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WASHINGTON, DC

WHEN: March 18, 1997 at 9:00 am

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Reader Aids
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Electronic Bulletin Board
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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.

Rules and Regulations

Federal Register
Vol. 62, No. 36
Monday, February 24, 1997

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 790 and 792

Description of NCUA; Requests for Agency Action and Requests for Information Under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule

SUMMARY: Due to changes in the credit union environment, in October of 1996, the NCUA authorized a change in the mission and a corresponding name change of the Asset Liquidation and Management Center (ALMC). The new name is the Asset Management and Assistance Center (AMAC). A description of the new AMAC replaces the description of the ALMC. In addition, AMAC replaces ALMC in another part of the regulations.

EFFECTIVE DATE: Effective February 24, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel at the above address or telephone: 703–518–6540.

SUPPLEMENTARY INFORMATION: The NCUA Board established the Asset Liquidation Management Center (ALMC) in July 1988, to deal with an emerging concentration of real estate assets in a limited number of troubled credit unions. The mission of the ALMC was to minimize losses to the National Credit Union Share Insurance Fund by managing and disposing of real estate assets acquired from troubled credit unions. In February of 1990, the Board added the agency's liquidation activity to the ALMC. Although the number of liquidations are down, liquidations have become increasingly complex. The ALMC's responsibilities have expanded to include the review of large, complex loan portfolios, assistance in uncovering and developing bond claims and complex record reconstruction. The ALMC provides additional depth, experience and resources in liquidation related as well as other matters to NCUA's six regional offices.

The Board believed that the name ALMC did not accurately reflect the responsibilities the center was carrying out. Therefore, in October 1996, the Board officially changed the name to Asset Management and Assistance Center (AMAC). The Board is now amending its regulation which describes the duties of AMAC, formerly the ALMC. The description of the office is found in 12 CFR 790.2(b)(4). There is also a reference to ALMC in 12 CFR 792.2(f). This paragraph describes information centers for purposes of requesting materials under the Freedom of Information Act. The reference is corrected to read AMAC. An additional sentence is added to paragraph 792.2(f) to indicate that the President of the AMAC is responsible for the operation of the information center maintained there. This is a technical addition of a responsibility already delegated to the President of AMAC.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions. The changes made by this rule are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Parts 790 and 792

Credit Unions.

By the National Credit Union Administration Board on February 13, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

2. Amend § 790.2 by revising paragraph (b)(4) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(4) *Asset Management and Assistance Center.* The President of the Asset Management and Assistance Center (AMAC) is responsible for monitoring, evaluating, disposing, and/or managing major assets acquired by NCUA; responsible for managing involuntary liquidations for all federally insured credit unions placed into involuntary liquidation including the orderly processing of payments of share insurance, sale and/or collection of loan portfolios, liquidation of other assets and achieving other recoveries, payments to creditors, and distributions to any uninsured shareholders. The President, AMAC, serves as a primary consultant with the regional offices on asset sales or purchases to restructure problem case credit unions, as technical expert to evaluate specific areas of credit union operations, and as instructor in training classes; responsible to prepare and negotiate bond claims; responsible to manage or assist in the management of conservatorships. The address of AMAC is 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

* * * * *

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

3. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f; 5 U.S.C. 552, 5 U.S.C. 552b; Executive Orders 12600 and 12356.

4. Amend § 792.2 by revising paragraph (f) to read as follows:

§ 792.2 Information made available to the public and requests for such information.

* * * * *

(f) *Information Centers.* The Central Office, Regional Offices and the Asset Management and Assistance Center are the designated Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operation of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The President of the Asset Management and Assistance Center is responsible for the operation of the Information Center maintained there.

* * * * *

[FR Doc. 97–4441 Filed 2–21–97; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–38–AD; Amendment 39–9941; AD 97–04–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped With Walter Kidde Nose Wheel Steering System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG). This amendment also requires that periodic inspections of that torque value be incorporated into the FAA-approved maintenance program. This amendment is prompted by several reports that the dowel pins in the Walter Kidde nose wheel steering system were found broken and/or had elongated holes due to a reduced torque value of the subject bolt. The actions specified by this AD are intended to prevent such a reduction in the torque value, which could result in failure of the dowel pins in the Walter Kidde nose wheel steering system; this situation could result in reduced controllability of the airplane or the collapse of the NLG during landing.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 series airplanes was published in the Federal Register on July 29, 1996 (61 FR 39366). That action proposed to require increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG).

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Withdraw Proposal

One commenter, a U.S. operator, requests that the proposal be withdrawn because it is unnecessary. The commenter points out that the proposed requirements previously were issued by Fokker both as a service bulletin and a maintenance circular several years ago. This commenter has already added the inspections to its maintenance program, far in advance of any requirement by AD to do so. The commenter contends that mandating the actions via an AD will ''only add an administrative burden on an industry already overburdened with administrative tasks, many of which are redundant.'' Instead of issuing this AD, the commenter recommends that the proposed requirements be added to the airlines' Operations Specifications, or merely have the Principal Maintenance Inspectors for the affected airlines talk to the operators about this issue. The commenter maintains that handling the proposed requirements in some other way than by AD action would save the affected operators a considerable amount of time and money.

The FAA does not concur with the commenter's request to withdraw the proposal. The FAA acknowledges that the required actions specified in this AD were contained in a manufacturer's service bulletin and maintenance circular, both of which were released some time ago. Prudent operators, such as the commenter, may have accomplished those actions already. However, until an AD is issued, there is no legal basis for requiring U.S. operators to comply with those actions. The AD is the vehicle for ensuring, by law, that all affected operators perform the necessary actions that will address the identified unsafe condition. In light of this, the FAA has determined that this AD is appropriate and warranted.

Further, the FAA is not convinced that issuance of this AD will add a significant economic or administrative burden on operators who have already accomplished the required actions, as the commenter suggests:

First, the FAA points out that there are currently only 34 U.S.-registered airplanes that are affected by the AD.

