qualifications and familiarity with the local market area.

Until such time as qualified Designees are selected for specific areas, HUD will be responsible for Demonstration Program implementation.

B. Alternative Approaches for Designee Participation in the Demonstration Program

Designees may contract with HUD under one of two approaches:

1. Fee for Service With Performance Incentive

a. Compensation Structure. Under this approach, the Designee will be paid on a uniform fee structure, to be established by HUD, which will include both a Base Fee and an incentive fee, called a Bonus Fee, as defined in the contract to be negotiated between HUD and the Designee.

(1) Base Fee. The Base Fee will be earned and paid based on achievement of certain stages of performance as indicated below.

Stages of Performance Criteria on which Base Fee will be earned:

Stage I: Submission of Detailed Business Plan

Submission to HUD of a detailed Business Plan to include:

(i) An outline of the ownership entity, loan documents (and bond documents, if applicable);

(ii) Required third party approvals;

(iii) A completed appraisal meeting the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of the Appraisal Foundation, as modified by HUD, incorporating data on operating expenses available from FHA and entities such as IREM;

(iv) Underwriting analysis including assessment of market rents and operating expenses based on the appraisal, historical operating expenses, and determination of Net Operating Income, supportable financing, proposed principal reduction, rehabilitation financing, and owner input;

(v) Assessment of rehabilitation needs;

(vi) Description and rationale for the mandatory demonstration approach being selected;

(vii) Evidence of proper notification to tenants, Affected Unit of Local Government and lender(s);

(viii) Summary of comments received in the process and how they were addressed;

(ix) Environmental issues;

(x) Litigation issues;

(xi) Tax issues;

(xii) Public policy issues;

(xiii) Written record of inquiries from public officials regarding the restructuring; and

(xiv) Other issues as provided more specifically in further guidance to be provided by HUD. All information in the Business Plan is to be supported by the findings of the due diligence activities.

Stage II: Executed Restructuring Commitment

Reach agreement on a post-appeal Restructuring Commitment or aggregate Commitments in the case of multiple project restructurings, executed by the Designee and owner within 180 days of the date of the contract between HUD and the Designee that:

(i) Meets or exceeds net savings to government anticipated by the HUD cost saving model as adjusted and agreed to by HUD to accommodate project financing and public policy needs; and

(ii) Achieves HUD's public policy objectives to be defined jointly by the Designee and HUD.

Stage III: Closing of the Transaction

Close transaction based on a Restructuring Commitment within 60 days of the execution of the Restructuring Commitment.

(2) Bonus Fee. In addition to the Base Fee for Service, a Bonus Fee would be earned based on the following Bonus Objectives being achieved:

(a) Amount of Savings to the Federal Government, based on the HUD model for credit scoring;

(b) Timeliness. Closing the transaction in a period shorter than the projected 60 days after execution of the Restructuring Commitment; and

(c) Achieving HUD and local Public Policy Objectives. Providing an exceptional solution to meeting HUD's public policy objectives, in HUD's sole estimation.

b. Processing. Once a project in the Demonstration Program has been assigned by HUD to the Designee, the Designee will be responsible for accomplishing the restructuring of the project in a period of 180 days from the date of the Demonstration Agreement and closing in a period not to exceed 60 days from the execution of the Restructuring Commitment. The Designee's process for restructuring must be consistent with the authorizing legislation for the Demonstration Program and must meet mandatory Demonstration Program objectives including statutory notification requirements.

The Designee will be required to seek HUD approval and the approval of the insured mortgagee and other necessary third parties at the three Stages described above in Section VII.B.1.a.(1). The Business Plan and the Final Restructuring Commitment will require HUD approval.

As in direct HUD processing, the owner will have 10 calendar days from the issuance of the Restructuring Commitment to appeal, in writing, to the Director of Multifamily Housing in the HUD field office with jurisdiction, the terms Restructuring Commitment. The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. Following the appeal, a modified Commitment may be issued by HUD. If needed, after signing a modified Commitment, the owner will qualify for an extension of the Demonstration HAP Contract. Failure to sign a Restructuring Commitment will result in the termination of the Demonstration Agreement and a reduction of project rents to 120% of FMR.

Any project rehabilitation or capital improvements supported or required by HUD must be processed in accordance with HUD's environmental review requirements in 24 CFR part 50, prior to HUD's approval of a Designee's Detailed Business Plan. All projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1). HUD will also execute the closing documents. Where full or partial mortgage prepayment from the FHA Insurance Fund or new FHA-insured financing is included in the restructuring, new regulatory agreements must be entered into.

The Demonstration Program limits the number of units for which HUD may permit assignment of its insured position, enter into contracts to purchase reinsurance or otherwise transfer economic interest in the contracts of insurance to 5,000 units. HUD will approve requests from Designees to receive such assignment in the order in which they are received and subject to HUD's assessment of the benefit to the Federal Government and the timeliness of implementation. In the absence of designees for any geographic area, HUD may assume the role of designee and sub-contract the assignment of economic interest.

The Demonstration Program also limits the number of units for which HUD may substitute tenant-based Section 8 assistance for project-based assistance to 10% of the aggregate number of units in projects restructured in any one fiscal year. HUD will approve requests for tenant-based assistance for projects that demonstrate new and innovative approaches to restructuring, subject to availability, given the 10% limitation.

In the Designee's restructuring process, HUD will be the initial point of contact with owners and will be responsible for allocating projects to the selected Designee.

2. Joint Venture Approach

a. Compensation Structure. HUD seeks joint venture arrangements in which nonprofit or public entity Designees assume some or all of HUD's risk of restructuring in exchange for a share of the savings to the Federal Government resulting from restructuring. In most cases, savings to the Government will be measured by comparing the cost to the Government that would occur if the project were not restructured and the first mortgage defaulted with the cost to the Government of the restructuring by the joint venture.

The objective of the joint venture approach is to explore ways to significantly reduce HUD's administrative role while simultaneously advancing the interest of the Federal Government (taxpayers) in the restructurings. The risk of restructuring assumed by designees could include originating a new uninsured or partially insured loan, making a cash payment for the assignment of HUD's economic interest in insurance in force, or other form as designed and proposed by the Designee.

In joint venture arrangements, the Designee investment can take the form of money, time, or credit exposure. The investment may be made directly by the Designee or by a partner of the Designee, such as those public and private entities listed in Section VII.A. The freedom of the Designee to control the transaction will be commensurate with the level of investment. HUD seeks to transfer sufficient risk and reward to the Designee to insure that HUD's objectives will be met with substantially reduced HUD monitoring and involvement. Ideally, HUD would not review interim

stages of the restructuring process and would accept the Designees' warranties, certifications and representations. It is possible that HUD would delegate all its powers to the designees including the ability to authorize full or partial mortgage prepayment and would rely solely on a post-restructuring audit to verify that the interests of the Federal Government were fairly represented in the transaction.

Payments to Designees for fees, return on investment and, if applicable, administration of Section 8 will be funded from transaction proceeds, Section 8 appropriations and other funds as HUD may determine.

b. Process. The Joint Venture Designees will be responsible for all decision making. HUD approvals will be based on representations and certifications made by the Designee. The Designee's process for restructuring must be consistent with the authorizing legislation for the Demonstration Program and must meet mandatory Demonstration Program objectives including statutory notification requirements and affordability requirements.

Joint Venture Designees will indicate in their letter of interest or RFQ that they desire to handle, on a joint venture basis, some or all of the projects in their service areas whose owners opt to participate in the Demonstration Program. Once the joint venture is in place, HUD will assign the Designee demonstration projects. In its selection, HUD will give preference to qualified Designees that have had positive previous association with specific projects that may seek restructuring.

After being selected by HUD, the Designees will meet with the Demonstration Program Coordinator and HUD financial advisors to develop a joint venture approach that is mutually satisfactory to HUD and the Designees. The approach with each Designee will be formally described in a joint venture agreement that will set forth Designee risk and authority, HUD oversight, a cost to government calculation model and a method of sharing savings to government with HUD and the Designee. The joint venture agreement shall provide that HUD shall complete its environmental review requirements under 24 CFR part 50, as applicable, prior to the entry of any restructuring commitment by HUD or binding HUD. The agreement shall also provide that all projects must be in conformance with flood insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1).

The Demonstration Program limits the number of units for which HUD may permit assignment of its insured position, enter into contracts to purchase reinsurance or otherwise transfer economic interest in the contracts of insurance to 5,000 units. HUD will approve requests from Designees to receive such assignment in the order in which they are received and subject to HUD's assessment of the benefit to the Federal Government and the timeliness of implementation. In the absence of Designees for any geographic area, HUD may assume the role of Designee and sub-contract the assignment of economic interest.

The Demonstration Program also limits the number of units for which HUD may substitute tenant-based Section 8 assistance for project-based assistance to 10% of the aggregate number of units in projects restructured in any one fiscal year. HUD will approve requests for tenant-based assistance for projects that demonstrate new and innovative approaches to restructuring, subject to availability, given the 10% limitation.

VIII. Alternative Processing

The following alternative processing may also be used for projects that are not within the jurisdiction of a Designee.

Within 10 days of execution of the Demonstration Agreement in the case of FY 1997 contract expirations, or upon submission of a restructuring proposal in the case of post-1997 contract expirations, and where the FHA loan is refinanced by a new loan with or without FHA insurance, owners may elect to engage an FHA approved lender or servicer to undertake some or all of the due diligence and underwriting described in these guidelines, subject to review and approval by the Demonstration Manager or the field office Multifamily Director. The lender/servicer shall submit to HUD a detailed Business Plan signed by the owner to include:

A. An outline of the ownership entity and loan documents required for the restructuring proposal (and bond documents, if necessary);

B. Third party approvals required;

C. Completed appraisal meeting the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Standards Board of the Appraisal Foundation, as modified by HUD, incorporating data on operating expenses available from FHA and entities such as IREM;

D. Underwriting analysis including assessment of market rents and operating expenses based on the appraisal, proposed operating expenses, determination of NOI, supportable financing, proposed principal reduction, rehabilitation financing, owner input;

E. Assessment of rehabilitation needs;

F. Description and rationale for the mandatory demonstration approach to restructuring being selected;

G. Evidence and certification of proper notification of tenants, Affected Unit of Local Government and lender(s) of the owner's intent to participate in the Demonstration Program, and a summary of comments received in the process and how they were addressed. The same process that HUD requires owners to follow for notification, outlined in Section VI.D., must be followed;

H. Description of environmental issues, if any;

I. Description of litigation issues and tax issues;

J. Description of public policy issues;

K. Written record of inquiries from public officials regarding the restructuring; and

L. Other issues as provided more specifically in further guidance to be provided by HUD.

All information in the Business Plan is to be supported by the findings of the due diligence activities.

The restructuring Business Plan will be submitted to the Demonstration Manager and or Field Office Multifamily Director for approval. Any project rehabilitation or capital improvements supported or required by HUD must be processed in accordance with HUD environmental review requirements in 24 CFR part 50, prior to HUD's approval of the restructuring Business Plan. All projects must be in conformance with Flood Insurance purchase requirements, as applicable, in accordance with 24 CFR 50.4(b)(1). HUD will respond to the Business Plan in 30 days, after negotiating with the owner and lender, with a Restructuring Commitment. As in direct HUD processing, the owner will have 10 calendar days from the issuance of the Restructuring Commitment to appeal, in writing, to the Director of Multifamily Housing in the HUD field office with jurisdiction, the terms Restructuring Commitment. The written notice of appeal shall specifically state, in reasonable detail, the issues and bases upon which the owner seeks review. Following the appeal, a modified Commitment may be issued by HUD. If needed, after signing a modified Commitment, the owner will qualify for an extension of the Demonstration HAP Contract. Failure to sign a Restructuring Commitment will result in the termination of the Demonstration Agreement and a reduction of project rents to 120% of FMR.

In cases where the FHA loan is being retained, HUD may request the mortgagee or loan servicer to perform due diligence activities and underwriting, in coordination with the Demonstration Manager, as currently permitted for certain mortgagees and servicers under FHA policies.

IX. Other Provisions of Demonstration Program Legislation

A. Participation of Projects With Post-FY 1997 Expirations

In the allocation of Demonstration Program funding resources, priority will be given to projects with Section 8 contracts expiring in FY 1997. Demonstration projects with contracts expiring after FY 1997 will not be processed until (i) all projects with contracts expiring in FY 1997 have either closed on a Restructuring Commitment or the Demonstration Agreement has expired; or (ii) HUD determines that the proposed restructuring imposes no cost to the Federal Government as calculated using the rules established for implementation of the Budget Enforcement Act of 1990. In general, the determination of cost to government will compare the loss to the Government (cost to FHA) that would occur if the demonstration candidate were to have rents set in accordance with section 211(b) of the HUD FY 1997 Appropriations Act, to the cost to FHA of the proposed restructuring. If the restructuring of a project costs less, on a discounted basis, than the total costs if the project goes all the way through the default process (assuming project rents are reduced to 120% of FMR), then that project will be included in the Demonstration Program.

Post-FY 1997 project owners may enter the Demonstration Program by submitting a letter of interest to the Demonstration Program Coordinator. The letter of interest must include the following:

a. Project Name and Address;

b. FHA Project Number;

c. FHA Insurance Program;

d. Unit Rental Information: Gross rent (contract rent plus utility allowance, if applicable) by unit type, number of total units and assisted units by unit type, owner estimate of market rents by unit type, gross rent as a percentage of FMR;

e. HAP Expiration Date and a copy of the HAP contract and Section 8 Identification Number;

f. Loan Information: Unpaid Principal Balance of the FHA-insured mortgage(s), original principal amount, loan maturity date;

g. Owner contact name, address, telephone number and fax number; and

h. Management agent name, address, telephone number and fax number.

Within 30 calendar days after HUD's receipt of letters of interest, HUD will respond to the owner with a calculation of probable cost or savings to government, based on the comparison described above. If the proposed restructuring appears to generate savings, it will be referred to a Designee or to a HUD Demonstration Manager for processing. At the same time, project tenants, Lender(s) and the Affected Unit of Local Government will be notified in the same manner as required for projects with Section 8 contracts expiring in FY 1997. This notice must be coordinated with the Field Office having program jurisdiction. HUD's restructuring processing for projects with post-FY 1997 expirations follows the same process the projects with FY 1997 expirations. Designee processing is discussed in Section VII of these Guidelines and Alternate processing is discussed in Section VIII.

B. Sunshine Provision

In order that others may learn from the experience of the Demonstration Program, all proposals accepted by HUD to participate in the 1997 Demonstration Program may be posted on the Department's Web Page (www.hud.gov/fha/mfh/mfhsec8.html). The posted information will include, but not be limited to, the final restructuring commitment, detailed financial information regarding the asset and tenant issues. Owners will be requested to waive the provisions of the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905).

X. HUD Findings and Certifications

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The notice implements a statutorily authorized demonstration program and is intended to find ways of reducing the impact on families that might otherwise be caused by the nonrenewal of Section 8 project-based rental assistance.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–1557 Filed 1–22–97; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday
January 23, 1997

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Oats and Coronary Heart Disease; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95P–0197]

RIN 0910–AA19

Food Labeling: Health Claims; Oats and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to authorize the use, on food labels and in food labeling, of health claims on the association between soluble fiber from whole oats and a reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposal, as well as of the evidence described in the proposal, the agency has concluded that the type of soluble fiber found in whole oats, i.e., beta (β)-glucan soluble fiber, is primarily responsible for the association between consumption of whole oats, including oat bran, rolled oats, and whole oat flour, and an observed lowering of blood cholesterol levels. The agency has concluded that, based on the totality of the scientific evidence, there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in whole oats and CHD. Therefore, FDA has decided to make the subject of the health claim ''soluble fiber from whole oats'' and has concluded that claims on foods relating the onsumption of soluble fiber from whole oats to reduced risk of heart disease are justified. FDA is announcing this action in response to a petition filed by the Quaker Oats Company (the petitioner).

DATES: The regulation is effective January 23, 1997. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 101.81(c)(2)(ii)(A), effective January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

SUPPLEMENTARY INFORMATION

I. Background

In the Federal Register of January 4, 1996 (61 FR 296), the agency proposed to authorize the use, on food labels and in food labeling, of health claims on the association between oat bran and oatmeal and reduced risk of CHD. The proposed rule was issued in response to a petition filed under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall promulgate regulations authorizing health claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c)).

FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on oat bran and oatmeal, i.e., rolled oats, and heart disease. The agency summarized this evidence in the proposed rule (61 FR 296).

The proposed rule included qualifying and disqualifying criteria for the purpose of identifying foods eligible to bear the proposed health claim. The proposed qualifying criteria were that a food provide 13 grams (g) of oat bran or 20 g of oatmeal, and that the oat bran and oatmeal contain, without fortification, at least 1 g of β-glucan soluble fiber. The proposal also specified mandatory content and label information for health claim statements and provided model health claims.

As part of the requirements for the claim, the agency proposed to allow a shortened version of the claim describing the relationship between diets high in oat bran and oatmeal and risk of heart disease that included a referral statement to the location of the full claim. The proposed version of the full claim described the relationship between diets low in saturated fat and cholesterol and high in oat bran and oatmeal and heart disease. FDA requested data on whether permitting a shortened claim will affect whether consumers will also read the full claim.

The agency also proposed to make the phrase ''depends on many factors'' optional information. The agency agreed with the petitioner's arguments that, based on an ever increasing background of health information made available through various media, consumers already understand that foods are not drugs, and that health enhancement depends not only on consumption of a particular food but also on other dietary practices, exercise, heredity, lifestyle, and a host of other factors. The agency also agreed with the petitioner that the requirement that the claim use the term ''may'' or ''might'' to relate the ability of oat bran or oatmeal to reduce the risk of heart disease is intended to reflect the multifactorial nature of the disease. The agency requested written comments on the proposed rule, including comments on the agency's tentative decision to make the phrase ''depends on many factors'' optional information.

II. Summary of Comments and the Agency's Responses

In response to the proposal, the agency received approximately 1,450 letters, each containing one or more comments, from consumers, professional organizations, government agencies, industry, trade associations, and health care professionals.

The majority of the comments that the agency received agreed with one or more provisions of the proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the proposal. Many of these comments also requested modification of one or more provisions of the proposed rule. A few comments disagreed with the proposed rule and provided specific support for their positions. The agency has summarized and addressed the relevant issues raised in all comments in the sections of this document that follow.

A. Food Substance Associated with Reduced Risk of CHD

Health claims have two essential elements: a food substance and a disease or health-related condition (§ 101.14). The agency proposed to authorize a health claim that diets high in oat bran and oatmeal and low in saturated fat and cholesterol may reduce the risk of CHD. Further, in the proposal, the agency tentatively agreed with the petitioner's position that, while current research may not demonstrate that β-glucan soluble fiber is the only component of oats that affects blood total- and low density lipoprotein (LDL)-cholesterol levels, potentially reducing the risk of CHD, β-glucan soluble fiber can serve as a marker for the food substance that is the subject of the claim. Therefore, FDA tentatively concluded that the relationship is based on a daily intake of not less than 40 g oat bran or 60 g oatmeal, without fortification, that provide 3 g or more per day β-glucan soluble fiber. The disease element of the claim is CHD, as

assessed by changes in serum total- and LDL-cholesterol levels in response to the consumption of specified levels of oatmeal or oat bran. A number of comments dealt with what should be the appropriate description of the food substance that is part of the health claim relationship.

1. Terminology

(Comment 1)

Some comments stated that the proposed claim seemed to be limited to hot cereals because the agency used the term ''oatmeal'' to describe one of the qualifying foods. A few comments suggested that the agency inappropriately used the term ''oatmeal'' for the more technically correct term ''rolled oats,'' the dry form of the food before cooking or processing.

The agency did not intend to limit the proposed claim to hot cereals. As suggested by the comments, the agency was using the term ''oatmeal'' to be synonymous with the term ''rolled oats,'' i.e., the dry oat product.

Likewise, the agency did not intend that use of the terms ''oatmeal'' and ''oat bran'' would mean that only hot, cooked cereals could bear the claim. The proposed claim was intended to describe the relationship between oat bran and rolled oats which can be used as single ingredients, such as in hot or ready-to-eat cereals, or as components of other foods that are served either hot or cold. Under the proposal, any oat product meeting the eligibility requirements for the claim could bear the claim. Because the term ''rolled oats'' is the technical term more commonly used to describe the dry form of the food, the agency has replaced the term ''oatmeal'' with ''rolled oats'' throughout this final rule.

2. Component of Oat Bran and Rolled Oats Responsible for the Effect

(Comment 2)

Some comments stated that the proposed claim inappropriately focused on oat bran and rolled oats as providing an effect on CHD risk. These comments suggested that it was the type of soluble fiber in oat products, specifically β-glucan, that was the primary component responsible for the relationship between the oat products and CHD. FDA had noted in its proposal that β-glucan soluble fiber was closely associated with the observed effect, but at the time, the agency tentatively concluded that β-glucan soluble fiber served as a marker for the food with potential to reduce the risk of CHD. Comments offered support for the view that β-glucan soluble fiber is more than just a marker in whole oats by referencing studies that demonstrated effects of β-glucan independent of the food. These comments cited references in FDA's proposed rule (Refs. 12, 15, 33, 35, 38) and also provided additional references (Refs. 60 through 74) in support of their argument. According to these comments, this evidence suggests that β-glucan soluble fiber can provide an independent and meaningful effect and, in turn, supports that β-glucan is the primary component in whole oat products responsible for that effect on CHD risk factors. A few comments also noted that studies suggest a dose-response relationship between β-glucan soluble fiber and the effect on blood total- and LDL-cholesterol levels because the degree of effect is linearly related to the amount of β-glucan consumed (Ref. 66). Conversely, some comments supported the agency's proposed treatment of β-glucan soluble fiber as a marker for identifying a useful food product rather than as the active component.

In addition, several comments cited references to demonstrate that processing of oat products in ways that alter the physical structure of the β-glucan soluble fiber component (e.g., alter molecular structure and hence viscosity) results in a loss of effect on blood total- and LDL-cholesterol levels (Refs. 63 through 64). Several comments also noted that FDA's proposal cited the Torrenen et al. study (Ref. 38), showing that a special processing technique, when used with oat bran concentrate, appeared to reduce its effect on serum lipid levels. These comments cited the loss of effect with changes in the physical structure of β-glucan soluble fiber as evidence that there is a direct effect attributable to the presence of β-glucan soluble fiber, and that this effect is dependent not only on the chemical characteristics of the β-glucan soluble fiber but also on the retention of important physical characteristics such as viscosity.

Moreover, several comments cited references to show that it is the presence of a highly viscous soluble fiber in the intestinal tract that is determinative of the desired effect on CHD risk factors, and that, holding all other factors constant, changes in viscosity of intestinal contents alone result in significant effects on blood total- and LDL-cholesterol levels (Refs. 72 through 74). These comments, which were submitted by fiber experts, suggested that the ability of β-glucan soluble fiber to produce viscosity in the intestinal contents, while not the only mechanism by which soluble fibers have an effect on CHD risk, can be a clinically meaningful and independent factor affecting CHD risk. Other comments cited studies that showed that oat β-glucan soluble fiber has viscous properties that are responsible for physiological effects on the glycemic response (i.e., changes in blood sugar levels following ingestion of foods) and suggested that the same viscous properties may also play a role in affecting blood total cholesterol levels (Refs. 60 and 69).

On the other hand, some comments stated that, while β-glucan soluble fiber is an important factor, other components in the oat products, including certain chemical characteristics and the tocotrienols that are part of the lipid fraction of whole oats, also contribute to the association with CHD risk reduction. Thus, according to these comments, specifying requirements for only β-glucan soluble fiber in the proposed regulation is not appropriate.

The agency has carefully reviewed the comments and evidence submitted on the issue of the significance of the β-glucan in the oat products and is persuaded that β-glucan soluble fiber is the primary, but not the only, component in whole oats that affects serum lipids. β-glucan thus plays a significant role in the relationship between whole grain oats and the risk of CHD. The agency reached this conclusion based on evidence that there is a dose response between the level of β-glucan soluble fiber from whole oats and the level of reduction in blood total- and LDL-cholesterol (Refs. 15 and 33), and that intakes of β-glucan soluble fiber at or above 3 g per day were more effective in lowering serum lipids than lower intake levels. These results are consistent with the results of the individual human studies reviewed in the proposal.

FDA, therefore, concludes that it is appropriate to change the food substance that is the subject of this authorization for claims from oat bran and rolled oats to β-glucan soluble fiber from whole oats.

3. Eligibility of Whole Oat Flour

(Comment 3)

A number of comments suggested that products containing whole oat flour made from 100 percent oat groats should be eligible to bear the health claim. The reasons given, some supported by data, included: (a) Evidence suggests that β-glucan soluble fiber is the primary contributor to the observed effect of oat bran and rolled oats, and whole oat flour contains β-glucan; (b) whole oat flour is derived from the same starting material as rolled oats (i.e., whole oat groats) and, other

than the smaller particle size of whole oat flour, possesses a chemical and physical composition virtually identical to rolled oats (Ref. 57); (c) animal studies demonstrate that, like the β-glucan soluble fiber from oat bran and rolled oats, whole oat flour β-glucan soluble fiber retains important physical characteristics during digestion (Ref. 68); and (d) data from a human study (Ref. 70) and several animal studies (Refs. 57, 66, and 71) show a positive effect of ready-to-eat cereals made with whole oat flour on risk factors for CHD. One comment submitted a recent, unpublished human clinical trial in which a ready-to-eat cereal made from whole oat flour was used as the test product (Ref. 70). Results showed that consumption of the cereal had a significant effect on blood total- and LDL-cholesterol levels as compared to the placebo cereal.

In considering the comments concerning the inclusion of whole oat flour in this rulemaking, the agency has reviewed the evidence referenced in these comments, including the additional data submitted. The agency noted the similarity of whole oat flour to rolled oats in terms of chemical and physical properties and type of processing. After careful consideration of the scientific evidence and the nature of the proposed health claim, FDA has concluded that products made with whole oat flour from 100 percent oat groats should be eligible to bear a claim.

FDA originally proposed the health claim that is the subject of this rulemaking for oat bran and oatmeal (i.e, rolled oats) because this was the claim requested in the petition that began this proceeding, and because the submitted evidence supported the relationship between the consumption of these foods and a reduced risk of CHD. However, the agency did not conclude in its proposal that the effect was uniquely that of oat bran and rolled oats, but rather that the evidence submitted by the petitioner supported the relationship for these foods. The comments argued, and pointed to evidence in the record as well as to evidence that they submitted that supported their claim, that whole oat flour has a similar composition, and had similar effects on blood cholesterol levels, as oat bran and rolled oats. They argued that, given these facts, it was the logical outgrowth of the proposal to enlarge the substances that could be the subject of a claim as part of this final rule to include whole oat flour.

FDA notes that one study submitted with a comment examined the effect of whole oat flour-based cereal on serum lipids in mildly hypercholesterolemic subjects. Forty-three patients, aged 27 to 68 years, with mild to moderate hypercholesterolemia participated in this placebo-controlled study. The study consisted of three parts: a 4-week run-in on a Step 1 diet (i.e., a diet with less than 30 percent calories from fat, less than 10 percent calories from saturated fat, and less than 300 mg cholesterol), a 2-week baseline, and a 4-week treatment period. During the treatment period, subjects in the oat group continued to adhere to the Step I diet and consumed one prepackaged portion (1.5 oz.) of cereal twice a day, resulting in an estimated total daily intake of 3 g β-glucan from whole oat flour. Body weights were maintained at a constant level throughout the treatment period. Although there were differences in total-, high density lipoprotein (HDL)-, and LDL-cholesterol levels between the groups at baseline, the authors used an analysis of covariance to adjust data to a common baseline.

The results of the study showed that subjects consuming the whole grain oat cereal experienced a significant decrease in total cholesterol (4.4 percent or 10.0 milligrams (mg)/deciliter (dL)) and LDL-cholesterol (4.9 percent or 7.8 mg/dL), and no significant difference in HDL-cholesterol, compared to the placebo group. These results are consistent with the findings for oat bran and rolled oats, i.e., positive effects on blood total- and LDL-cholesterol levels in mildly hypercholesterolemic subjects adhering to a diet low in saturated fat and cholesterol. Therefore, this study, along with evidence submitted by comments showing compositional similarities between whole oat flour and rolled oats, provides sufficient evidence for the agency to conclude that whole oat flour has the same effects relative to reduced risk of CHD as do oat bran and rolled oats. Further, there is evidence that corroborates this conclusion that is provided by animal studies (Ref. 68). These animal studies addressed the issue of retention of viscosity characteristics during processing and digestion. Because viscosity of intestinal contents is known to be a critical factor in determining the ability of soluble fibers to reduce the risk of CHD (Refs. 56, 72, and 73), and because viscosity is known to be affected by food processing procedures or, following ingestion, by the digestive system in ways that are unpredictable (Refs. 56 and 65), evidence to demonstrate that the β-glucan soluble fiber from whole oat flour retains the same level of viscosity in the digestive tract as does that from rolled oats is crucial to the question of whether whole oat flour can provide the same benefits as rolled oats.

The animal studies cited by one comment (Ref. 68) demonstrate that there is bioequivalence relative to these important physical characteristics between whole oat flour and rolled oats. When taken together, the available evidence provides a basis for concluding that it is appropriate to make whole oat flour, as well as oat bran and rolled oats, the subject of the authorized substance-disease relationship.

Therefore, for the purposes of § 101.81, the term ''whole oats'' includes oat bran, rolled oats, and whole oat flour. Changes to the codified sections of this rule to reflect the inclusion of whole oat flour are discussed in section II.B. of this document.

While FDA has added whole oat flour as a subject of the health claim in this proceeding, it must caution that it has done so here only because of the close relationship of whole oat flour to the substances that were the subject of the proposal and the very narrow increment of evidence necessary to broaden the claim to include this substance. Given the very tight timeframes that are established by the statute, and the agency's interest in ensuring that scientifically valid claims are authorized as quickly as possible, the agency cautions that it will not frequently be in a position to authorize claims about additional substances during the comment period. Thus, interested people would be well advised, if they are aware of a substance that should be the subject of a health claim, to petition for authorization for a claim about the substance rather than relying on the comment process to achieve that end.

4. β-glucan Soluble Fiber From Other Sources

(Comment 4)

Some comments, in noting the evidence to suggest that β-glucan soluble fiber is the component in oat bran and rolled oats responsible for their effect, further noted that the evidence suggests that β-glucan soluble fiber from other sources, such as barley and oat gums, affects the risk of CHD in the same way as β-glucan from the oat bran and rolled oats (Refs. 61 through 65, and 67). These comments requested that the proposed health claim be extended to any food product containing a specified level of β-glucan soluble fiber from any source including processed or novel sources of β-glucan soluble fiber.

Several comments suggested that one type of evidence to demonstrate that β-glucan soluble fiber from other food sources can affect the risk of CHD is the studies showing similar effects on blood total- and LDL-cholesterol levels among different β-glucan containing foods, including barley and oats (Refs. 61 through 65, and 67). Another comment cited a study showing that variability in effects on serum cholesterol levels among different barley cultivars is associated with differences in amounts of β-glucan soluble fiber (Ref. 64).

While acknowledging that there is evidence suggesting that consumption of β-glucan soluble fiber from a variety of food sources may help to lower blood total- and LDL-cholesterol levels, and thus reduce the risk of CHD, the agency disagrees that the claim should be extended at this time to all foods that contain a specified amount of β-glucan soluble from any source. The agency's decision to limit eligibility to bear a claim to oat bran, rolled oats, and whole oat flour is based on several considerations.

First, the proposed subject of this rulemaking was oatmeal and oat bran and their effect on the risk of CHD. FDA has examined in detail only the evidence for these oat products and whole oat flour. Other food sources of β-glucan soluble fiber (oat and non-oat sources) have not been carefully reviewed by FDA, nor has the totality of the evidence on these other sources of the fiber been submitted to the agency for review. Thus, the basis for including a wider range of food sources of β-glucan beyond whole oats in the regulation authorizing health claims is not presented by the administrative record, and consideration of these other sources is beyond the scope of this rulemaking.

Nonetheless, the agency recognizes that it is likely that consumption of other sources of β-glucan soluble fiber in addition to those that are the subject of this rulemaking will affect blood cholesterol levels. For this reason, and for reasons described elsewhere in this document in response to related comments about other soluble fibers, FDA is adopting a final rule that is structured so that it can be amended to establish a framework that will accommodate claims for other sources and types of soluble fibers and the risk of CHD.

Second, there currently are no generally accepted or validated criteria for predicting which sources or processed forms of β-glucan soluble fiber, beyond oat bran, rolled oats, and whole oat flour, are capable of reducing blood total- and LDL-cholesterol levels. FDA, therefore, lacks criteria for differentiating among those sources that provide such effects and those that do not. This lack of evidence is of concern to the agency because, as discussed previously, certain types of processing may decrease the ability of the fiber to have the desired effect for reasons that are unpredictable and that vary from source to source. At the same time, it is known that certain physical characteristics related to the fiber's ability to maintain the viscosity of the intestinal contents must be present. However, the extent to which this capacity can be influenced by different food sources or by processing is unclear. Validated and accepted in vitro or animal methods for identifying this characteristic are not part of the administrative record for this rulemaking.

Human clinical trials can be used to resolve these issues. However, in the absence of clinical or other appropriate types of data in the administrative record, assumptions about the bioequivalence of all sources of β-glucan soluble fiber cannot be made at this time.

In authorizing the claim for whole oat flour as a result of comments to the proposal, FDA is relying on in vivo (animal) studies as evidence of the bioequivalence of whole oat flour relative to rolled oats. The agency feels comfortable in doing so because there is a human study to demonstrate the effectiveness of whole oat flour in reducing the risk of CHD, as well as information on the similarity in composition of whole oat flour to rolled oats. It is unclear to what extent such in vivo data from animal studies can be relied upon in the absence of corroborating human data. FDA will make decisions on this issue based on the totality of the available evidence. Thus, future petitions for other sources of β-glucan soluble fiber to be added as subjects of a health claim, which the agency anticipates receiving, should specifically address the appropriateness, the protocol used to develop, and the interpretation of, in vivo data from animal studies in demonstrating bioequivalence among soluble fibers.

5. Claims for Other Soluble Fibers

(Comment 5)

Some comments stated that by proposing the oat bran and rolled oats health claim, the agency has acknowledged that soluble fibers themselves are an important functional component that affect serum lipid levels and thereby reduce the risk of CHD. These comments suggested that other soluble fibers have been shown to have the same effects as that of β-glucan soluble fiber from whole oats on the risk of CHD. One comment discussed the evidence for psyllium and its capacity to affect serum lipid levels and thereby reduce the risk of CHD. These comments stated that, because other soluble fibers and purified gums can demonstrate cholesterol-lowering effects, the agency should authorize a broad claim for soluble fibers and reduced risk of CHD.

Several comments suggested that consumers would benefit from a soluble fiber and CHD claim in that it would be consistent with dietary recommendations to consume diets high in fiber and low in fat. However, some of the comments noted that differences in the source and method of processing whole oat β-glucan result in varied and unpredictable effects on the physical characteristics of the fiber, and that these differences may apply to other types of soluble fibers as well. The comments stated that, therefore, a claim for soluble fiber and heart disease should only be extended to those soluble fibers that have been demonstrated to reduce the risk factors related to CHD.

Another comment noted that, from a regulatory standpoint, a single claim on the relationship between certain soluble fibers and heart disease would be more manageable for the agency than would be attempting to authorize individual health claims for all the different soluble fiber sources that might be eligible to bear a CHD claim. The comment explained that, as other soluble fibers are shown to qualify to bear a soluble fiber/CHD claim, the regulation could be amended to include the additional substance.

FDA agrees with the comments that stated that there is evidence to suggest that consumption of a number of soluble fibers, in addition to β-glucan, affect blood total- and LDL-cholesterol levels and thus affect the risk of CHD. The agency reviewed evidence to this effect in evaluating the relationship between total dietary fiber and CHD in the final regulation published in the January 6, 1993 Federal Register (58 FR 2552). The agency noted, however, that there was some evidence that soluble fiber from different foods has different effects, and that the analytical measure of soluble fiber may not be adequately predictive of its physiological effects (58 FR 2552 at 2562). Therefore, FDA encouraged manufacturers to petition for a claim for their soluble fiber product if there was evidence to demonstrate that the particular soluble fiber-containing product is effective in lowering serum lipid levels (58 FR 2552 at 2562).

Further, FDA agrees that its decision to authorize claims on the association between oat bran, rolled oats, and whole oat flour and CHD represents acceptance that one type of soluble fiber, i.e., β-glucan soluble fiber from whole oats, has been adequately shown scientifically to have this effect. However, while the agency agrees with the comments that there is considerable likelihood that a similar showing will be made for certain other soluble fibers, based on the record now before the agency, it cannot take the steps suggested by the comments and broaden this claim. As the agency explained in the 1993 dietary fiber final rule, the effect of individual soluble fibers needs to be documented on a case-by-case basis. A concern about the ability of particular soluble fibers to affect CHD risk was expressed in several comments to the oat bran and oatmeal proposal. As mentioned previously, those comments stated that only soluble fibers that have been demonstrated to reduce serum lipids should qualify to bear a claim. The agency notes that a petition for soluble fiber from psyllium and risk of CHD is currently under consideration by the agency.

As mentioned previously, in the 1993 dietary fiber final rule, the agency encouraged manufacturers to petition for a health claim if the manufacturer could present scientific evidence to support the relationship between its soluble fiber product and risk of CHD (58 FR 2552 at 2567). By encouraging manufacturers to petition for a more specific health claim, the agency implied that it would consider a new claim for those soluble fiber products that had been shown to affect the risk of CHD. However, the agency did not commit to any particular course for how it would authorize health claims about a specific fiber source should it find them to be justified.

One way of doing so would be a regulation about each particular ingredient source of soluble fiber. This model is essentially the one that the agency utilized in the proposal. An alternative approach would be to adopt an umbrella regulation authorizing a claim for diets containing soluble fiber from certain foods and CHD but authorize the use of the claim for specific food sources of soluble fiber only when consumption of those foods has been demonstrated to help reduce the risk of heart disease. FDA agrees with comments that this alternative mechanism would provide flexibility, and that this flexibility may ultimately provide efficiency. However, based on the fact that it was not the agency's charge, in responding to this petition to review the totality of evidence from other, non-oat sources of β-glucan soluble fiber or other types of soluble fiber, the agency finds that it is premature to authorize a broader claim for ''soluble fiber from certain foods.''

The agency may, at some point, decide to amend § 101.81 to cover types of soluble fiber other than β-glucan from whole oats. If a manufacturer can document, through appropriate studies, that a soluble fiber product has an effect on blood total- and LDL-cholesterol levels, and thereby the product can be useful in reducing the risk of CHD, the manufacturer may petition to amend § 101.81 to include that type of soluble fiber-containing product among the substances about which claims are authorized. This case-by-case approach is necessary because, as discussed in the oat bran and oatmeal proposal, soluble fiber is a family of very heterogeneous substances that vary greatly in their effect on the risk of CHD (61 FR 296).

In summary, in its proposal, the agency was responding to a specific petition to authorize claims about the relationship between oat bran and rolled oats and the reduced risk of CHD. In response to comments, however, FDA is now authorizing claims that describe the relationship between consumption of only a specific type of soluble fiber, β-glucan from whole oats, and reduced risk of CHD.

As suggested by comments, on-going research efforts are likely to build support for the relationship between CHD and consumption of other soluble fibers not addressed in this rulemaking. While the narrow focus of this rulemaking, and limitations on agency time and resources, preclude review of all such soluble fibers as part of this rulemaking, FDA will consider amending § 101.81 to establish a framework that will allow the agency to readily add the list of soluble fibers that can be the subject of a claim, as the evidence warrants.

Therefore, in this final rule, FDA has revised the title of § 101.81 to read: ''Health claims; soluble fiber from whole oats and coronary heart disease.'' For this health claim, the statement ''soluble fiber from whole oats'' is intended to mean β-glucan soluble fiber from whole oats. Based on information provided in the petition and in some comments, the soluble fiber content of whole oats is predominantly (approximately 87 percent or more) β-glucan (Ref. 1, p. 22). Thus, the total soluble fiber content of whole oats significantly reflects the β-glucan present. Moreover, the term ''soluble fiber'' is more familiar to consumers than '' β-glucan'' because soluble fiber can be used on the nutrition label under § 101.9(c)(6)(i)(A). β-glucan is a technical term that presumably is not widely understood.

Further, the agency has modified the regulation to reflect its decision to describe specifically the food substance that is the focus of the claim and to list the sources of β-glucan soluble fiber that have been shown to affect the risk of CHD. Thus, the agency has replaced the discussion in proposed section (c)(2)(ii) on the presentation of the claim with a new discussion, ''Nature of the substance: Eligible sources of soluble fiber.'' This provision describes those sources of β-glucan soluble fiber that qualify for this claim. This section will be discussed in detail in section II.B., of this document.

Given the change in focus from oat bran and rolled oats to soluble fiber from whole oats, the agency is revising several sections of the proposed regulation. First, the words ''diets high in oatmeal and oat bran'' has been deleted from § 101.81(c)(2)(i) and reference to soluble fiber from whole oats is being added, so that § 101.81(c)(2)(i) will read, relevant part, ''diets low in saturated fat and cholesterol that include soluble fiber from whole oats.'' The agency notes that the statement ''diets low in saturated fat and cholesterol and high in soluble fiber from * * *'' cannot be used at this time because the term ''high'' and its synonyms have been defined under § 101.54(b) as meaning that the food contains 20 percent or more of the Daily Reference Value (DRV) per reference amount customarily consumed (RACC) for a particular substance. There is no DRV for soluble fiber. While the agency recognizes that it would be helpful to encourage consumption of a specific amount of soluble fiber from whole oats, it cannot do so in the absence of a DRV for this nutrient. Therefore, the agency is wording § 101.81(c)(2)(i) to state that the diet ''include'' soluble fiber from whole oats, until such time that a DRV for soluble fiber is established. The agency intends to propose to establish a DRV for soluble fiber, and, once that rulemaking is completed, assuming it results in a DRV, it plans to revisit the requirements in § 101.81 and propose appropriate changes in the requirements for the wording of the claim. Other sections of the regulation that are affected by these changes include § 101.81(a), (b), and (c)(2)(i)(D). Additionally, FDA has deleted the phrase ''oat bran and oatmeal'' in paragraphs (c)(2)(i)(A), (c)(2)(i)(E), (d)(2), (d)(3), and (e) and replaced it with the statement ''diets low in

saturated fat and cholesterol that include soluble fiber from whole oats.''

Other changes to the proposed regulation, in order of appearance, include the following: the second sentence of proposed § 101.81(a)(2) states ''* * * These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as oatmeal and oat bran.'' The agency is revising the last part of that sentence to read ''* * * but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as whole oat products.''

Proposed § 101.81(a)(3) described oat bran and rolled oats as good sources of soluble fiber and stated that scientific evidence demonstrates that these products are associated with reduced blood total- and LDL-cholesterol levels. In light of the changes in this final rule intended to focus on the relationship between soluble fiber from whole oats and CHD, FDA has deleted the first sentence in proposed § 101.81(a)(3) and revised the second sentence to state, ''Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from whole oats to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.'' Again, the agency notes that it realizes that information about the amount of soluble fiber from whole oats to consume would be helpful information for consumers, but until a DRV is established, such information cannot be provided. The agency has concluded that the statements in paragraph (a)(3) accurately represent the relationship between diets low in saturated fat and cholesterol and CHD and between soluble fiber from whole oats and CHD.

Proposed § 101.81(c)(2)(i)(C) described what the claim could state in terms of a diet high in oat bran and oatmeal (paragraph (c)(2)(i)(C)(*1*)), and that the effect of a dietary intake of oat bran and oatmeal on risk of CHD was particularly evident when consumed as part of a diet low in saturated fat and cholesterol (paragraph (c)(2)(i)(C)(*2*)). In light of the change to a claim for soluble fiber from whole oats and the risk of CHD, FDA is deleting paragraph (c)(2)(i)(C) and adding two new paragraphs, (c)(2)(i)(C) and (D). These new paragraphs list the terms for use in specifying the soluble fiber and fat components of the claim (paragraphs (c)(2)(i)(C) and (D), respectively) and are discussed further in this section of this document. With the addition of paragraphs (c)(2)(i)(C) and (D), FDA has redesignated proposed paragraphs (c)(2)(i)(D) and (E) as paragraphs (c)(2)(i)(E) and (F), respectively.

Section 101.81(d) contains optional information that may be included in the claim. In paragraph (d)(4) of the proposal, the agency proposed to permit manufacturers the option of describing oat bran and oatmeal as good sources of soluble fiber. For the reason given previously for the revision in paragraph (a)(3), the agency is deleting proposed paragraph (d)(4). FDA is replacing it with new paragraph (d)(4), which states ''The claim may specify the name of the eligible soluble fiber.'' Thus, the manufacturer may refer to ''beta-glucan soluble fiber'' in the health claim. The use of a specific soluble fiber name is appropriate as optional information but is likely too technical to be of interest to many consumers, and thus to require its inclusion in the claim would be contrary to the agency's desire to provide for claims that are simple, concise, and easy for consumers to understand. The rationale for this change is discussed in more detail under section II.D.4. of this document.

6. Amounts of β-glucan Soluble Fiber Useful in Reducing the Risks of CHD

(Comment 6)

One comment reexamined the data from the Davidson et al., study (Ref. 15) concerning the level of β-glucan consumption per day that is needed to affect blood total cholesterol levels and thereby reduce the risk of CHD. The results of the Davidson et al. study suggested a dose-response relationship between the level of β-glucan intake and the amount of change in blood total cholesterol. The petitioner presented the data from this study in a linear regression model to show the change in blood total cholesterol as a function of soluble fiber intake (Ref. 1, p. 26). The linear regression model showed that an estimated intake of 3 g per day soluble fiber (i.e., β-glucan soluble fiber) is associated with a reduction in blood total cholesterol of about 5 percent. The petitioner submitted the results of its analysis as support for the conclusion that 3 g per day of β-glucan soluble fiber is useful in affecting risks for CHD.

The comment stated that a nonlinear model fits the data better than the simple linear regression model. The comment stated that, based on the nonlinear model, 2.5 g/d β-glucan soluble fiber is necessary to lower blood total cholesterol 5 percent.

The agency does not agree that there is sufficient evidence to conclude that 2.5 g per day is more appropriate than 3 g per day, or that the nonlinear model is a better statistical approach than is the linear model. The data available from the Davidson et al. study are insufficient to determine superiority of the linear model compared to the curvilinear model. The results of the studies that showed an effect of soluble fiber from oat bran, rolled oats, and whole oat flour, and the results of the meta-analysis demonstrate that intakes of 3 g or more β-glucan are more likely to be effective. Thus, to use 2.5 g would be speculative, at best, and not supported by actual data. In contrast, the use of 3 g per day is. Therefore, the agency has concluded that, without further data, there is no justification for concluding that 2.5 g per day is a more appropriate estimate of the amount of β-glucan useful in reducing the risk of CHD than is 3 g per day.

7. Issues Related to a Food-specific Health Claim

(Comment 7)

Some comments stated that the proposed claim for oat bran and oatmeal should not be authorized because it will portray specific foods, i.e., oat products, as ''magic bullets.'' The comments suggested that the claim would mislead consumers in that it creates the impression that consumption of certain foods (oat bran and oatmeal) alone will protect against CHD, and in that it would not convey the concept that it is diets, not foods, that are important in risk reduction. The comments suggested that, as a result, consumers will be discouraged from making other important, and perhaps more effective, life-style changes to help reduce their risk of CHD. Some comments suggested that including reference to the diet in the claim will help prevent oat bran and rolled oats from appearing as ''magic bullets.'' However, there were many comments that stated that consumers are aware that no one food is a ''magic bullet'' in reducing the risk of disease.