Second, the compliance provision of the AD clearly states that compliance is ''required as indicated, unless accomplished previously.'' Therefore, operators who have already accomplished the required actions need only make a single entry in their maintenance logs to indicate compliance with the AD. Further, once the maintenance program is changed to include the required periodic inspections, in accordance with paragraph (b) of the AD, operators do not need to make a maintenance log entry to show compliance with the AD every time those inspections are accomplished thereafter. (A new Note 2 has been added to the final rule to specify this.) Such procedures should

not pose a serious burden on any operator.

Conclusion

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

Cost Impact

The FAA estimates that 34 Fokker Model F27 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $4,080, or $120 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.

However, the FAA has been advised that one U.S. operator already has accomplished the required actions on its 2 affected airplanes. Therefore, the future cost impact of this AD is only $4,056.

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:

97–04–16 Fokker: Amendment 39–9941. Docket 96-NM–38-AD.

Applicability: Model F27 series airplanes, serial numbers 10102 through 10692 inclusive; equipped with Walter Kidde nose wheel steering system (steering unit gearbox housing assembly) having part number 893954; 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 a reduction in the torque value of the bolt in the Walter Kidde nose wheel steering system, which could result in reduced controllability of the airplane or the collapse of the nose landing gear (NLG) during landing, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, or within 4 months after the effective date of this AD, whichever occurs first, tighten the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the NLG to a torque value of 700 to 800 inch-pounds, in accordance with Fokker Service Bulletin F27/32–166, dated September 7, 1993.

(b) Within 30 days following accomplishment of paragraph (a) of this AD, revise the FAA-approved maintenance program to include periodic inspections of the torque value of the affected bolt, as described in Fokker F27 Maintenance Circular No. 32–6, dated April 30, 1993; and, thereafter, comply with those requirements.

Note 2: Once the maintenance program is changed to include the required periodic inspections, in accordance with this paragraph, operators do not need to make a maintenance log entry to show compliance with this AD every time those inspections are accomplished thereafter.

(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 3: 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 Fokker Service Bulletin F27/32–166, dated September 7, 1993; and Fokker F27 Maintenance Circular No. 32–6, dated April 30, 1993. 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 Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4201 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–48–AD; Amendment 39–9942; AD 97–04–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, that requires inspections to detect leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), and eventual replacement of those assemblies with new or serviceable assemblies. This amendment is prompted by reports of leakage of hydraulic fluid from lock jack assemblies due to a manufacturing forging defect that extends through the wall of the lock jack assembly. The actions specified by this AD are intended to prevent leakage of hydraulic fluid from the lock jack assemblies of the MLG, which, in conjunction with a hot brake, could cause a fire in the MLG bay.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. 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 Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; 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 British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes was published in the Federal Register on August 27, 1996 (61 FR 44006). That action proposed to require an inspection to identify affected lock jack assemblies by serial number. That action also proposed to require repetitive inspections of certain lock jack assemblies to detect leakage of hydraulic fluid from the lock jack assemblies, and, if leakage is detected, replacement of the lock jack assemblies with new or serviceable assemblies. That action also proposed to require eventual replacement of the lock jack assemblies with new or serviceable assemblies.

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 52 airplanes of U.S. registry will be affected by this AD.

To accomplish the required inspections will take approximately 1 work hour per airplane, per inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $3,120, or $60 per airplane, per inspection cycle.

To accomplish the required replacement of the lock jack assembly will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $3,120, or $60 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 adding the following new airworthiness directive:

97–04–17 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9942. Docket 96–NM–48–AD.

Applicability: Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes having lock jack assemblies of the main landing gear as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), which, in conjunction with a hot brake, could cause a fire in the MLG bay; accomplish the following:

(a) Within 30 days after the effective date of this AD, verify the serial number of all lock jack assemblies, part number 104275001, of the MLG.

Note 2: Verification may be accomplished by a review of appropriate records.

(1) If no lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, no further action is required by this paragraph.

(2) If any lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, prior to further flight, perform a visual inspection to detect any leakage of hydraulic fluid from the lock jack assembly, in accordance with the service bulletin.

(i) If no leakage of hydraulic fluid is detected, thereafter, repeat the inspection at intervals not to exceed 30 days, until the requirements of paragraph (b) of this AD are accomplished.

(ii) If any leakage of hydraulic fluid is detected, prior to further flight, replace the lock jack assembly with a new or serviceable unit that does not have one of those serial numbers, in accordance with the service bulletin.

(b) Within 6 months after the effective date of this AD, replace any lock jack assembly having a serial number listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, with a new or serviceable assembly that does not have one of those serial numbers, in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install a lock jack assembly, having any serial number listed in British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, on any airplane.

(d) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) 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.

(f) The inspections and replacements shall be done in accordance with British Aerospace Inspection Service Bulletin SB 32–103, Revision 1, dated February 22, 1991, which contains the specified list of effectives pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, Appendix A1, Page 1–3.	1	Feb. 22, 1991.
3, Appendix A1, Page 4.	Original	June 15, 1990.

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 British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. 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.

(g) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4200 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–142–AD; Amendment 39–9943; AD 97–04–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires repetitive x-ray inspections to detect cracks in stringers 4 through 7 of the lower skin of the wings, and modification or repair, if necessary. This amendment also requires modification of the stringers of the lower skin of the wings, which terminates the repetitive inspections. This amendment is prompted by reports of fatigue cracking found in stringers 4 through 7 of the lower skin of the wings. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the wings.

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the Federal Register on August 6, 1996 (61 FR 40760). That action proposed to require repetitive x-ray inspections to detect cracks of stringers 4 through 7, inclusive, at certain wing stations of the lower skin of the wings; and modification or repair, if necessary. That action also proposed to require modification of certain stringers of the lower skin of the wings, which, when accomplished, would constitute terminating action for the repetitive inspection requirements.

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

Support for the Proposal

One commenter supports the proposed AD.