Other comments stated that a claim for an individual food, such as that proposed for oat bran and oatmeal, is appropriate and would also be helpful to consumers because it would identify products that contribute to healthy dietary practices. A few comments expressed concern that consumers would inappropriately extrapolate from the effects of consuming oat bran and rolled oats set out in the health claim and assume a similar effect for all foods containing oat products, whether the foods are consistent with a total dietary pattern for risk reduction of heart disease or not. The comments likened this situation to the one that developed before the passage of the 1990

amendments, when some high-fiber food products bore a message from the National Cancer Institute suggesting that there was a relationship between fiber and risk of cancer. There was a proliferation of ingredient claims on products with trivial amounts of fiber.

A few comments stated that the proposed claim for oat bran and oatmeal should be folded into the authorized claim for fruits, vegetables, and grain products and heart disease (i.e., § 101.77). The comments stated that § 101.77 could be modified to permit the terms ''oat bran'' and ''oatmeal'' in the health claim. The comments explained that § 101.77 already establishes the specific requirements for foods that contain soluble fiber. The comments added that this would help prevent individual foods, such as rolled oats, from appearing to be ''magic bullets.''

The agency disagrees with the comments that stated that it should incorporate this health claim into the authorization for claims on the relationship between fruits, vegetables, and grain products and CHD (§ 101.77). Under § 101.77, soluble fiber is a marker for identifying useful foods, but no specific effect is attributed to the fiber. The claim that FDA is authorizing in this proceeding is based on the demonstrated effect of a certain type of soluble fiber (β-glucan soluble fiber) from a specific food source (whole oats). Therefore, the eligibility criteria and the scientific criteria set forth in § 101.81 are different from those set out in § 101.77. The agency concludes, consequently, that the two claims should not be combined.

The agency notes that, in this final rule, the relationship of whole oats to reduced risk of heart disease is being described in terms of the total diet. As discussed in more detail in response to comment 13 in section II.D.1. of this document, diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk (Ref. 5). While soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Refs. 4 and 5). Describing the relationship of a total diet low in saturated fat and cholesterol that includes whole oats to the risk of CHD will prevent the oat-containing foods eligible to bear the claim from appearing to be ''magic bullets.''

B. Specifications for the Nature of the Food Substance Eligible to Bear the Claim

In the proposal, the food substances that were the subject of the claim were oat bran and rolled oats and the products that contain them. The agency stated that the β-glucan soluble fiber content of these products is an appropriate marker for identifying the cholesterol-reducing potential of these products (61 FR 296 at 308) and established levels for β-glucan in foods that would qualify for the claim.

Based on its review of the comments, however, the agency has concluded that β-glucan is the primary component of whole oats that is responsible for the effect that consuming these foods has on the risk of CHD. Therefore, the agency has concluded that the substance-disease relationship that is appropriately the subject of a claim is that between β-glucan soluble fiber from whole oats and CHD. To reflect this judgment, the agency has modified the authorizing regulation to specify the sources of β-glucan that are appropriately the subject of a claim.

Section § 101.81(c)(2)(ii)(A) lists β-glucan soluble fiber and the whole oat sources of this substance. It also sets out the official Association of Official Analytical Chemists International (AOAC) method to be used to determine the β-glucan content of the food. Paragraph (c)(2)(ii)(A) states that the eligible source of β-glucan soluble fiber is from the whole oat sources specified in paragraphs (c)(2)(ii)(A)(1) through (3). Paragraph (c)(2)(ii)(A)(1) lists oat bran, paragraph (c)(2)(ii)(A)(2) lists rolled oats, and paragraph (c)(2)(ii)(A)(3) lists whole oat flour. The totality of the evidence establishes that consumption of these three sources of β-glucan soluble fiber as part of a diet that is low in saturated fat and cholesterol can reduce blood lipids and thus help reduce the risk of CHD.

1. Definition of Whole Oat Products

In the proposal, the agency set out a specific qualifying level of oat bran or rolled oats and β-glucan soluble fiber, i.e., 13 g of oat bran or 20 g or rolled oats that provide 1 g of β-glucan soluble fiber per RACC.

(Comment 8)

Some comments noted that the variability in β-glucan soluble fiber content of oat products may affect whether these products qualify to bear this claim. Several comments stated that to ensure that products contain the appropriate amount of β-glucan soluble fiber, FDA needs to define oat bran because β-glucan soluble fiber levels vary among cultivars. Most of these comments encouraged adoption of the existing American Association of Cereal Chemists' (AACC) definition for oat bran.

The comments pointed out that the AACC definition requires that for a product to be oat bran, it must have a total β-glucan content of at least 5.5 percent (dry weight basis (dwb)). As a result of processing oat groats to oat bran, β-glucan soluble fiber is more concentrated. Therefore, oat bran contains higher levels of this soluble fiber than rolled oats or oat flour.

Some comments explained that the level of β-glucan soluble fiber in rolled oats and oat flour more closely approximates the level of β-glucan in oat groats. This level may range from 3 to 5 percent, depending on the specific oat cultivar and on seasonal variation between crop years. One comment stated that the AACC had not adopted a definition of rolled oats because the product, oatmeal, has been on the market for over 100 years and is known to be a product made by rolling whole grain oats that have had 100 percent of the hull removed.

The agency is persuaded by the comments that, based on the variability in β-glucan soluble fiber content of oat cultivars, a definition of the eligible whole oat products that includes the β-glucan soluble fiber content will help ensure that a source of whole oats that bears a claim is consistent with those shown in clinical studies to lower blood lipids. In its review of studies in the proposal (61 FR 296 at 314), FDA observed that the results of most of the studies that failed to show a significant effect of oat bran on serum lipids used oat bran that provided less than 5.5 percent (dwb) of β-glucan soluble fiber (Refs. 13, 26, 27, 28, 36, and 41). For example, New Zealand oat bran was described to contain β-glucan soluble fiber within a range of 3.7 to 4.4 percent (Ref. 26). In the studies that showed an effect of oat bran on serum lipid levels, the oat bran provided more than 5.5 percent (the exact amount cannot be determined in all studies) β-glucan (Refs. 8, 11, 12, 15, 17, 20, 23 through 25, 29, 35, 39, and 42).

Thus, the agency agrees that adoption of the AACC definition of oat bran (Ref. 52), which requires that a product have a total β-glucan content of at least 5.5 percent (dwb) to qualify as oat bran, is appropriate. This definition was developed to respond to the confusion among oat processors, as well as others in industry and among home consumers, about a uniform identity of the product that was receiving widespread publicity with regards to its health benefits. Oat bran cannot be cleanly separated from the endosperm of oat groats (Ref. 52). Consequently, oat bran contains some flour and is rich in β-glucan soluble fiber, and debranned oat flour contains some bran but contains significantly less β-glucan.

Consequently, it became essential that the industry define what could be called ''oat bran.'' It was the ''rich'' oat bran that has been used in clinical trials and that has been shown to lower serum lipids.

Therefore, FDA is adding the AACC definition of oat bran (Ref. 52) to § 101.81(c)(2)(ii)(A)(*1*). It states that oat bran is produced by grinding clean oat groats or rolled oats and separating the resulting oat flour by suitable means into fractions, such that the oat bran fraction is not more than 50 percent of the original starting material and provides at least 5.5 percent (dwb) β-glucan soluble fiber and a total dietary fiber content of 16 percent (dwb), and such that at least one-third of the total dietary fiber is soluble fiber.

As discussed previously, there have been no formally accepted definitions of the terms rolled oats and whole oat flour. However, based on data provided in comments from fiber experts (Refs. 55 through 58), data from the U.S. Department of Agriculture National Nutrient Data Base (Ref. 75), and data provided in the petition (Ref. 1, p. 22 and Appendix II), the agency is providing general definitions for these terms that reflect the type of whole oat products used in clinical trials. As part of each definition, the agency is specifying the β-glucan soluble fiber and total dietary fiber contents of rolled oats and whole oat flour that are required for a product to qualify for this claim.

In light of the evidence presented in the proposal that some oat groats naturally contain low levels of β-glucan soluble fiber and, as a result, may not have hypocholesterolemic properties, the agency finds it important to set a minimum β-glucan content to ensure the effectiveness of these oat products. In new § 101.81(c)(2)(ii)(A)(2), the agency defines rolled oats, also known as oatmeal, as a product produced from 100 percent dehulled clean oat groats by steaming, cutting, rolling, and flaking, and that provides at least 4 percent (dwb) of β-glucan soluble fiber with a total dietary fiber content of at least 10 percent (Refs. 1, 55 through 58, and 75).

In new § 101.81(c)(2)(ii)(*3*), the agency is defining whole oat flour as a product that is produced from 100 percent dehulled, clean oat groats by steaming and grinding, such that there is no significant loss of oat bran in the final product, and that provides at least 4 percent (dwb) of β-glucan soluble fiber and 10 percent (dwb) total dietary fiber.

FDA agrees with the comments that definitions to identify of the whole oat substances that have been shown in clinical studies to help reduce serum lipids are important in light of the fact that there are other whole oat substances, e.g., oat husks and fine oat flour, that have not been shown to provide this effect.

2. Testing of Oat Products to Ensure Retention of Characteristics

(Comment 9)

Some comments suggested that the effect on blood lipids from consumption of β-glucan soluble fiber from whole oat products is related to the molecular weight and the solution viscosity of the β-glucan. The comments stated that processing methods can alter the size and molecular weight of the β-glucan molecule and may cause it to lose its effect on blood cholesterol levels. The comments suggested that to ensure that the processed oat-containing food product will provide the effects associated with the β-glucan soluble fiber in the starting material, i.e., oat bran, rolled oats, and whole oat flour, the finished oat product should be tested to determine whether its β-glucan soluble fiber has retained the physical properties, such as molecular weight, that it had in the starting material.

The agency is not persuaded that there is a need for testing for the molecular weight and solution viscosity of the β-glucan in products that contain oat bran, rolled oat, or whole oat flour. Although processing can produce extensive depolymerization of the β-glucan, oat bran and rolled oats were fed to subjects in a variety of processed foods as part of the scientific studies that evaluated the effects of these ingredients on blood cholesterol levels (see Table 1, 61 FR 296). Regardless of whether the whole oats were processed into cereals, muffins, breads, or other foods, or whether they were consumed hot or cold, the majority of oat products significantly lowered blood lipids when consumed as part of an appropriate diet.

The agency noted that, in the few studies that did not demonstrate cholesterol-lowering effects from the consumption of oat bran or rolled oats, the authors attributed the lack of an effect to either the source of the oat cultivar, specifically a New Zealand cultivar that had a low content of soluble fiber (one case), or to an effect of processing to purify an extract of the β-glucan soluble fiber (one case) (61 FR 296 at 305). Thus, the lack of an effect in one of these cases was associated with an unusually low level of β-glucan in the oats. This problem is protected against by the β-glucan content requirement in § 101.81(c)(2)(ii)(A)(*1*), (*2*), and (*3*). In the other case, the lack of effect was associated with the use of a highly processed oat gum extract. This result does not represent a problem under § 101.81 because FDA is only authorizing claims on whole oat products.

Therefore, the agency finds that there is no need for testing the physical properties of the β-glucan soluble fiber in processed products containing whole grain oats.

C. Nature of the Food Eligible to Bear the Claim

Proposed section § 101.81(c)(2)(iii)(A) stated that for a food to be eligible to bear the claim, it must contain 13 g of oat bran or 20 g oatmeal, and that the oat bran or oatmeal must contain, without fortification, at least 1.0 g of β-glucan soluble fiber per RACC. The agency noted that consumption of 3 or more g of oat β-glucan soluble fiber per day was associated with significant reductions in blood total- and LDL-cholesterol levels. It tentatively concluded that it is reasonable to assume that a person could consume a total of at least 40 g oat bran, 60 g oatmeal, or a combination of the two, to provide 3 g β-glucan soluble fiber in the course of three eating occasions a day.

1. Qualifying Criteria for Foods

(Comment 10)

Some comments agreed with the proposal and emphasized that foods should contain a significant amount of oat bran or oatmeal in order to qualify for this claim. A few comments stated that the claim should be allowed only on foods for which a customary serving enables consumers to achieve the desired effect on the risk of disease (i.e., 3 g β-glucan per serving of food). However, a number of comments suggested that it is unrealistic to assume consumers will eat enough oat bran or oatmeal daily for the rest of their lives to lower their risk of cardiovascular disease.

Some comments suggested that the proposed qualifying levels of oatmeal, oat bran, and β-glucan were overly restrictive and prevented a number of important oat-containing foods from bearing the claim. These comments requested that the qualifying levels of oat bran, oatmeal, or β-glucan be lowered so that more products could qualify to bear the claim. Several suggested that Americans are more likely to increase their consumption of soluble fiber if they are presented with a wide variety of whole-grain oat-containing foods that may be eaten over the course of the day. The comments suggested various qualifying levels for a food to bear the claim, ranging from 6 to 15 g of oatmeal or from 4 to 11 g of oat bran.

Some comments recommended setting only a level of β-glucan soluble fiber that must be contained in the food to qualify for this claim, rather than a level of oat bran or oatmeal as well as a level of β-glucan soluble fiber. These comments argued that the level of the β-glucan soluble fiber in the product is a marker of the product's usefulness in reducing the risk of CHD, and that if a product contains the appropriate amount of β-glucan soluble fiber, it should qualify to bear the claim no matter how much oat bran or oatmeal it contains. The comments suggested a range of qualifying β-glucan levels from 0.5 g β-glucan to 3 g β-glucan per serving. A number of different rationales where presented in the comments to justify these varying qualifying levels of β-glucan per serving.

One comment recommended a level of 0.6 g β-glucan soluble fiber per serving as the qualifying level instead of the proposed 1 g β-glucan soluble fiber because 0.6 g is more readily achievable and thus would encourage the development of new soluble fiber-containing products. According to the comment, this level is at least twice the level of existing oatmeal-based bakery products such as cookies and crackers. Some comments suggested that a qualifying level of 0.6 g β-glucan per serving would make the qualifying criteria for this claim consistent with the authorized health claim for fruits, vegetables, and grain products and CHD.

Many comments stated that the qualifying level of β-glucan soluble fiber per serving should not be based on three servings of oat products per day but rather on FDA's usual basis of four eating occasions (three meals and a snack) a day. The comments stated that the agency did not adequately justify its reliance on three eating occasions per day, rather than on four. A few comments questioned whether consumers would consume oatmeal and other oat products three or four times a day. One comment asked for evidence that consumers will eat oat products three times a day every day.

As discussed earlier in this final rule, FDA has been persuaded that the subject of the claim is appropriately β-glucan soluble fiber from whole oats. Thus, to be eligible to bear the claim, a food must contain the requisite amount of β-glucan soluble fiber from whole oat sources, rather than a specified amount of oat bran or rolled oats that provide a specific amount of β-glucan soluble fiber.

Given the changed focus of the final regulation, the issues raised in the comments that addressed the levels of oat bran and oatmeal are moot. FDA has deleted the requirement in proposed § 101.81(c)(2)(iii)(A) that the food must contain no less than 20 g oatmeal or 13 g of oat bran that provides, without fortification, at least 1.0 g of β-glucan soluble fiber and replaced it with a requirement that focuses on the β-glucan level.

The agency has reviewed the discussions from the comments concerning the levels of β-glucan in a food. The agency disagrees with the comments that suggested that the qualifying level of β-glucan soluble fiber be low as 0.5 or 0.6 g per RACC to permit many more oat-containing products, e.g., crackers and cookies, to qualify to bear the claim. As discussed previously, an intake of 3 or more g of β-glucan soluble fiber from whole oat products is necessary to make a significant impact on serum lipid levels. Using the minimum levels of β-glucan soluble fiber for oat bran (5.5 percent) and rolled oats and whole oat flour (4 percent) that the agency now specifies in new § 101.81(c)(ii)(A)(*1*) through (*3*) (see comment 8 in section II.B.1. of this document), products that contain a minimum of 0.5 g β-glucan soluble fiber would contain about 9 g of oat bran or 12.5 g rolled oats or whole oat flour, or a level between 9 and 12 g if a blend of whole oats is used. To obtain a daily intake of 3 g β-glucan from whole oats, it would require the consumption of six or more servings. Similarly, if the oat products qualified with 0.6 g β-glucan soluble fiber, consumers would have to consume five or more servings of oat-containing products daily. The agency finds that these levels of consumption, five or six or more servings per day, highly unlikely. As mentioned in some of the comments, consumers should be able to consume a beneficial amount of the nutrient based on typical American eating patterns, i.e., four eating occasions per day.

In the proposal, the agency considered the number of eating occasions at which consumers might consume oat bran and rolled oats. The agency tentatively agreed with the petitioner's arguments that it was unlikely that consumers would eat oat bran or rolled oats 4 times a day, in order to consume a daily intake of about 40 g oat bran or 60 g rolled oats, but that consumers should be able to consume this amount over three eating occasions a day (61 FR 296 at 309). Based on the petitioner's submission, the agency considered that β-glucan soluble fiber would come from only two sources, oat bran and rolled oats, which would limit the number and types of products available.

In this final rule, however, the agency has expanded the sources of whole oats to include whole oat flour. Thus, many more whole oat-containing products will be available to qualify to bear this claim. This development increases the likelihood that whole oat products will be consumed at four, instead of three, eating occasions. Moreover, based on consumption data provided in a comment submitted by the petitioner, whole oat products (including all oat cereals, baked products, and snack foods) are consumed at four eating occasions a day, with breakfast being the most popular time to consume oat products (see Sup-1 to Docket No. 95P–0197). Therefore, based on the expanded focus of this final regulation (to include whole oat flour) and on the additional evidence from comments, the agency is persuaded that the determination of the qualifying level of β-glucan for a food to bear a claim should be based on four eating occasions a day (three meals plus a snack) rather than on the proposed three.

The agency proposed a qualifying level of 1 g β-glucan soluble fiber per serving based on the consumption of 3 g per day (see comment 6 in section II.A.6. of this document) distributed over three eating occasions per day. Based on the same approach as that used in the proposal, but adjusting it for the increase in the number of servings consumed per day, the intake of 3 g of β-glucan is distributed over four servings per day as part of four eating occasions (3 g divided by 4) and results in a criterion of 0.75 g per serving (i.e., RACC).

In providing for this qualifying level, the agency wishes to point out that the approach used to derive the qualifying level is somewhat different from that used in authorizing other health claims. Specifically, the guiding principle for other health claims is to use the established definitions for ''good source'' or for ''high'' which characterize the amount of a nutrient based on a percentage of the Daily Value (DV) for the nutrient in a serving of food. In this way, products that qualify to bear the claim contain a meaningful level of the substance per serving compared to the recommended intake of the substance from all food sources. In the case of this final rule, there is no DV for β-glucan soluble fiber or for soluble fiber.

FDA has revised § 101.81(c)(2)(iii)(A) to state ''[T]he food shall contain at least 0.75 gram (g) per reference amount customarily consumed of whole oat soluble fiber from the eligible sources listed in paragraph (c)(2)(ii) of this section.'' The statement in proposed

§ 101.81(c)(2)(iii)(A) regarding the method for determining β-glucan soluble fiber has been deleted because it now appears under section new section § 101.81(c)(2)(ii)(A) of this final rule, as discussed previously.

No comments were received on proposed § 101.81(c)(2)(iii)(B) which requires that the food meet the nutrient content requirements of § 101.62 for a ''low saturated fat,'' ''low cholesterol,'' and ''low fat'' food. Therefore this paragraph is adopted without change, although it has been renumbered as § 101.81(c)(2)(iii)(C).

2. Mixtures of Oat Products

(Comment 11)

Some comments stated that the agency should allow a mixture of oat products that together within a single food product provide the total qualifying level of β-glucan soluble fiber to bear this claim. The comments stated that as long as the requisite amount of β-glucan soluble fiber is present, it should not matter if it is derived from a mixture.

The agency agrees with this suggestion and notes that it never intended not to allow a mixture of whole oats to qualify for the proposed claim. To clarify this fact, the agency has revised § 101.81(c)(2)(iii) (Nature of the food eligible to bear the claim) to state that the product must provide the required level of soluble fiber per RACC from the eligible sources of whole oat soluble fiber listed in § 101.81(c)(2)(ii). Therefore, a mixture of oat bran, rolled oats, and whole oat flour may be used in a product that bears a claim so long as the product contains the requisite amount of β-glucan soluble fiber per RACC.

3. Nutrient Declaration for Soluble Fiber and β-glucan Soluble Fiber

The agency proposed in § 101.81(d)(4) that if the claim uses the term ''soluble fiber,'' which was to be optional, the total soluble fiber content must be declared in the nutrition label, consistent with § 101.9(c)(6)(i)(A).

(Comment 12)

One comment suggested that the final rule require that the soluble fiber and β-glucan contents of a food product bearing the health claim be declared in nutrition labeling. The comment stated that, because β-glucan is the marker nutrient in a qualifying product, it should be included in the nutrition label. The comment cited other health claim regulations specific to foods (rather than nutrients) (§§ 101.76 to 101.78) as precedents for requiring declaration of the amount of the marker nutrient in the nutrition label. In suggesting that β-glucan be declared as a subcomponent of soluble fiber, the comment also cited as precedent the regulation permitting β-carotene to be declared as a subcomponent of vitamin A (§ 101.9(c)(8)(vi)). In addition, the comment stated that the final regulation should also permit optional declaration of these nutrients elsewhere on the label, consistent with § 101.13(i)(3).

The agency has considered this comment in view of the previously discussed conclusions concerning the food substance that is the subject of this claim, specifically β-glucan soluble fiber from whole oats. The suggestion in the comment that soluble fiber be declared within the nutrition label is consistent with the change in focus of the claim from oat bran and oatmeal to β-glucan soluble fiber from whole oats. Since β-glucan is a soluble fiber, and the claim requires use of the term ''soluble fiber,'' FDA is requiring the declaration of the amount of soluble fiber per RACC or labeled serving (which would include the declaration of the amount of β-glucan) in the nutrition label in accordance with § 101.9(c)(6)(i)(A). In this document, FDA is adding § 101.81(c)(2)(iii)(B), which reflects this requirement. As a result of this action, FDA, as stated previously, is redesignating proposed § 101.81(c)(2)(iii)(B) as § 101.81(c)(2)(iii)(C).

FDA does not agree with the comment that the specific amount of β-glucan should also be declared in the nutrition label. Declarations for β-carotene, which the comment uses as an analogy, are made in terms of a percentage of the DV for vitamin A. In this case, there is no DV for soluble fiber or for β-glucan soluble fiber. More importantly, use of the term ''beta-glucan'' as a subcategory of soluble fiber would likely be confusing to the consumer as ''β-glucan'' is primarily a technical term with which consumers are not familiar. Therefore, FDA is not providing for the declaration of β-glucan on the nutrition label.

It should be noted that the agency is making provision for optional label statements in the claim relative to the amount of β-glucan considered useful in reducing the risk of CHD (i.e., 3 g per day) and to the contribution that one serving of the food makes toward reaching the specified amount. As explained in section II.D.4. of this document, provision of this information is optional because of the agency's concerns about requiring long messages and the possibility of consumer information overload. Moreover, given the potential for the broad range of soluble fibers that may be eligible to bear the claim in the future, it is questionable whether requiring that the consumers' attention be drawn to a specific type of soluble fiber would be helpful. The comment provided no information on how consumers would use and interpret such a declaration for β-glucan. In the absence of such data, it is difficult to conclude that declaration of β-glucan soluble fiber in the nutrition label would assist consumers to any greater degree than the declaration of soluble fiber.

Further, FDA notes that, as suggested in the comment, declaration of soluble fiber and β-glucan soluble fiber on the label other than in the Nutrition Facts panel, is permitted by § 101.13(i)(3). No additional authorization is needed for such declarations.

D. Provisions for Abbreviated and Full Claims

In addition to providing for a full claim on the relationship between oat bran and rolled oats as part of a diet low in saturated fat and cholesterol and risk of CHD, the agency proposed an optional abbreviated claim. FDA proposed in § 101.81(c)(2)(ii), ''Presentation of the claim,'' to provide that if a full statement of the claim appears on a label or in labeling, other presentations of the claim may appear on the label or in labeling that do not include the information required in proposed § 101.81(c)(2)(i)(C)(*2*) as long as there is a referral statement from the shortened to the full claim. The agency was concerned, however, about the possibility that consumers may not read the complete claim, and thus that they will not have all the facts necessary to fully understand the significance of the claim and to comprehend the claim in the context of the daily diet. FDA asked for data on whether the shortened claim will affect the extent to which consumers read the full claim (61 FR 296 at 307). The agency also requested comments on whether consumers will be misled if the multifactorial nature of CHD is not stated as part of the claim (61 FR 296 at 307). The agency proposed making optional the statement ''a disease caused by many factors.''

1. Appropriateness of Abbreviated Claim and Wording of Full Claim

(Comment 13)

Many comments expressed concern about the omission of reference to the diet in the proposed abbreviated claim. Some comments suggested that the proposed abbreviated claim, which stated that ''Diets high in [oat bran/oatmeal] may reduce the risk of heart disease,'' will mislead consumers to think that the oat products will

compensate for a diet that is high in saturated fat and cholesterol. The comments stated that other authorized health claims reinforce that overall diets, not individual foods, can reduce the risk of disease. Many comments stated that the abbreviated claim is misleading without the reference to a total diet that is low in saturated fat and cholesterol. A few of the comments stated that the effects of oat bran or rolled oats on reducing the risk of CHD, in the absence of a low saturated fat and cholesterol diet, is modest, so the abbreviated claim may mislead consumers to think that eating oat products daily, without consuming a low saturated fat and cholesterol diet, will significantly effect their risk of CHD.

Some of the comments discussed diet as one of the more important modifiable risk factors for CHD. Many stated that a reference to the total diet should be a mandatory part of the abbreviated claim. The comments suggested that including reference to the diet in the claim will help prevent oat bran and rolled oats from appearing to be ''magic bullets.'' However, there were comments that stated that consumers are aware that no one food is a ''magic bullet'' in reducing the risk of disease.

Some of the comments stated that the agency did not present any data to show that consumers will read the full claim, which includes the statement on the total diet, when it is located elsewhere on the food label relative to the abbreviated claim. They concluded that consumers would be misled by the limited information in the abbreviated claim. Several comments stated that by removing the qualifying portion of the health claim (i.e., information about total diet) from the most prominent location on the label, there was less likelihood this critical information would be read by consumers.

Some comments supported FDA's proposal to permit use of an abbreviated health claim because it provided flexibility and consumer-friendly language. Several comments in support of the shortened claim mentioned its advantages in communicating information to consumers because it was easily readable, compelling, and direct. The shortened claim was seen as playing the role of a reminder to consumers about the core diet-disease relationship that is the subject of the health claim. One comment cited findings from FDA health claims focus groups (Ref. 53), which reported that consumers perceived full health claims as ''too wordy, too vague, too academic, and much too long.'' One comment stated the use of the abbreviated claim as a referral (see § 101.14(d)(2)(iv)) to the full claim would serve both consumer information needs and the motivational goals of the 1990 amendments to encourage industry to use health claims on appropriate food products.

The agency proposed the abbreviated claim because the petitioner requested it, and because the agency tentatively concluded that the information could be more effectively communicated with an abbreviated claim in a prominent place with a referral to the full claim. The agency did not intend for the abbreviated message to suggest to consumers that adding oats to the diet was the only dietary modification necessary to help them reduce the risk of CHD.

The agency agrees with the comments that the dietary component of this health claim is important for a complete understanding of the relationship between the type of soluble fiber from whole oats and reduced risk of heart disease. FDA has been persuaded that there is the possibility that consumers may be misled if reference to the total diet were to be omitted in an abbreviated version of this claim. Diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk (Ref. 5). While soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Refs. 4 and 5). Selection of foods with soluble fiber from whole oats is seen as a useful adjunct to selection of diets low in saturated fat and cholesterol (Ref. 5). Therefore, the agency concludes that it would not be in the best interest of public health or consistent with the scientific evidence to imply that selecting diets with soluble fiber from whole oats is a substitute for consuming diets low in saturated fat and cholesterol, and has FDA revised § 101.81 to emphasize the importance of the diet.

Proposed § 110.81(b)(2) stated, ''* * * Scientific evidence demonstrates that diets high in oat bran and oatmeal and low in saturated fat and cholesterol are associated with lower blood total- and LDL-cholesterol levels.'' FDA has revised that sentence to state:

> * * * Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soluble fiber from whole oats, when added to a low saturated fat and cholesterol diet, also helps to lower these blood levels and thus the risk of CHD.

The revised statement emphasizes that consumption of a diet low in saturated fat and cholesterol is an important factor in reducing the risk of CHD and is consistent with FDA's conclusions in authorizing the health claim for dietary saturated fat and cholesterol and heart disease (58 FR 2739, January 6, 1993).

Relative to the concerns about the appropriateness of the abbreviated claim, the agency was mindful of those comments that focused on concerns about health claims being too wordy and too lengthy. This concern has been raised to the agency in various ways, including by a petition submitted by the National Food Processors Association (NFPA) (Docket No. 94P–0390). In response to the NFPA petition, the agency proposed several changes to the requirements for health claims in the Federal Register of December 21, 1995 (60 FR at 66206) (the 1995 proposal). At that time, FDA stated that it had no desire for its regulations to unnecessarily stand in the way of the use of health claims and the presentation of the important information contained therein. The agency stated that, while health claims are being used on the label and in labeling, they could be used more extensively. The agency, therefore, proposed to provide for shorter health claims by making optional some of the elements that are presently required. If FDA finalizes the 1995 proposal as it was proposed, many of the current full claims will be brief enough to permit their use on the principal display panel.

FDA is reviewing the comments received in response to the 1995 proposal on changing the requirements for health claims, but it has not completed its work on the final rule. Given that this proposal is pending, and given its relevance to many of the issues raised as a result of the proposal that is the subject of this rulemaking, FDA has decided to defer a decision on allowing for an abbreviated claim on β-glucan soluble fiber from whole oats and the risk of CHD. The agency intends to resolve this matter in the context of the rulemaking based on the NFPA petition. Thus, at this time, the agency is making provision only for a full claim. Thus, FDA has deleted proposed § 101.81(c)(2)(ii), ''Presentation of the claim,'' which provided for an abbreviated claim, in this final rule.

2. Research Study on the Abbreviated Claim

(Comment 14)

A comment from the petitioner included results from a consumer research study that compared an abbreviated oatmeal claim (''A diet high in oatmeal may help reduce the risk of heart disease'') with a full fiber-heart disease health claim (''Diets low in

saturated fat and cholesterol and high in grains, fruits and vegetables that contain fiber, particularly soluble fiber, may reduce the risk of heart disease, a condition associated with many factors.'') The data were from a national shopping mall intercept study of 826 consumers. Participants saw one of three mocked-up cereal packages that contained either the abbreviated claim, the long claim, or no claim (control condition).

The comment suggested that results showed that the presence of either health claim, compared to the control condition, increased the number of participants who recognized that a diet high in oatmeal may help reduce the risk of heart disease. There were no significant differences in terms of the impact of the claims on consumers' perceptions of the product or their beliefs about the diet-disease relationship.

The data submitted by the petitioner address issues related to the interpretation of a specific abbreviated claim and are intended to provide support for an abbreviated claim on the relationship that is the subject of this rulemaking. Because the FDA rulemaking that responds to the NFPA petition is pending, the agency is deferring a final decision on whether to make provisions for an abbreviated claim to describe this relationship. FDA finds that there is nothing in this evidence that is sufficiently compelling to persuade the agency that it is not appropriate to defer this decision. Therefore, the agency is forwarding the petitioner's comment and supporting data as a comment to the 1995 proposal (i.e., to Docket No. 94P–0390) so that FDA can consider these results as part of that rulemaking.

3. Use of ''Low Fat'' to Replace ''Low in Saturated Fat and Cholesterol''

(Comment 15)

Two comments suggested that the statement ''low in saturated fat and cholesterol'' might be shortened to ''low fat'' for the abbreviated claim only. These comments did not provide any data to show that consumers interpret the statement ''low fat'' to mean ''low in saturated fat and cholesterol.''

Another comment cautioned against referring to a ''low fat'' diet because the scientific evidence showed that a low fat diet was not associated with reduced blood total cholesterol levels and hence a reduced risk of CHD, while a diet low in saturated fat and cholesterol did affect cholesterol levels.