Request to Extend Proposed Compliance Time

One commenter requests that the proposal be revised to extend the compliance time for the initial x-ray inspection (Part 2 of the Fokker Service Bulletin F27/57–70)) and the terminating modification (Part 1 of the Fokker service bulletin) to the next regularly scheduled ''C'' check. This commenter states that the 12-month compliance time for the inspection creates unnecessary burdens both economically and operationally. However, since the downtime for accomplishing the terminating action

would be a minimum of 6 days (dictated by the number of maintenance personnel who can work on this area at one time), the commenter considers that it would be more feasible to allow both the inspection and terminating action to be accomplished during that one time. A convenient time for this to take place would be during a ''C'' check inspection or equivalent.

The FAA acknowledges this commenter's request, but finds that clarification of the intent of the compliance time is necessary, based on the commenter's apparent misinterpretation of it.

Paragraph (a) of the AD is meant to require that the initial inspection be performed at the later of either:

—paragraph (a)(1)—prior to the accumulation of 30,000 total flight cycles; or

—paragraph (a)(2)—within 2,000 flight cycles or 12 months after the effective date of the AD, whichever is earlier.

The 2,000-cycle/12-month compliance time provided by paragraph (a)(2) is meant to serve as a ''grace period'' if an affected airplane has already accumulated nearly or more than 30,000 total flight cycles. This grace period provision eliminates the situation where an airplane having over 30,000 flight cycles would be in immediate non-compliance with the AD. For those airplanes then, the inspection must be accomplished either within 2,000 flight cycles after the effective date of the AD or within 12-months after the effective date, whichever occurs first.

As for the terminating modification, paragraph (d) requires that it be installed on all airplanes prior to the accumulation of 30,000 total flight cycles, or within 30 months after the effective date of this AD, whichever occurs later. Again, this paragraph provides a grace period of 30 months for airplanes that are nearly approaching or have exceeded 30,000 total flight cycles.

In looking at the AD as a whole, operators should note that the inspection specified in paragraph (a) actually is meant to be an ''optional'' interim action that can be accomplished on higher-time airplanes prior to accomplishing the terminating modification, if time and schedules dictate. For example, a higher time airplane meeting the utilization criteria relevant to paragraph (a)(2) could be initially inspected within 12 months and, if no cracking was found during any inspection, need not be modified in accordance with paragraph (d) for another 18 months (totaling 30 months after the effective date of the AD). On the other hand, that airplane instead could be modified prior to the 12-month period and, therefore, need not be inspected in accordance with paragraph (a) at all.

For very low-time airplanes, as long as the terminating modification is accomplished prior to the accumulation of 30,000 flight cycles, the inspection specified in paragraph (a) need not be performed.

In light of this explanation, the FAA does not consider that any change to the compliance times, based on the commenters request, is necessary.

Further, the FAA does not concur with the commenter's suggestion to state compliance times in terms of maintenance checks (i.e., ''C'' checks), since the intervals for those checks may vary greatly from operator to operator. Based on the data available concerning fatigue cracking in the subject areas, the FAA finds that the compliance time intervals, as proposed, are appropriate. Under the provisions of paragraph (e) of this final rule, however, operators may request approval of adjustments of the compliance time, provided that sufficient data are presented to the FAA to justify the request.

Conclusion

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

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 16 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $32,640, or $960 per airplane, per inspection cycle.

It will take approximately 400 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,365 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $862,410, or $25,365 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:

97–04–18 Fokker: Amendment 39–9943. Docket 96-NM–142-AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (e) 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 fatigue-related cracking of stringers of the lower skin of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Perform an x-ray inspection to detect cracks in stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, May 17 ,1993, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 30,000 total flight cycles; or

(2) Within the next 2,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs first.

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. After accomplishment of the modification, no further action is required by this AD.

(2) Repair the crack in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Within the next 2,000 flight cycles or 1 year following accomplishment of the repair, whichever occurs first, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. After accomplishment of the modification, no further action is required by this AD.

(d) Prior to the accumulation of 30,000 flight cycles, or within 30 months after the effective date of this AD, whichever occurs later, modify the stringers 4 through 7, inclusive, at wing stations 11260, 11860, 12660, and 13460 of the lower skin of the wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–70, dated May 17, 1993. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(g) The actions shall be done in accordance with Fokker Service Bulletin F27/57–70, dated May 17, 1993. 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 Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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.

(h) This amendment becomes effective on March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4199 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–236–AD; Amendment 39–9944; AD 97–04–19]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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

DATES: Effective March 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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 Saab Model SAAB 2000 series airplanes was published in the Federal Register on December 12, 1996 (61 FR 65369). That action proposed to require a visual inspection to determine if rudder disconnection has occurred, and, if so, the immediate replacement of the disconnect unit with a new unit.

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 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $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 AD on U.S. operators is estimated to be $1,260, or $420 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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:

97–04–19 SAAB Aircraft AB: Amendment 39–9944. Docket 96–NM–236–AD.

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

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

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

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

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

(d) The inspection shall be done in accordance with Saab Alert Service Bulletin 2000–A27–020, dated March 25, 1996. The replacement shall be done in accordance with Saab Service Bulletin 2000–27–021, Revision 1, dated June 19, 1996. 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 SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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 March 31, 1997.

Issued in Renton, Washington, on February 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4198 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 97–ACE–3]

Airport Name Change; Johnson County Industrial Airport, Olathe, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; amendment.

SUMMARY: This amendment changes the name of the Johnson County Industrial Airport, Olathe, KS to New Century Aircenter, Olathe, KS for the class D and E5 airspace.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

In February 1995, the name of the Johnson County Industrial Airport, Olathe, KS was changes to New Century Aircenter. FAA Order 7400.9D was not amended to reflect this change. This docket amends that Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the name of Johnson County Industrial Airport to New Century Aircenter. The FAA has determined that this regulation only involves a technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a ''significant regulatory action'' under Executive Order 12886; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 CFR 11034: February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipate impact is so minimal. Since this is a routine matter that will only affect an airport name, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Olathe, KS [Amend]

Olathe, New Century Aircenter, KS
(Lat. 38°49′54″ N., long. 94°53′24″ W.)

* * * * *

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

* * * * *

ACE KS E5 Olathe, KS [Amend]

Olathe, New Century Aircenter, KS
(Lat. 38°49′54″ N., long. 94°53′24″ W.)