The agency finds that there is not sufficient evidence to support simplifying the term ''low saturated fat and cholesterol'' to the term ''low fat.'' No data were submitted to show that consumers would not be misled by such a simplification, and, as pointed out by comments, there is evidence that low fat diets do not necessarily result in the benefits of low saturated fat diets. The term ''low fat'' is defined in § 101.62(b)(iii)(2) as low in total lipid fatty acids. It therefore takes into account not only saturated fat but also polyunsaturated and monounsaturated fat. Further, the term does not include cholesterol. Therefore, the term ''low fat'' is not be sufficiently specific.

4. Modifications of § 101.81

In light of the changes in this final rule to authorize a claim for diets low in saturated fat and cholesterol that include soluble fiber from whole oats, a number of additional modifications to the proposed requirement for the claim are required.

The agency is revising § 101.81(c)(2)(i)(A) to state that: ''The claim states that diets low in saturated fat and cholesterol that include soluble fiber from whole oats 'may' or 'might' reduce the risk of heart disease.''

New § 101.81(c)(2)(i)(C) states: ''In specifying the substance, the claim uses the term 'soluble fiber' qualified by either the use of the name of the eligible source of whole oat soluble fiber (provided in (c)(2)(ii)) or the name of the food product.'' Examples of such statements are: ''Soluble fiber from whole oats * * *'' and ''Soluble fiber from oatmeal * * *'' In each case, the inclusion of information about the source or the product qualifies the term soluble fiber so that the consumer is not misled to believe that all soluble fiber may reduce the risk of CHD. The manufacturer may also clarify the information for those product names that do not indicate the name of the soluble fiber source, for instance: ''Soluble fiber from the oat bran in this product * * *.''

The agency is also adding new paragraph (c)(2)(i)(D), which states: ''In specifying the fat component, the claim uses the terms ′saturated fat′ and ′cholesterol′.'' This terminology is consistent with the authorized CHD health claims, §§ 101.75 and 101.77, regarding diets low in saturated fat and cholesterol and risk of disease.

After careful consideration of the comments about claim wording and in view of the change in focus of the claim in response to comments, FDA has modified the model health claim statements in § 101.81(e) to reflect the changes it is making. Thus, FDA has deleted proposed paragraph (e)(1), which provided an example of a full claim, and replaced it with the following model claim: ''Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.'' FDA has also deleted proposed § 101.81(e)(2) and (e)(2)(A) and (B), which provided examples of the shortened claim with the referral statement, and replaced it with new paragraph (e)(2), which gives another example of a full claim.

Section 101.81(d) provides for optional information that the manufacturer may use to elaborate on the substance-disease relationship. New § 101.81(d)(4) states that the manufacturer may identify the specific type of soluble fiber that is the subject of claim. For instance, the claim may state: ''Beta-glucan soluble fiber from whole oats, as part of a diet low in saturated fat and cholesterol, may reduce the risk of coronary heart disease.'' The agency believes that the specification of β-glucan soluble fiber in the wording of the claim is appropriate as an option for the manufacturer but need not be a required component of the claim, because while scientifically correct, it may be information that is too technical for many consumers and thus contrary to the agency's desire to keep the claim simple, concise, and easy for consumers to understand.

Proposed § 101.81(b)(2) stated, ''Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. Intakes of cholesterol are, on average, at or above recommended levels * * *.'' Based on recent data on cholesterol intakes reported in the ''Third Report on Nutrition Monitoring in the United States'' (Ref. 77), which shows a reduction in some cholesterol intake levels, the agency has reconsidered including of the second sentence and has decided to delete it.

5. Multifactorial Nature of Disease

(Comment 16)

Several comments responded to FDA's question as to whether consumers will be misled if the multifactorial nature of CHD is not stated in the claim. These comments supported the proposal to make optional the statement ''a disease caused by many factors.'' Several comments cited FDA Health and Diet Survey data that showed ''American consumers understand that serious diseases like cancer and heart disease have multiple causes, including factors such as diet, heredity, smoking and stress'' (Ref. 54). One comment stated that consumers are

sufficiently knowledgeable to appreciate that many factors affect risk of CHD, and that a mandatory statement of this fact would detract from the communication of the core message because it would make the claim longer, which would in turn deter manufacturers from using the claim.

For the reasons set out in the proposal and in the absence of any objections to the agency doing so, FDA has concluded that the statement ''a disease caused by many factors'' should remain optional. FDA is adopting proposed paragraph (d)(1) without change.

6. Dietary ''Context'' of Claim

(Comment 17)

Some comments stated that the proposed claim would be misleading to consumers because it provided no indication of how much of the oat-containing food would have to be consumed to reduce the risk of CHD. One comment stressed the need for explicit information in the health claim about how much oat bran or oatmeal to eat daily to affect the risk of disease, for example in terms of number of servings. The comment emphasized the need to make it clear that the consumer should eat a certain amount every day in order to benefit from consumption of these foods.

The agency agrees that consumers may find ''contextual'' information, as well as additional information that specifies the nature of the relationship, helpful. However, in the absence of a DRV for soluble fiber, the agency cannot identify an amount of whole oat soluble fiber that represents a ''good source'' or that is ''high'' in soluble fiber. Until the agency takes action to establish a DRV for soluble fiber, it considers such information to be more appropriate as optional information.

The agency does not agree that consumers would be misled if such information were not provided, and the mandatory inclusion of such optional information would be inconsistent with the approach taken for other claims. For the other authorized health claims, §§ 101.72 through 101.80, the agency has not required the level of detail suggested by these comments in the wording of the claim. For example, the regulation authorizing health claims on the relationship between diets low in saturated fat and cholesterol and CHD does not require that the claim statement specify that saturated fat should be less than 10 percent of calories on a daily basis, or that cholesterol should be limited to less than 300 mg per day. FDA allows for the optional provision of this information.

FDA, therefore, concludes that the information described in proposed § 101.81(d)(8) be retained as optional information, but the agency is modifying the statement to reflect the change in the focus of the claim to β-glucan soluble fiber from whole oats. Proposed paragraph (d)(8) has been replaced with new § 101.81(d)(6), which states:

> A claim based on β-glucan soluble fiber from whole oats may state that 3 g or more per day of β-glucan soluble fiber from whole oats may reduce the risk of CHD, provided that the claim also states the contribution one serving of the product makes to this specified intake level for β-glucan soluble fiber.

The amount of β-glucan per serving is required here because without it, consumers may be misled to believe that the food contributes 3 g of β-glucan soluble fiber per serving. In making this provision, FDA wishes to point out that if a variety of soluble fibers become eligible to make this claim, it may be necessary to review and revise the appropriateness of such ''contextual.''

As a result of this change, FDA has renumbered proposed paragraphs (d)(6) and (d)(7) in the final regulation as paragraphs (d)(7) and (d)(8), respectively. In the absence of comments on paragraphs (d)(7) and (d)(8), FDA has adopted these paragraphs without change.

Proposed paragraph (d)(5) states: ''The claim may state that a diet low in saturated fat and cholesterol and high in oatmeal or oat bran is consistent with 'Nutrition and Your Health, Dietary Guidelines for Americans,' * * *.'' In light of the change in focus of this claim to soluble fiber from whole oats and in the absence of dietary guidelines specific for soluble fiber, the agency is revising this statement to keep it consistent with ''Dietary Guidelines for Americans.'' Therefore, § 101.81(d)(5) now states ''* * * a diet low in saturated fat and cholesterol that includes soluble fiber from whole oats'' is consistent with the dietary guidelines.

E. Other Comments

1. Implied Claims

(Comment 18)

Some comments expressed concern that, if FDA authorizes a health claim that specifically mentions an oat ingredient, e.g., oat bran, oatmeal, or whole oats, these terms will imply, wherever they appear, that the food provides the effect described in the claim. One comment suggested specific limitations on how label statements about oat ingredients in a food could be used, depending on the nature and amount of soluble fiber in the food.

Another comment noted that in the regulation on implied nutrient content claims (§ 101.65(c)(3)) and FDA's discussion of implied claims in the January 6, 1993, final rule on nutrient content claims (58 FR at 2374), the agency had provided that in some contexts terms like ''made with oat bran'' or ''oat bran muffins'' would be considered to imply that the food was a good source of dietary fiber. This comment stated that once the health claim appears on food labels, consumers will interpret the terms as implying the presence of a significant amount of β-glucan soluble fiber consistent with the message of the claim. The comment stated that, therefore, any such oat ingredient implied nutrient content claim should be regulated as a claim about the amount of β-glucan soluble fiber rather than as a more general claim about dietary fiber.

Recognizing that current FDA regulations do not permit ''good source'' or ''high in'' claims about soluble fiber in general or about β-glucan in particular, the comment suggested that FDA provide advice in this final rule that such claims could be made using the soluble fiber intake recommendations cited in the regulation authorizing health claims about soluble-fiber containing fruits, vegetables, and grain products and CHD (§ 101.77). In the preamble to the final rule establishing § 101.77 (58 FR 2573 through 2574), FDA had explained that the 0.6 g soluble fiber eligibility criterion for bearing the claim derives from 10 percent of the Life Science Research Organization (LSRO) recommended daily intake of soluble fiber, i.e., about 6 g (Ref. 7).

Another comment disagreed with this suggestion, however, stating that it would require decisions that are outside the scope of this proposal. The comment stated that the proposal made no mention of the possibility of a nutrient content claim regulation arising from the proposed health claim rule. In addition, the comment stated that it would be speculative to conclude that any declaration (outside the ingredient list) on the label of the whole oat substance identified in the health claim regulation would constitute a nutrient content claim. The comment stated that the impact of label references to oats will depend on a variety of factors: The extent of the market penetration of the oats/CHD claim; the manner in which consumers who became aware of the claim perceive that claim; whether the claim leads consumers to become aware of β-glucan at all; and whether they consider it beyond its role as a marker for measuring the effectiveness of oats

in improving serum cholesterol levels. On the basis that this kind of information is not available at this time, the comment opined that FDA should not adopt any final rules until it has more information on these issues.

The agency agrees that a final regulation defining a nutrient content claim is outside the scope of the proposal. FDA also agrees with the comment that it would be premature for the agency to conclude that all declarations of relevant oat ingredients on a food label (other than in the ingredient list) are implied claims. The regulation establishing general principles for health claims states that implied health claims ''include those statements, * * * that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition'' (§ 101.14(a)(1)). In the preamble for that regulation (58 FR 2478 at 2483), FDA stated that it could not establish a bright line definition of implied health claims, and that labeling claims needed to be considered in their entirety and in context to determine whether the elements of a health claim are present. The agency took a similar position in the preamble of the final rule establishing regulations for nutrient content claims (58 FR 2370 through 2374). In that document, FDA stated that whether a label statement is a nutrient content claim will depend on the context in which it is presented, taking the entire label into consideration.

To change this position and find that terms such as ''oat bran,'' ''rolled oats,'' or ''whole oat flour'' are always in a context that constitutes a nutrient content or health claim, FDA would need information that it does not have. The agency would need data showing that consumers consistently interpret these terms as implying the presence of a significant amount of β-glucan, or that consumption of the food will affect the risk of CHD. The comments did not provide this or any other kind of information that FDA could use as a basis for the requested policy.

While FDA remains concerned that label statements not be misleading, it agrees with the comment that its policy of evaluating label statements on a case-by-case basis provides adequate control. The agency reviews the entire label to assess what emphasis is being placed on the specific ingredients named. However, if experience with label statements about oat ingredients or other information persuades FDA that additional regulatory controls are needed, the agency can take action to establish appropriate regulations.

In addition, FDA advises that, as discussed previously in response to comment 5 in section II.A.5. of this document, the agency intends to propose to establish a DRV for soluble fiber, which will provide the basis for nutrient content claims like ''good source of soluble fiber'' and ''high in soluble fiber.'' The information in the comment recommending use of 6 g as the DV can be fully evaluated in the rulemaking to establish the DV for soluble fiber.

2. Reference to Authoritative Bodies

(Comment 19)

One comment suggested permitting reference to third party authoritative bodies, including FDA, as part of the health claim. It was noted that in the FDA health claims study (Ref. 53), consumers expressed skepticism about health claims on food packages, in large part because they did not realize health information on the front of the package was regulated.

The agency advises that issues related to making specific provision for reference to authoritative bodies as part of health claims statements is outside the scope of this rulemaking. Under the statute, FDA evaluates the relationship between a nutrient or food and a disease being advanced as the subject of a health claim. FDA authorization reflects a determination that there is significant scientific agreement that the relationship is supported by the totality of publicly available data. Once a health claim has been authorized by the agency, specific claims on labels are not subject to prior review or approval because the agency does not approve specific claims (see section 3(b)(1)(A)(vii) of the 1990 amendments). Therefore, the agency does not agree that citing FDA as an authoritative body is appropriate. Under the general principles for health claims, § 101.14(a)(1), the agency defines a health claim as including ''third party'' references, so it does not object to the use of other third party endorsements, provided the food complies with all requirements of the claim, and the statement of endorsement is not false or misleading.

3. RACC

(Comment 20)

One comment requested that FDA reevaluate its established RACC for flavored instant oat products. The comment suggested that the RACC for flavored sweetened hot cereals should be lowered from 55 g to 40 g which is the RACC for regular rolled oats.

This issue is outside the scope of this rulemaking. This rulemaking addresses the question of whether to authorize a claim regarding the association between oat bran and rolled oats and the risk of CHD. The process for amending a reference amount is set forth in § 101.12.

4. Oat Gum Product

(Comment 21)

One comment stated that, in the proposal, the agency incorrectly concluded that the oat gum product used in the study by Braaten et al. (Ref. 12), had not been characterized. The comment stated that the gum was thoroughly described and characterized in other studies that were cited in the Braaten et al. study, and requested that FDA correct this statement to make clear that the gum had in fact been characterized. The comment included a copy of the studies but made no other request relative to consideration of these data.

The agency acknowledges that the oat gum used in the study by Braaten and coworkers was characterized in the information and studies submitted with the comment (Refs. 56, 59, and 76). The agency notes, however, that this additional information was not submitted with the petition and was, therefore, not part of the administrative record available to the agency at the time of the proposal. The studies submitted with the comment do not alter the outcome of this final rulemaking because oat gum, a purified extract of oat bran, is not a whole grain oat product and was not one of the substances that was the subject of the petition. Although whole oat flour was not one of the substances in the petition, the agency has included it in this final rule because it is a whole grain oat product with similar nutritional properties to rolled oats, and there were sufficient data in the administrative record from which to evaluate its physiological effectiveness. This type of evidence for purified oat gum is not available in the administrative record. A manufacturer may petition to amend § 101.81 to include oat gum by submitting such data.

III. Decision to Authorize a Health Claim on the Relationship Between Soluble Fiber From Whole Oats and CHD

FDA has considered all of the comments that it received in response to its proposal to authorize a claim to describe the relationship between oat bran and rolled oats and the risk of CHD. The agency is authorizing this claim although, based on comments, FDA has been persuaded to make a

number of changes in the proposed provisions for the health claim.

FDA concludes that, rather than oat bran and rolled oats, the food substance that is the subject of the claim is β-glucan soluble fiber from whole oats. FDA further determines that the relationship is scientifically valid in that there is significant scientific agreement based on the totality of publicly available scientific evidence that β-glucan soluble fiber from whole oats, as part of a diet low in saturated fat and cholesterol, may reduce the risk of CHD. Decisions relating to provisions for an abbreviated version of the claim have been deferred and will be handled in a separate rulemaking.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (61 FR 296). At that time, the agency 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. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. 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 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 specified 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 a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities. FDA finds that this 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 impact on a substantial number of small entities.

The authorization of health claims about the relationship between β-glucan soluble fiber from whole oats and CHD results in benefits and in costs only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. This rule will not require that any labels be redesigned, or that any product be reformulated.

The benefit of authorizing this type of health claim is to provide for new information in the market in the form of a claim linking consumption of soluble fiber from whole oats to the risk of CHD.

Costs will be incurred by small entities only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a. m. and 4 p. m., Monday through Friday.

1. The Quaker Oats Company, ''Petition for Health Claim—Oat Products and Coronary Heart Disease,'' March 22, 1995 [CP1].

2. Scarbrough, F. Edward, CFSAN, FDA, Letter to Ted Moeller, Quaker Oats Company, June 29, 1995.

3. DHHS, Public Health Service (PHS), ''The Surgeon General's Report on Nutrition and Health,'' U.S. Government Printing Office, Washington, DC, 1988.