* * * * *

Issued in Kansas City, MO, on February 6, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–4501 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 131 and 133

[Docket Nos. 95P–0125, 95P–0250, 95P–0261, and 95P–0293]

Lowfat and Skim Milk Products, Lowfat Cottage Cheese: Revocation of Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objection and denial of the request for a hearing; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying the requests that it received for a hearing on the final rule removing the standards of identity for lowfat milk and skim milk as well as those for other lower-fat dairy products. After reviewing the objections to the final rule, the agency has concluded that the objections do not raise issues of material fact that justify granting a hearing. Therefore, FDA is confirming the effective date for the final rule. The final rule was based, in part, on petitions filed jointly by the Milk Industry Foundation and the Center for Science in the Public Interest and on a petition filed by the American Dairy Products Institute. This action is also part of the agency's ongoing review of existing regulations under President Clinton's Regulatory Reinvention Initiative.

DATES: Effective date confirmed: January 1, 1998. This rule is applicable to all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Compliance may begin on November 20, 1996. Any labels or labeling that require revision as a result of this revocation shall comply no later than January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background—The Final Regulation

In the Federal Register of November 20, 1996 (61 FR 58991), FDA issued a final rule entitled ''Lowfat and Skim Milk Products, Lowfat and Nonfat Yogurt Products, Lowfat Cottage Cheese: Revocation of Standards of Identity; Food Labeling, Nutrient Content Claims For Fat, Fatty Acids and Cholesterol Content of Food'' which removed the standards of identity for the following lower-fat dairy products: Sweetened condensed skimmed milk (21 CFR 131.122), lowfat dry milk (21 CFR 131.123), evaporated skimmed milk (21 CFR 131.132), lowfat milk (21 CFR 131.135), acidified lowfat milk (21 CFR 131.136), cultured lowfat milk (21 CFR 131.138), skim milk (21 CFR 131.143), acidified skim milk (21 CFR 131.144), cultured skim milk (21 CFR 131.146), sour half-and-half (21 CFR 131.185), acidified sour half-and-half (21 CFR 131.187), and lowfat cottage cheese (21 CFR 133.131) (the November 1996 final rule). The final regulation also amended the standard of identity for dry cream in 21 CFR 131.149 by removing the reference to 21 CFR 131.135 (the lowfat milk standard). FDA announced that it was deferring action, for 120 days, on its proposal to remove the standards of identity for lowfat and nonfat yogurt (21 CFR 131.203 and 131.206). Further, the final rule amended the nutrient content claims regulations for fat, fatty acids, and cholesterol content to provide for ''skim'' as a synonym for ''nonfat'' when used in labeling milk products.

Interested persons had until December 20, 1996, to file written objections to the revisions in parts 131 and 133 (21 CFR parts 131 and 133) or to request a hearing on the specific provisions to which there were objections. FDA received one letter, from Mid-America Dairymen, Inc., Associated Milk Producers, Inc., and Swiss Valley Farms (hereinafter referred to as ''Mid-America'' or ''the objector'') containing objections to portions of the November 1996 final rule and requests for a hearing on those objections. Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)), FDA has carefully considered the objections and requests for a hearing, and other responses. The specific objections and the agency's conclusions follow.

II. Standards for Granting a Hearing

Section 701(e) of the act provides that, within 30 days after publication of an order relating to standards of identity for dairy products, any person adversely affected by such an order may file objections, specifying with particularity the provisions of the order ''deemed objectionable, stating the grounds therefor,'' and requesting a public hearing based upon such objections. FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young,* 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied,* 475 U.S. 1123 (1986)). Specific criteria for determining whether a request for a hearing is justified are set forth in 21 CFR 12.24(b).

A party seeking a hearing is required to meet a ''threshold burden of tendering evidence suggesting the need for a hearing.'' (See *Costle* v. *Pacific Legal Foundation,* 445 U.S. 198, 214–215 (1980) *reh. den.,* 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 620–621 (1973).) If a hearing request fails to identify any factual evidence

that would be the subject of a hearing, there is no point in holding one.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (*Dyestuffs and Chemicals, Inc.*, v. *Flemming*, 271 F.2d 281 (8th Cir. 1959) *cert. denied*, 362 U.S. 911 (1960)). A hearing is justified only if the objections are made in good faith, and if they ''draw into question in a material way the underpinnings of the regulation at issue'' (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.*, v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.) *cert. denied*, 358 U.S. 872 (1958).)

In sum, a hearing request should present sufficient credible evidence to raise a material issue of fact, and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

III. Objections and Requests for a Hearing

1. The first objection was about the removal of the standards of identity for lowfat milk (21 CFR 131.135) and skim milk (21 CFR 131.143). In the November 1996 final rule, FDA removed the standards of identity for lower-fat dairy products, including the standards for lowfat milk and skim milk, so that these products would be subject to the requirements in 21 CFR 130.10 (the general standard). FDA concluded that the final regulation will provide for consistency in the nomenclature and labeling of most nutritionally modified dairy products and other foods bearing ''lowfat'' and ''nonfat'' claims; promote honesty and fair dealing in the interest of consumers; increase flexibility for manufacturers of lower-fat dairy products; and increase product choices available to consumers.

Mid-America objected to the removal of the standards for lowfat and skim milk stating that those standards were issued because the Commissioner of Food and Drugs (the Commissioner) found that they would promote honesty and fair dealing in the interest of consumers. In support of this objection, Mid-America cited section 401 of the act (21 U.S.C. 341) which provides:

> Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity.

Mid-America also included by reference ''all of the factual findings made by the Commissioner when the lowfat and skim milk standards were promulgated.''

In further support of the objection, Mid-America maintained that new nutrition and other labeling requirements do not obviate the need for standards of identity for lowfat milk and skim milk. Mid-America acknowledged that some of the rationale in the preamble to the November 1996 final rule may be sound for products other than lowfat milk and skim milk, because of the new labeling requirements. However, according to Mid-America, these new requirements cannot be interpreted to mean that removing the standards for lowfat milk and skim milk will be in the interest of consumers because the standards were issued to promote honesty and fair dealing in the interest of consumers.