4. National Research Council, National Academy of Sciences, ''Diet and Health,'' National Academy Press, Washington, DC, 1989.

5. DHHS, PHS and the National Institutes of Health (NIH), ''National Cholesterol Education Program: Report of the Expert Panel on Detection, Evaluation, and Treatment of High Blood Cholesterol in Adults,'' NIH, Bethesda, MD, 1989.

6. DHHS, PHS and the National Institutes of Health, ''National Cholesterol Education Program: Population Panel Report,'' Bethesda, MD, 1989.

7. LSRO, FASEB, ''Physiological Effects and Health Consequences of Dietary Fiber,'' Bethesda, MD, 1987.

8. Anderson, J. W., N. H. Gilinsky, D. A. Deakins, S. F. Smith, D. S. O'Neal, D. W. Dillon, and P. R. Oeltgen, ''Lipid Responses of Hypercholesterolemic Men to Oat-bran and Wheat Bran Intake,'' *American Journal of Clinical Nutrition*, 54:678–83, 1991.

9. Anderson, J. W., D. B. Spencer, C. C. Hamilton, S. F. Smith, J. Tietyen, C. A. Bryant, and P. Oeltgen,''Oat-bran Cereal Lowers Serum Total and LDL Cholesterol in Hypercholesterolemic Men,'' *American Journal of Clinical Nutrition*, 52:495–499, 1990.

10. Bartram, P., S. Gerlach, W. Scheppach, F. Keller, and H. Kasper, ''Effect of a Single Oat Bran Cereal Breakfast on Serum Cholesterol, Lipoproteins, and Apolipoproteins in Patients with Hyperlipoproteinemia Type IIa,'' *Journal of Parenteral and Enteral Nutrition*, 16:533–537, 1992.

11. Beling, S., L. Detrick, and W. Castelli, ''Serum Cholesterol Response to a Processed Oat Bran Cereal Among Hypercholesterolemics on a Fat-modified Diet,'' unpublished clinical trial submitted by the Quaker Oats Co., 1991.

12. Braaten, J. T., P. J. Wood, F. W. Scott, M. S. Wolyneta, M. K. Lowe, P. Bradley-White, M. W. Collins, ''Oat Beta-glucan Reduces Blood Cholesterol Concentration in Hypercholesterolemic Subjects,'' *European Journal of Clinical Investigation*, 48:465–474, 1994.

13. Bremer, J. M., R. S. Scott, and C. J. Lintott, ''Oat Bran and Cholesterol Reduction: Evidence Against Specific Effect,'' *Australia and New Zealand Journal of Medicine*, 21:422–426, 1991.

14. Cara, L., C. Cubois, P. Borel, M. Armand, M. Senft, H. Portugal, A. M. Pauli, P. M. Bernard, and D. Lairon, ''Effects of Oat Bran, Rice Bran, Wheat Fiber, and Wheat Germ on Postprandial Lipemia in Healthy Adults,'' *American Journal of Clinical Nutrition*, 55:81–88, 1992.

15. Davidson, M. H., L. D. Dugan, J. H. Burns, J. Bova, K. Story, and K. B. Drennan, ''The Hypocholesterolemic Effects of Beta-glucan in Oatmeal and Oat Bran—A Dose-controlled Study,'' *Journal of the American Medical Association*, 265(14):1833–39, 1991.

16. Demark-Wahnefried, W., J. Bowering, and P. S. Cohen, ''Reduced Serum Cholesterol with Dietary Change Using Fat-modified and Oat Bran Supplemented Diets,'' *Journal of the American Dietetic Association*, 90:223–9, 1990.

17. Gold, K. V. and D. M. Davidson, ''Oat Bran as a Cholesterol-Reducing Dietary Adjunct in a Young, Healthy Population,'' *Western Journal of Medicine*, 148:299–302, 1988.

18. Gormley, T. R., J. Kevany, J. P. Egan, and R. McFarland, ''Investigation of the Potential of Porridge as a Hypocholesterolemic Agent,'' *Israel Journal of Food Science and Technology*, 2:85–91, 1978.

19. He, J., M. J. Klag, P. K. Whelton, J-P. Mo, J-Y. Chen, P-S. Mo, and G-Q. He, ''Oats and Buckwheat Intakes and Cardiovascular Disease Risk Factors in an Ethnic Minority of China,'' *American Journal of Clinical Nutrition*, 61:366–372, 1995.

20. Hegsted, M., M. M. Windhauser, K. Morris, and S. B. Lester, ''Stabilized Rice Bran and Oat Bran Lower Cholesterol in Humans,'' *Nutrition Research*, 13:387–398, 1993.

21. Kahn, R. F., K. W. Davidson, J. Garner, and R. S. McCord, ''Oat Bran Supplementation for Elevated Serum Cholesterol,'' *Family Practice Research Journal*, 10:37–46, 1990.

22. Kastan, H. H., S. Stern, D. J. A. Jenkins, K. Hay, N. Marcon, S. Minkin, and W. R. Bruce, ''Wheat Bran and Oat-Bran Supplements' Effects on Blood Lipids and Lipoproteins,'' *American Journal of Clinical Nutrition*, 55:976–980, 1992.

23. Keenan, J. M., J. B. Wenz, S. Myers, C. Ripsin, and Z. Huang, ''Randomized Controlled Cross-over Trial of Oat Bran in Hypercholesterolemic Subjects,'' *Journal of Family Practice*, 33:600–608, 1991.

24. Kelley, M. J., J. Hoover-Plow, J. F. Nichols-Bernhard, L. S. Verity, and H. B. Brewer, ''Oat Bran Lowers Total and Low-Density Lipoprotein Cholesterol but not Lipoprotein in Exercising Adults with Borderline Hypercholesterolemia,'' *Journal of the American Dietetic Association*, 94:1419–1421, 1994.

25. Kestin, M., R. Moss, P. M. Clifton, and P. J. Nestel, ''Comparative Effects of Three Cereal Brans on Plasma Lipids, Blood Pressure, and Glucose Metabolism in Mildly Hypercholesterolemic Men,'' *American Journal of Clinical Nutrition*, 52:661–6, 1990.

26. Leadbetter, J., M. J. Ball, and J. I. Mann, ''Effects of Increasing Quantities of Oat Bran in Hypercholesterolemic People,'' *American Journal of Clinical Nutrition*, 54:841–845, 1991.

27. Lepre, F. and S. Crane, ''Effect of Oat Bran on Mild Hyperlipidaemia,'' *The Medical Journal of Australia*, 157:305–306, 1992.

28. Mackay, S. and M. J. Ball, ''Do Beans and Oat Bran Add to the Effectiveness of a Low-fat Diet?'', *European Journal of Clinical Nutrition*, 46:641–648, 1992.

29. Marlett, J. A., K. B. Hosig, N. W. Vollendorf, F. L. Shinnick, V. S. Haack, and J. A. Story, ''Mechanism of Serum Cholesterol Reduction by Oat Bran,'' *Hepatology*, 20:1450–1457, 1994.

30. O'Brien, L. T., R. J. Barnard, and J. A. Hall, ''Effects of a High-Complex-Carbohydrate Low-Cholesterol Diet Plus Bran Supplement on Serum Lipids,'' *Journal of Applied Nutrition*, 37:26–34, 1985.

31. O'Kell, R. T. and A. A. Duston, ''Lack of Effect of Dietary Oats on Serum Cholesterol,'' *Missouri Medicine*, 85:726–728, 1988.

32. Poulter, N., C. L. Chang, A. Cuff, C. Poulter, P. Sever, and S. Thom, ''Lipid Profiles After the Daily Consumption of an Oat-based Cereal: A Controlled Crossover Trial,'' *American Journal of Clinical Nutrition*, 58:66–69, 1993.

33. Ripsin, C. M., J. M. Keenan, D. R. Jacobs, P. J. Elmer, R. R. Welch, L. Van Horn, K. Liu, W. H. Turnbull, F. W. Thye, M. Kestin, M. Hegsted, D. M. Davidson, M. H. Davidson, L. D. Dugan, W. Demark-Wahnefried, and S. Beling, ''Oat Products and Lipid lowering—A Meta-analysis,'' *Journal of the American Medical Association*, 267:3317–3325, 1992.

34. Saudia, T. L., B. R. Barfield, and J. Barger, ''Effect of Oat Bran Consumption on Total Serum Cholesterol Levels in Healthy Adults,'' *Military Medicine*, 157:567–568, 1992.

35. Spiller, G. A., J. W. Farquhar, J. E. Gates, and S. F. Nichols, ''Guar Gum and Plasma Cholesterol, Effect of Guar Gum and an Oat Fiber Source on Plasma Lipoproteins and Cholesterol in Hypercholesterolemic Adults,'' *Arteriosclerosis and Thrombosis*, 11:1204–1208, 1991.

36. Stewart, F. M., J. M. Neutze, and R. Newsome-White, ''The Addition of Oat Bran to a Low Fat Diet has no Effect on Lipid Values in Hypercholesterolaemic Subjects,'' *New Zealand Medical Journal*, 106:398–340, 1992.

37. Swain, J. F., I. L. Rouse, C. B. Curley, and F. M. Sacks, ''Comparison of the Effects of Oat Bran and Low Fiber Wheat on Serum Lipoprotein Levels and Blood Pressure'' *New England Journal of Medicine*, 322:147–52, 1990.

38. Törrönen, R., L. Kansanen, M. Uusitupa, O. Hanninen, O. Myllymaki, H. Harkonen, and Y. Malkki, ''Effects of an Oat Bran Concentrate on Serum Lipids in Free-living Men with Mild to Moderate Hypercholesterolaemia,'' *European Journal of Clinical Nutrition*, 46:621–627, 1992.

39. Turnbull, W. H. and A. R. Leeds, ''Reduction of Total and LDL-cholesterol in Plasma by Rolled Oats,'' *Journal of Clinical Nutrition and Gastroenterology,, 2:1–4, 1987.*

40. Grover, S. A., M. Abrahamowicz, L. Joseph, C. Brewer, L. Coupal, S. Suissa, ''The Benefits of Treating Hyperlipidemia to Prevent Coronary Heart Disease,'' *Journal of the American Medical Association*, 267: 816–822, 1992.

41. Uusitupa, M. I. J., E. Ruuskanen, E. Makinen, J. Laitinen, E. Toskala, K. Kervinen, and A. Kesaniemi, ''A Controlled Study on the Effect of Beta-glucan-rich Oat Bran on Serum Lipids in Hypercholesterolemic Subjects: Relation to Apolipoprotein E Phenotype,'' *Journal of the American College of Nutrition*, 11:651–659, 1992.

42. Van Horn, L., L. A. Emidy, K. Liu, Y. Liao, C. Ballew, J. King, and J. Stamler, ''Serum Lipid Response to a Fat-modified, Oatmeal-enhanced Diet,'' *Preventive Medicine*, 17:377–386, 1988.

43. Van Horn, L., K. Liu, D. Parker, L. Emidy, Y. Liao, W. H. Pan, D. Giumetti, J. Hewitt, and J. Stamler, ''Serum Lipid Response to Oat Product Intake with a Fat-modified Diet,'' *Journal of the American Dietetic Association*, 86:759–764, 1986.

44. Van Horn, L., A. Moag-Stahlberg, K. Liu, C. Ballew, K. Ruth, R. Hughes, J. Stamler, ''Effects on Serum Lipids of Adding Instant Oats to Usual American Diets,'' *American Journal of Public Health, 81:183–88*, 1991.

45. Whyte, J., R. McArthur, D. Topping, and P. Nestel, ''Oat Bran Lowers Plasma Cholesterol in Mildly Hypercholesterolemic men,'' *Journal of the American Dietetic Association*, 92:446–449, 1992.

46. Zhang, J. G. Hallmans, H. Andersson, I. Bosaeur, P. Aman, P. Tidehag, R. Stenling, E. Lundin, and S. Dahlgren, ''Effect of Oat Bran on Plasma Cholesterol and Bile Acid Excretion in Nine Subjects with Ileostomies,'' *American Journal of Clinical Nutrition*, 56:99–105, 1992.

47. Sempos, C. T., J. I. Cleeman, M. D. Carroll, C. L. Johnson, P. S. Bachorik, D. J. Gordon, V. L. Burt, R. R. Briefel, C. D. Brown, K. Lippel, and B. M. Rifkind, ''Prevalence of High Blood Cholesterol Among U.S. Adults. An Update Based on Guidelines from the Second Report of the National Cholesterol Education Program Adult Treatment Panel,'' *Journal of the American Medical Association*, 269:3009–3014, 1993.

48. Ross, Russell, ''Atherosclerosis,'' in *Cecil-Textbook of Medicine*, J. B. Wyngaarden, L. H. Smith, and J. C. Bennett, (editors), Harcourt Brace Jovanevich, Inc., Philadelphia, p. 293, 1992.

49. Saltsman, Joyce J., CFSAN, FDA, Memorandum to file, May 19, 1995.

50. DHHS and USDA, ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Gov. Printing Office, 273–930, 1990.

51. Schultz, William B., FDA, Letter to John R. Cady, National Food Processors Association, May 11, 1995.

52. American Association of Cereal Chemists, Inc., ''AACC Committee Adopts Oat Bran Definition,'' *Cereal Foods World*, 34:1033–1034, 1989.

53. Levy, A., CFSAN, FDA, ''Summary Report on Health Claims Focus Groups,'' June 15, 1995.

54. Derby, B., CFSAN, FDA, Memorandum to Victor Frattali, October 25, 1995.

55. Marlett, J. A., ''Comparisons of Dietary Fiber and Selected Nutrient Compositions of Oat and Other Grain Fractions,'' In: *Oat Bran*, P. J. Wood (editor), published by the American Association of Cereal Chemists, Inc., St. Paul, MN, p. 49–82, 1993.

56. Wood, P. J., ''Physiocochemical Characteristics and Physiological Properties of Oat (1–3), (1–4)-β-D-Glucan,'' In: *Oat Bran*, P. J. Wood (editor), published by the American Association of Cereal Chemists, Inc., St. Paul, MN, p. 83–112, 1993.

57. Shinnick, F. L. and J. A. Marlett, ''Physiological Responses to Dietary Oats in Animal Models,'' In: *Oat Bran*, P. J. Wood (editor), published by the American Association of Cereal Chemists, Inc., St. Paul, MN, p. 113–138, 1993.

58. Vollendorf, N. W. and J. A. Marlett, ''Dietary Fiber Methodology and Composition of Oat Groats, Brans, and Hulls,'' *Cereal Foods World*, 36:565–569, 1991.

59. Wood, P. J., J. T. Braaten, F. W. Scott, D. Riedel, and L. M. Poste, ''Comparison of Viscous Properties of Oat and Guar Gum and the Effects of These and Oat Bran on Glycemic Index,'' *Journal of Agriculture and Food Chemistry*, 38:753–757, 1990.

60. Wood, P. J., J. T. Braaten, F. W. Scott, K. D. Riedel, M. S. Wloynetz, and M. W. Collings, ''Effect of Dose and Modification of Viscous Properties of Oat Gum on Blood Glucose and Insulin Following an Oral Glucose Load,'' *British Journal of Nutrition*, 72:731–743, 1994.

61. McIntosh, G. H., J. Whyte, R. McArthur, and P. J. Nestel, ''Barley and Wheat Foods:

Influence on Plasma Cholesterol Concentrations in Hypercholesterlemic Men,'' *American Journal of Clinical Nutrition*, 53:1205–1209, 1991. (See comments C–1177 and CR1).

62. Chen, W. L., J. W. Anderson, and M. R. Gould, ''Effects of Oat Bran, Oat Gum and Pectin on Lipid Metabolism of Cholesterol-Fed Rats,'' *Nutrition Reports International*, 24:1093–1098, 1981.

63. Fadel, J. G., R. K. Newman, C. W. Newman, and A. E. Barnes, ''Hypocholesterolemic Effects of β-glucans in Different Barley Diets Fed to Brolier Chicks,'' *Nutrition Reports International*, 35:1049–1058, 1987.

64. Newman, R. K., S. E. Lewis, C. W. Newman, R. J. Boik, and R. T. Ramage, ''Hypocholesterolemic Effect of Barley Foods on Healthy Men,'' *Nutrition Reports International*, 39:749–759, 1989.