Mid-America did not specify to which new labeling requirements it was referring. FDA assumes the reference is to the January 6, 1993, final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). These final rules included new requirements for nutrition labeling, uniform definitions for nutrient content claims and health claims, and more complete ingredient declaration, particularly for standardized foods. Further, the objection did not identify the foods to which it was referring in saying that the new nutrition labeling regulations may justify removal of the standards of identity in part 131 or 133, nor did it offer any reason for treating lowfat milk and skim milk differently from other lower-fat dairy products with respect to the new nutrition labeling requirements. Thus, this part of the objection does not present any substantive evidence in support of the objection.

In addition, Mid-America included by reference all the ''factual findings'' made by the Commissioner in establishing the standards for lowfat and skim milk. The objection's premise appears to be that if those findings justified issuance of the standards of identity, they must now preclude removal of the standards. However, an evidentiary hearing was not held when the standards were originally issued, and, therefore, there were no formal findings of fact.

FDA assumes that by referring to ''factual findings,'' without any more specific references, Mid-America may have intended to include by reference all conclusions reached by the agency during the course of the rulemaking that resulted in the standards for lowfat milk and skim milk. This rulemaking spanned 14 years, however, and Mid-America has provided no specific information to help the agency focus its attention on any factual evidence or legal arguments that Mid-America might present at a hearing. Consequently, it is difficult for the agency to determine the specific issues to which the objection refers. Nonetheless, FDA has carefully reviewed the record of the rulemaking that resulted in the standards for lowfat milk and skim milk to see whether there were any findings or conclusions that were in conflict with the agency's determination in the November 1996 final rule to revoke these standards and to replace them with the general standard.

Most of the objections to the original final rule issuing standards for lowfat and skim milk (38 FR 27924, October 10, 1973) (the 1973 final rule), as discussed in a notice in the Federal Register of December 5, 1974 (39 FR 42351), have no bearing here. For example, FDA received objections to the requirement in the 1973 final rule that milk be pasteurized. Other objections concerned the failure of the standards for fluid milks to provide for fortification with minerals and vitamins other than vitamins A and D.

The only issue that the agency found that could be even partially related to Mid-America's objection was one over whether FDA should have provided for the use of stabilizers and emulsifiers, and the basis for limiting the permitted amounts of these substances, in lowfat milk and skim milk. The 1973 final rule establishing standards of identity for lowfat milk and skim milk provided for limited use of stabilizers and emulsifiers in these foods. FDA received a number of objections and requests for a hearing based on its failure to provide for unrestricted use of stabilizers. These objections maintained that stabilizers could improve the palatability of lower-fat milks and would be more economical than nonfat milk-derived solids.

On December 5, 1974, FDA published a notice staying the provision that would have limited the use of stabilizers and emulsifiers in lower-fat milks (39 FR 42351). In an attempt to avoid a hearing, FDA proposed to amend the standards for lowfat milk and skim milk to expand the uses of stabilizers and emulsifiers (41 FR 46873, October 26,

1976) (the 1976 proposal). Subsequently, based on comments to the 1976 proposal, FDA published a final rule in the Federal Register of December 12, 1980 (45 FR 81734), terminating the 1976 rulemaking and continuing the stay on the provisions in the 1973 standard that would have restricted the use of stabilizers and emulsifiers in lowfat and skim milks. In 1983, FDA published a notice announcing a public hearing on stayed provisions of the 1973 final rule. Based on a motion by FDA for summary judgment, and a lack of opposition by the original objectors, an administrative law judge issued an order, dated December 12, 1983, finding that the provisions in the original standards that limited the use of stabilizers and emulsifiers would promote honesty and fair dealing in the interest of consumers (51 FR 40313, November 6, 1986).

After carefully reviewing the record on this issue, FDA concludes that nothing in the record of the 1973 final rule raises an issue of fact about the agency's decision with respect to the use of stabilizers and emulsifiers that is embodied in the November 1996 final rule. The controversy in 1973 concerned a comparison between lower-fat milks containing stabilizers and emulsifiers and lower-fat milks to which milk solids not fat (msnf) are added so that the finished product contains 10 percent msnf. In that context, FDA concluded (45 FR 81734 at 81736) that lower-fat milks thickened with stabilizers and emulsifiers would be nutritionally inferior to the same products containing not less than 10 percent msnf, and that, therefore, use of stabilizers and emulsifiers to thicken lower-fat milk products would not promote honesty and fair dealing in the interest of consumers. No conclusions were reached in that rulemaking on the broader issue of adding ingredients, including stabilizers and emulsifiers, to a nutritionally modified food (that is, foods to which vitamins have been added to avoid nutritional inferiority) to restore functional properties that are reduced or lost when fat is removed compared to the same food without added ingredients, which is the issue that FDA decided in replacing the standards in 21 CFR 131.135 and 131.143 with the general standard in the November 1996 final rule.

Furthermore, and more importantly, the finding of an administrative law judge in 1983 that a standard of identity will promote honesty and fair dealing in the interest of consumers does not mean that that standard cannot be changed. FDA's administrative regulations in 21 CFR 10.30 provide that interested persons may petition the agency to amend standards to reflect changes in consumer needs and perceptions, along with advances in technology, whenever such changes will promote honesty and fair dealing in the interest of consumers. Further, FDA can propose on its own initiative to amend a standard when the agency considers the amendment to be appropriate. To raise an issue of fact that would justify a hearing, an objector must do more than point out that a standard has changed, yet that is all the objector has done here.

In addition, Mid-America appears to misunderstand the impact of the November 1996 final rule in at least one important regard. Removing the standards of identity for lowfat milk and skim milk in 21 CFR 131.135 and 131.143 does not mean that these foods are not covered by a standard of identity. Rather, these foods will continue to be regulated as standardized foods under the requirements in the general standard (21 CFR 130.10).

Mid-America failed to identify any specific evidence in support of its objection. FDA has carefully reviewed the record associated with issuing the original standards of identity for lowfat and skim milk. The agency has been unable to find anything in that record that conflicts with the agency's determination that creating new standards for lower-fat milk products under the general standard will promote honesty and fair dealing in the interest of consumers, in a way that raises a material issue of fact.