65. McIntyre, A., G. P. Young, T. Taranto, P. R. Gibson, and P. B. Ward, ''Different Fibers have Different Regional Effects on Luminal Contents of Rat Colon,'' *Gastroenterology*, 101:1274–1281, 1991.

66. Shinnick, F. L., J. M. Longacre, S. L. Ink, and J. A. Marlett, ''Oat Fiber: Composition Versus Physiological Function in Rats,'' *Journal of Nutrition*, 118:144–151, 1988.

67. Wang, L., R. K. Newman, C. W. Newman, and P. J. Hofer. ''Barley β-glucans Alter Intestinal Viscosity and Reduce Plasma Cholesterol Concentrations in Chicks,'' *Journal of Nutrition*, 122:2292–2297, 1992.

68. Gallaher, D. D., ''Intestinal Contents Viscosity of Rats Fed Oat-based Breakfast Cereals,'' Unpublished, November 26, 1996. (See comment C-1412).

69. Wood, P. J., J. T. Braaten, F. W. Scott, K. D. Riedel, M. S. Wolynetz, and M. W. Collins, ''Effect of Dose and Modification of Viscous Properties of Oat Gum on Plasma Glucose and Insulin Following an Oral Glucose Load,'' *British Journal of Nutrition*, 72:731–743, 1994.

70. Reynolds, H. R., ''The Effect of Whole Grain Oat Cereal on Serum Lipids,'' Unpublished study, 1996. (See comments C–1197 and CR5).

71. Ney, D. M., J. B. Lasekan, and F. L. Shinnick, ''Soluble Oat Fiber Tends to Normalize Lipoprotein Composition in Cholesterol-fed Rats,'' *Journal of Nutrition*, 118:1455–1462. 1988.

72. Gallaher, D. D., C. A. Hassel, and K. J. Lee, ''Relationships Between Viscosity of Hydroxypropyl Methylcellulose and Plasma Cholesterol in Hamsters,'' *Journal of Nutrition*, 123:1732–1738, 1993.

73. Carr, T. P., D. D. Gallaher, C. H. Yang, and C. A. Hassel, ''Increased Intestinal Contents Viscosity Reduces Cholesterol Absorption Efficiency in Hamsters fed Hydroxypropyl Methylcellulose,'' *Journal of Nutrition*, 126:1463–1469, 1996.

74. Gallaher, D. D., C. A. Hassel, K. J. Lee, and C. M. Gallaher, ''Viscosity and Fermentability as Attributes of Dietary Fiber Responsible for the Hypocholesterolemic Effect in Hamsters,'' *Journal of Nutrition*, 123:244–252, 1993.

75. USDA Nutrient Database for Standard Reference, Release 11, September, 1996.

76. Wood, P. J., J. Weisz, P. Fedec, and V. D. Burrows, ''Large-Scale Preparation and Properties of Oat Fractions Enriched in (1 3)(1 4)-β-D-Glucan,'' *Cereal Chemistry*, 66:97–103, 1989.

77. LSRO, FASEB, ''Third Report on Nutrition Monitoring in the United States—Executive Summary,'' U.S. Government Printing Office, Washington, DC, pp. ES–1–ES–5, 1995.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 351, 352, 355, 371).

2. New § 101.81 is added to subpart E to read as follows:

§ 101.81 Health claims: Soluble fiber from whole oats and risk of coronary heart disease (CHD).

(a) *Relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and risk of coronary heart disease*—(1) Cardiovascular disease means diseases of the heart and circulatory system. Coronary heart disease (CHD) is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL)-cholesterol levels are associated with increased risk of developing coronary heart disease. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 (mmol/L)) or above and LDL-cholesterol levels of 160 mg/dL (4.13 mmol/L) or above. Borderline high risk total cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L) and 130 to 159 mg/dL (3.36 to 4.11 mmol/L) of LDL-cholesterol. The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total- and LDL-cholesterol and, thus, with increased risk of CHD.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL-cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in fiber-containing fruits, vegetables, and grain products, such as whole oat products.

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from whole oats to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and risk of CHD*—(1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL-cholesterol are major modifiable risk factors in the development of CHD.

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 milligrams (mg) or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soluble fiber from whole oats, when added to a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) *Requirements*—(1) All requirements set forth in § 101.14 shall be met.

(2) Specific requirements—(i) Nature of the claim. A health claim associating diets low in saturated fat and cholesterol that include soluble fiber from whole oats with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets low in saturated fat and cholesterol that include soluble fiber from whole oats ''may'' or ''might'' reduce the risk of heart disease;

(B) In specifying the disease, the claim uses the following terms: ''heart disease'' or ''coronary heart disease'';

(C) In specifying the substance, the claim uses the term ''soluble fiber'' qualified by either the use of the name of the eligible source of whole oat

soluble fiber (provided in paragraph (c)(2)(ii)) of this section or the name of the food product;

(D) In specifying the fat component, the claim uses the terms ''saturated fat'' and ''cholesterol'';

(E) The claim does not attribute any degree of risk reduction for CHD to diets low in saturated fat and cholesterol that include soluble fiber from whole oats; and

(F) The claim does not imply that consumption of diets low in saturated fat and cholesterol that include soluble fiber from whole oats is the only recognized means of achieving a reduced risk of CHD.

(ii) Nature of the substance. Eligible sources of soluble fiber.

(A) Beta (β) glucan soluble fiber from the whole oat sources listed below. β-glucan soluble fiber will be determined by method No. 992.28 from the ''Official Methods of Analysis of the Association of Official Analytical Chemists International,'' 16th ed. (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877-2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(*1*) Oat bran. Oat bran is produced by grinding clean oat groats or rolled oats and separating the resulting oat flour by suitable means into fractions such that the oat bran fraction is not more than 50 percent of the original starting material and provides at least 5.5 percent (dry weight basis (dwb)) β-glucan soluble fiber and a total dietary fiber content of 16 percent (dwb), and such that at least one-third of the total dietary fiber is soluble fiber;

(*2*) Rolled oats. Rolled oats, also known as oatmeal, produced from 100 percent dehulled, clean oat groats by steaming, cutting, rolling, and flaking, and provides at least 4 percent (dwb) of β-glucan soluble fiber and a total dietary fiber content of at least 10 percent.

(*3*) Whole oat flour. Whole oat flour is produced from 100 percent dehulled, clean oat groats by steaming and grinding, such that there is no significant loss of oat bran in the final product, and provides at least 4 percent (dwb) of β-glucan soluble fiber and a total dietary fiber content of at least 10 percent (dwb).

(B) [Reserved]

(iii) Nature of the Food Eligible to Bear the Claim.

(A) The food shall contain at least 0.75 gram (g) per reference amount customarily consumed of whole oat soluble fiber from the eligible sources listed in paragraph (c)(2)(ii) of this section;

(B) The amount of soluble fiber shall be declared in the nutrition label, consistent with § 101.9(c)(6)(i)(A).

(C) The food shall meet the nutrient content requirements in § 101.62 for a ''low saturated fat,'' ''low cholesterol,'' and ''low fat'' food.

(d) *Optional information*—(1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL-cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease;

(2) The claim may state that the relationship between intake of diets low in saturated fat and cholesterol that include soluble fiber from whole oats and reduced risk of heart disease is through the intermediate link of ''blood cholesterol'' or ''blood total- and LDL-cholesterol;''

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and coronary heart disease and the significance of the relationship;

(4) The claim may specify the name of the eligible soluble fiber;

(5) The claim may state that a diet low in saturated fat and cholesterol that includes soluble fiber from whole oats is consistent with ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

(6) A claim based on β-glucan soluble fiber from whole oats may state that an intake of 3 g or more per day of β-glucan soluble fiber from whole oats may help reduce the risk of CHD, provided that the claim also states the contribution one serving of the product makes to this specified intake level for β-glucan soluble fiber;

(7) The claim may state that individuals with elevated blood total- and LDL-cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total- and LDL-cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment;

(8) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or ''Nutrition and Your Health: Dietary Guidelines for Americans,'' USDA and DHHS, GPO;

(e) *Model health claim*. The following model health claims may be used in food labeling to describe the relationship between diets low in saturated fat and cholesterol that include soluble fiber from whole oats and reduced risk of heart disease:

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease.

(2) Diets low in saturated fat and cholesterol that include soluble fiber from [name of soluble fiber source from paragraph (c)(2)(ii) of this section or name of food product] may reduce the risk of heart disease.

Dated: January 9, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–1598 Filed 1–22–97; 8:45 am]

BILLING CODE 4160–01–F

Reader Aids

Federal Register

Vol. 62, No. 15

Thursday, January 23, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — **202–523–5227**

Laws

For additional information — **523–5227**

Presidential Documents

Executive orders and proclamations — **523–5227**

The United States Government Manual — **523–5227**

Other Services

Electronic and on-line services (voice) — **523–4534**

Privacy Act Compilation — **523–3187**

TDD for the hearing impaired — **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–300 2
301–592 3
593–888 6
889–1030 7
1031–1238 8
1239–1382 9
1383–1658 10
1659–1826 13
1827–2006 14
2007–2264 15
2265–2546 16
2547–2890 17
2891–3192 21
3193–3440 22
3441–3602 23

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6966 3191–3192
6967 3441
6968 3443

Executive Orders:
July 2, 1910 (Revoked by PLO 7236) 3053
12543 (Continued by Notice of Jan. 2, 1997) 587
12544 (Continued by Notice of Jan. 2, 1997) 587
12947 (Continued by Notice of Jan. 21, 1997) 3439

Presidential Determinations:
No. 97–11A of December 6, 1996 299
No. 97–14 of December 27, 1996 1379
No. 97–15 of December 27, 1996 1381

5 CFR

315 3193
362 3193
532 3195
2640 1361

Proposed Rules:
213 1695
338 1695
831 2323
844 2323
2470 2547
2471 2547
2472 2547
2473 2547
2634 2048

7 CFR

2 1031
33 1032
51 ..... 2891, 2896
210 889
226 889
300 593
319 593
457 2007
729 2719
925 2547
929 915
932 ..... 1239, 2549
944 1239
959 916
982 1035
985 1246
997 1249
998 1249
999 1249
1011 918
1049 918
1079 918
1124 1
1205 1659
1439 3195
1464 3197
1499 2719

Proposed Rules:
400 2052
401 333
414 2055
441 2059
443 48
445 338
457 ..... 48, 333
906 55
985 942

8 CFR

Proposed Rules:
1 444
3 444
103 444
204 444
207 444
208 444
209 444
211 444
212 444
213 444
214 444
216 444
217 444
221 444
223 444
232 444
233 444
234 444
235 444
236 444
237 444
238 444
239 444
240 444
241 444
242 444
243 444
244 444
245 444
246 444
248 444
249 444
251 444
252 444
253 444
274a 444
286 444
287 444
299 444
316 444
318 444

REMINDERS

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.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Cattle for slaughter; tuberculosis and brucellosis pre-export test requirements elimination; published 1-23-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling--

Health claims; oat products and coronary heart disease; published 1-23-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

FAR supplement (NFS); rewrite

Federal regulatory reform; published 1-23-97

STATE DEPARTMENT

Fishermen's Protective Act Guaranty Fund procedures; published 9-24-96

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; published 1-23-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:

Abandonment and discontinuance of rail lines and rail transportation; envirionmental laws; published 12-24-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Wildlife Habitat Incentives Program; comments due by 1-27-97; published 12-13-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Fresh market tomatoes; comments due by 1-29-97; published 12-30-96

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Wildlife Habitat Incentives Program; comments due by 1-27-97; published 12-13-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery caonservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Alaska scallop; comments due by 1-30-97; published 1-15-97

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Bering Sea and Aleutian Islands groundfish; comments due by 1-31-97; published 12-2-96

Caribbean, Gulf, and South Atlantic fisheries--

South Atlantic Fishery Management Council; hearing; comments due by 1-27-97; published 1-21-97

COMMODITY FUTURES TRADING COMMISSION

Contract markets:

Contract market rule review procedures; comments due by 1-31-97; published 1-16-97

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act:

Acid rain program--

Contiuous emission monitoring; excess emissions; appeal procedures; comments due by 1-27-97; published 12-27-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Metolachlor; comments due by 1-28-97; published 11-29-96

Solid wastes:

Beverage containers and resource recovery facilities; management guidelines--

Federal regulatory reform; CFR Parts removed; comments due by 1-30-97; published 12-31-96

Federal regulatory review; comments due by 1-30-97; published 12-31-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 1-29-97; published 12-30-96

North Dakota; comments due by 1-27-97; published 12-26-96

Toxic substances:

Testing requirements--

Pharmacokinetics studies; comments due by 1-31-97; published 10-18-96

FARM CREDIT ADMINISTRATION

Federal regulatory reform; comments due by 1-31-97; published 12-20-96

FEDERAL COMMUNICATIONS COMMISSION

Telecommunications Act of 1996; implementation:

Common carrier services--

National Exchange Carrier Association, Inc., Board of Directors; changes to make Board more representative of telecommunications industry; comments due by 1-27-97; published 1-17-97

FEDERAL ELECTION COMMISSION

Reports by policital committees:

Best efforts; $200+ contributors identification; comment period extended; comments due by 1-31-97; published 12-30-96

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Community support requirements; comments due by 1-27-97; published 11-27-96

FEDERAL RESERVE SYSTEM

Equal credit opportunity (Regulation B):

Creditor compliance with Equal Credit Opportunity Act; legal privilege for information; comments due by 1-31-97; published 1-2-97

Securities credit transactions (Regulations G, T, and U); comments due by 1-31-97; published 12-23-96

Truth in lending (Regulation Z):

Improvement of disclosures; comments due by 1-30-97; published 12-31-96

FEDERAL TRADE COMMISSION

Industry guides:

Feather and down products; comments due by 1-28-97; published 10-28-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Medicare payment suspension charges and determination of allowable interest expenses; comments due by 1-31-97; published 12-2-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac):

Book-entry procedures; securities issuance, recordation, and transfer; comments due by 1-31-97; published 12-2-96

Noncitizens; financial assistance restrictions; comments due by 1-28-97; published 11-29-96

Correction; comments due by 1-28-97; published 12-6-96

Public and Indian housing:

Certificate and voucher programs (Section 8)--

Management assessment program; comments due by 1-31-97; published 12-2-96

Real Estate Settlement Procedures Act:

Improvement of disclosures; comments due by 1-30-97; published 12-31-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Iowa; comments due by 1-27-97; published 12-26-96

PERSONNEL MANAGEMENT OFFICE

Execepted service:

Schedule A authority for temporary organizations; comments due by 1-31-97; published 12-2-96

POSTAL RATE COMMISSION

Practice and procedure:

Omnibus rate proceeding--

Cost attribution methods and rate design principles; comments due by 1-31-97; published 12-24-96

SECURITIES AND EXCHANGE COMMISSION

Practice and procedure:

Regulatory Flexibility Act; list; comments due by 1-31-97; published 1-9-97

TRANSPORTATION DEPARTMENT

Air travel; nondiscrimination on basis of handicap:

Seating accommodations and collapsible electric wheelchair stowage; comments due by 1-30-97; published 11-1-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Avions Pierre Robin; comments due by 1-31-97; published 11-13-96

Boeing; comments due by 1-29-97; published 11-29-96

Mitsubishi; comments due by 1-27-97; published 12-4-96

Textron Lycoming; comments due by 1-31-97; published 12-2-96

Class C and Class D airspace; comments due by 1-29-97; published 12-9-96

Class D airspace; comments due by 1-30-97; published 12-24-96

Class E airspace; comments due by 1-28-97; published 12-16-96

Correction; comments due by 1-27-97; published 12-16-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection--

Smart air bags, vehicles without; warning labels, manual cutoff switches, etc.; correction; comments due by 1-27-97; published 12-11-96

TREASURY DEPARTMENT

Comptroller of the Currency

Fees assesment; national and District of Columbia banks:

Non-lead banks; lower assessments; comments due by 1-31-97; published 12-2-96

TREASURY DEPARTMENT

Thrift Supervision Office

Economic Growth and Regulatory Paperwork Reduction Act; implementation; comments due by 1-27-97; published 11-27-96