FDA concludes that the objection did not raise a genuine and substantial issue of fact that might be readily resolved by the evidence identified in the objection. Therefore, Mid-America's first objection fails, under 21 CFR 12.24(b)(1), to justify a hearing, and thus its request for a hearing on this objection is denied.

2. Mid-America objected to the removal of the standards for lowfat milk and skim milk on the basis that relying on other sections of the regulations to protect consumers is factually unsound. In support of its second objection, Mid-America maintained that a number of factual issues remain unresolved. This assertion was followed by a series of questions, including, for example: ''(1) What ingredients may be added to lowfat milk and skim milk [under 21 CFR 130.10]?'' and ''(2) In what amount may those ingredients be added?'' These questions were not accompanied by any additional information that could have clarified the position of Mid-America or that indicated why resolution of the question in any particular way might be in conflict with the agency's action in the November 1996 final rule.

First, FDA notes that most of the questions asked by Mid-America have already been addressed by the agency, either in the preamble of the November 1996 final rule or in the preambles to the proposal (56 FR 60512, November 27, 1991) and final rule (58 FR 2431, January 6, 1993) establishing the general standard, and Mid-America has not provided any basis for finding that a factual issue persists with respect to these questions. For example, both the November 20, 1996, and the January 6, 1993, final rules contain extensive discussions about the extent to which a nutritionally modified food named using a nutrient content claim and a standardized term may deviate from the food for which it substitutes and the types of labeling necessary to inform consumers about such deviations (61 FR 58991 at 58994 and 58 FR 2431 at 2433). In addition, requirements limiting such deviations are codified in 21 CFR 130.10. The objector's questions raised no new issues that have not previously been considered by the agency. Secondly, to the extent that any of the questions posed by Mid-America are not fully answered, Mid-America did not provide any basis to find that there is a factual issue with respect to any of those questions. Thus, the questions represent nothing more than mere allegations. Under 21 CFR 12.24(b)(2), a hearing will not be granted on the basis of mere allegations. Thus, the questions posed in support of the objection do not justify the granting of a hearing.

Furthermore, as noted in the agency's response to the first objection, it is not clear whether the objection takes into consideration that, although FDA removed the standards of identity in 21 CFR 131.135 and 131.143, there are new standards for lower-fat milk products under 21 CFR 131.10. Mid-America did not provide any evidence that would provide a basis for questioning the agency's finding that the new standards for lower-fat milk products under 21 CFR 130.10 are in the interest of consumers and promote fair dealing.

FDA concludes that Mid-America's second objection did not raise any genuine and substantial issue of fact that would justify a hearing. Rather, the questions posed in support of the second objection amount to little more than ''mere allegations or denials or general description and contentions'' that the agency has said in 21 CFR 12.24(b)(2) will not justify a hearing. Consistent with this regulation, the relevant case law provides that where a party requesting a hearing only offers allegations without an adequate proffer to support them, the agency may properly disregard those allegations

(*General Motors Corp.* v. *FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981)). Mid-America failed to submit any evidence that creating new standards for lowfat milk and skim milk under the general standard will not promote honesty and fair dealing in the interest of consumers. Because it did not proffer support for its allegations, Mid-America did not justify a hearing on this issue. Therefore, FDA denies the request for a hearing on the second objection.

3. Mid-America cited the agency's desire to reduce the burden of regulation and a need for increased flexibility in at least some standards of identity. At the same time, Mid-America said that none of these facts justify removing the standards for lowfat milk and skim milk that promote honesty and fair dealing in the interest of consumers. As with its second objection, Mid-America maintained that this objection raised several ''factual issues'' and proceeded to list a series of questions. The questions included: ''What do consumers expect when they purchase 'lowfat milk' or 'skim milk'?'' ''Would honesty and fair dealing in the interest of consumers be promoted if products labeled as 'lowfat milk' and 'skim milk' are permitted to contain any 'safe and suitable ingredients'?''

Mid-America's third objection did not raise any genuine and substantial issue of fact that might be readily resolved by any evidence identified in the objection. Again, the questions posed in support of the objection amount to little more than mere allegations or denials or general description and contentions that, under 21 CFR 12.24(b)(2), will not justify a hearing. Therefore, FDA denies the request for a hearing on this objection.

FDA notes that the letter containing objections and a request for a hearing was filed within the time specified in 21 CFR 12.22(e). However, as noted in section III.1. and III.2. of this document, the objections to the final rule removing the standards for lowfat and skim milk and placing these foods under new standards in 21 CFR 130.10 do not raise genuine and substantial issues of fact for resolution through a public hearing or other procedure as provided for under 21 CFR 12.24, nor did the objections provide any evidence that the November 1996 final rule would not promote honesty and fair dealing in the interest of consumers. Therefore, in accordance with 21 CFR 12.28, FDA is denying Mid-America's requests for a hearing. There were no objections to the November 1996 final rule other than those addressed above.

List of Subjects

21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 403, 409, 701, 721 (21 U.S.C. 321, 341, 343, 348, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is hereby given that the objections received did not justify a hearing, and that the final regulation to amend parts 131 and 133 by removing the standards of identity for various lower-fat milk, sour half-and-half, and cottage cheese products and amending the standard of identity for dry cream, as issued in the Federal Register of November 20, 1996 (61 FR 58991), will become effective on January 1, 1998. Any labels or labeling that require revision as a result of the final regulation must comply no later than January 1, 1998.

Dated: February 14, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–4365 Filed 2–18–97; 4:10 pm]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 723

Board for Correction of Naval Records

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending the Procedures for the Board for Correction of Naval Records. This revision incorporates format changes and clarifies various minor provisions of the part.

DATES: *Effective date:* February 24, 1997.

FOR FURTHER INFORMATION CONTACT: W. Dean Pfeiffer, Executive Director, Board for Correction of Naval Records, 2 Navy Annex, Washington, DC 20370–5100, (703) 614–1402.

SUPPLEMENTARY INFORMATION: The Department of the Navy has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–611, and does not have a significant economic impact on small entities as defined by the Act. This rule imposes no obligatory information requirements beyond internal Navy use. The proposed rule was published for comment on October 12, 1995, at 60 FR 53153. No comments or objections to the proposed rule were received. The final rule contains no substantive changes from the proposed rule.

List of Subjects in 32 CFR Part 723

Administrative practice and procedure, Claims, Military personnel.

Accordingly, part 723 of chapter VI of title 32 of the Code of Federal Regulations is revised as follows:

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Sec.

Authority: 10 U.S.C. 1034, 1552.

§ 723.1 General Provisions.

This part sets up procedures for correction of naval and marine records by the Secretary of the Navy acting through the Board for Correction of Naval Records (BCNR or the Board) to remedy error or injustice. It describes how to apply for correction of naval and marine records and how the BCNR considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552.

§ 723.2 Establishment, function and jurisdiction of the Board.

(a) *Establishment and composition.* Under 10 U.S.C. 1034 and 1552, the Board for Correction of Naval Records is established by the Secretary of the Navy. The Board consists of civilians of the executive part of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary and who shall serve at the pleasure of the Secretary. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as Chair. In the absence or incapacity of

the Chair, an Acting Chair chosen by the Executive Director shall act as Chair for all purposes.

(b) *Function.* The Board is not an investigative body. Its function is to consider applications properly before it for the purpose of determining the existence of error or injustice in the naval records of current and former members of the Navy and Marine Corps, to make recommendations to the Secretary or to take corrective action on the Secretary's behalf when authorized.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 723.3 Application for correction.

(a) *General requirements.* (1) The application for correction must be submitted on DD 149 (Application for Correction of Military Record) or exact facsimile thereof, and should be addressed to: Board for Correction of Naval Records, Department of the Navy, 2 Navy Annex, Washington, DC 20370–5100. Forms and other explanatory matter may be obtained from the Board upon request.

(2) Except as provided in paragraph (a)(3) of this section, the application shall be signed by the person requesting corrective action with respect to his/her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (18 U.S.C. 287 and 1001)

(3) When the record in question is that of a person who is incapable of making application, or whose whereabouts is unknown, or when such person is deceased, the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted with the application.

(b) *Time limit for filing application.* Applications for correction of a record must be filed within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the application is filed more than 3 years after discovery of the error or injustice, the application must set forth the reason why the Board should find it in the interest of justice to excuse the failure to file the application within the time prescribed.

(c) *Acceptance of applications.* An application will be accepted for consideration unless:

(1) The Board lacks jurisdiction.

(2) The Board lacks authority to grant effective relief.

(3) The applicant has failed to comply with the filing requirements of paragraphs (a)(l), (a)(2), or (a)(3) of this section.

(4) The applicant has failed to exhaust all available administrative remedies.

(5) The applicant has failed to file an application within 3 years after discovery of the alleged error or injustice and has not provided a reason or reasons why the Board should find it in the interest of justice to excuse the failure to file the application within the prescribed 3-year period.

(d) *Other proceedings not stayed.* Filing an application with the Board shall not operate as a stay of any other proceedings being taken with respect to the person involved.

(e) *Consideration of application.* (1) Each application accepted for consideration and all pertinent evidence of record will be reviewed by a three member panel sitting in executive session, to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. This determination will be made by majority vote.

(2) The Board may deny an application in executive session if it determines that the evidence of record fails to demonstrate the existence of probable material error or injustice. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Applicants have the burden of overcoming this presumption but the Board will not deny an application solely because the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for the correction of military or naval records. Denial of an application on the grounds of insufficient evidence to demonstrate the existence of probable material error or injustice is final subject to the provisions for reconsideration contained in § 723.9.

(3) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination shall be made in writing and include a brief statement of the grounds for denial.

(4) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant's claims of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reason for discharge. Further the Board shall make a determination as to the applicability of the provisions of the Military Whistleblower Protection Act (10 U.S.C. 1034) if it is invoked by the applicant or reasonably raised by the evidence. Attached to the statement shall be any advisory opinion considered by the Board which is not fully set out in the statement. The applicant will also be advised of reconsideration procedures.

(5) The statement of the grounds for denial, together with all attachments, shall be furnished promptly to the applicant and counsel, who shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. Classified or privileged material will not be incorporated or attached to the Board statement; rather, unclassified or nonprivileged summaries of such material will be so used and written explanations for the substitution will be provided to the applicant and counsel.

§ 723.4 Appearance before the board; notice; counsel; witnesses; access to records.

(a) *General.* In each case in which the Board determines a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his/her selection or in person with counsel. Additional provisions apply to cases processed under the Military Whistleblower Protection Act (10 U.S.C. 1034).

(b) *Notice.* (1) In each case in which a hearing is authorized, the Board's staff will transmit to the applicant a written notice stating the time and place of hearing. The notice will be mailed to the applicant, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his/her right to such notice in writing.

(2) Upon receipt of the notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he/she will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he/she intends to call. Cases in which the applicant notifies the Board that he/she does not desire to be present at the hearing will be considered in accordance with § 723.5(b)(2).

(c) *Counsel.* As used in this part, the term ''counsel'' will be construed to include members in good standing of the federal bar or the bar of any state, accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs under 38 U.S.C. 3402, or such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law. Representation by counsel will be at no cost to the government.

(d) *Witnesses.* The applicant will be permitted to present witnesses in his/her behalf at hearings before the Board. It will be the responsibility of the applicant to notify his/her witnesses and to arrange for their appearance at the time and place set for hearing. Appearance of witnesses will be at no cost to the government.

(e) *Access to records.* (1) It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he/she desires to present in support of his/her case.

(2) Classified or privileged information may be released to applicants only by proper authorities in accordance with applicable regulations.

(3) Nothing in this part authorizes the furnishing of copies of official records by the Board. Requests for copies of these records should be submitted in accordance with applicable regulations governing the release of information. The BCNR can provide a requestor with information regarding procedures for requesting copies of these records from the appropriate retention agency.

§ 723.5 Hearing

(a) *Convening of board.* The Board will convene, recess and adjourn at the call of the Chair or Acting Chair.

(b) *Conduct of hearing.* (1) The hearing shall be conducted by the Chair or Acting Chair, and shall be subject to his/her rulings so as to ensure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(2) If the applicant, after being duly notified, indicates to the Board that he/she does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(3) If the applicant, after being duly notified, indicates to the Board that he/she will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, the applicant or representative fails to appear at the time and place set for the hearing or fails to provide the notice required by § 723.4(b)(2), the Board may consider the case in accordance with the provisions of paragraph (b)(2) of this section, or make such other disposition of the case as is appropriate under the circumstances.

(4) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(c) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

§ 723.6 Action by the Board.

(a) *Deliberations, findings, conclusions, and recommendations.* (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of an application, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before it, the Board may require the applicant or military authorities to provide such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, the Board will make written findings, conclusions and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in § 723.3(e)(4). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication. Additionally, in Military Whistleblower Protection Act cases, any recommendation by the Board to the Secretary that disciplinary or administrative action be taken against any Navy official based on the Board's determination that the official took reprisal action against the applicant will not be made part of the Board's record of proceedings or furnished the applicant but will be transmitted to the Secretary as a separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board a minority report will be submitted, either as to the findings, conclusions or recommendation, including the reasons therefor.

(c) *Record of proceedings.* Following a hearing, or where the Board determines to recommend that the record be corrected without a hearing, a record of proceedings will be prepared. Such record shall indicate whether or not a quorum was present, and the name and vote of each member present. The record shall include the application for relief, a verbatim transcript of any testimony, affidavits, papers and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions and recommendations of the Board, where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his/her application without prejudice at any time before its record of proceedings is forwarded to the Secretary.

(e) *Delegation of authority to correct certain naval records.* (1) With respect to all petitions for relief properly before it, the Board is authorized to take final corrective action on behalf of the Secretary, unless:

(i) Comments by proper naval authority are inconsistent with the Board's recommendation;

(ii) The Board's recommendation is not unanimous; or

(iii) It is in the category of petitions reserved for decision by the Secretary of the Navy.

(2) The following categories of petitions for relief are reserved for decision by the Secretary of the Navy:

(i) Petitions involving records previously reviewed or acted upon by the Secretary wherein the operative facts remained substantially the same;

(ii) Petitions by former commissioned officers or midshipmen to change the character of, and/or the reason for, their discharge; or,

(iii) Such other petitions as, in the determination of Office of the Secretary or the Executive Director, warrant Secretarial review.

(3) The Executive Director after ensuring compliance with this section, will announce final decisions on applications decided under this section.

§ 723.7 Action by the Secretary.

(a) *General.* The record of proceedings, except in cases finalized by the Board under the authority delegated in § 723.6(e), and those denied by the Board without a hearing, will be forwarded to the Secretary who will direct such action as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration. Those cases returned for further consideration shall be accompanied by a brief statement setting out the reasons for such action along with any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he or she expressly adopts in whole or in part the findings, conclusions and recommendations of the Board, or a minority report, shall include a brief statement of the grounds for denial. See § 723.3(e)(4).

(b) *Military Whistleblower Protection Act.* The Secretary will ensure that decisions in cases involving the Military Whistleblower Protection Act are issued 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense. Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Navy.

(3) That the request for review must be in writing and include:

(i) The applicant's name, address and telephone number;

(ii) A copy of the application to the Board and the final decision of the Secretary of the Navy; and

(iii) A statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Navy.

(4) That the request must be based on the Board record; request for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for reconsideration by the Board under § 723.9.

§ 723.8 Staff action.

(a) *Transmittal of final decisions granting relief.* (1) If the final decision of the Secretary is to grant the applicant's request for relief the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the finalized record of proceedings to proper naval authority for appropriate action. Similarly final decisions of the Board granting the applicant's request for relief under the authority delegated in § 723.6(e), shall also be forwarded to the proper naval authority for appropriate action.

(2) The Board shall transmit a copy of the record of proceedings to the proper naval authority for filing in the applicant's service record except where the effect of such action would be to nullify the relief granted. In such cases no reference to the Board's decision shall be made in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and retained in a file maintained for this purpose.

(3) The addressees of such decisions shall report compliance therewith to the Executive Director.

(4) Upon receipt of the record of proceedings after final action by the Secretary, or by the Board acting under the authority contained in § 723.6(e), the Board shall communicate the decision to the applicant. The applicant is entitled, upon request, to receive a copy of the Board's findings, conclusions and recommendations.

(b) *Transmittal of final decisions denying relief.* If the final decision of the Secretary or the Board is to deny relief, the following materials will be made available to the applicant:

(1) A statement of the findings, conclusions, and recommendations made by the Board and the reasons therefor;

(2) Any advisory opinions considered by the Board;

(3) Any minority reports; and

(4) Any material prepared by the Secretary as required in § 723.7.

Moreover, applicant shall also be informed that the name and final vote of each Board member will be furnished or made available upon request and that he/she may submit new and material evidence or other matter for further consideration.

§ 723.9 Reconsideration.

After final adjudication, further consideration will be granted only upon presentation by the applicant of new and material evidence or other matter not previously considered by the Board. New evidence is defined as evidence not previously considered by the Board and not reasonably available to the applicant at the time of the previous application. Evidence is material if it is likely to have a substantial effect on the outcome. All requests for further consideration will be initially screened by the Executive Director of the Board to determine whether new and material evidence or other matter (including, but not limited to, any factual allegations or arguments why the relief should be granted) has been submitted by the applicant. If such evidence or other matter has been submitted, the request shall be forwarded to the Board for a decision. If no such evidence or other matter has been submitted, the applicant will be informed that his/her request was not considered by the Board because it did not contain new and material evidence or other matter.

§ 723.10 Settlement of claims.

(a) *Authority.* (1) The Department of the Navy is authorized under 10 U.S.C. 1552 to pay claims for amounts due to applicants as a result of corrections to their naval records.

(2) The Department of the Navy is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(b) *Application for settlement.* (1) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) When the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir or beneficiaries, in the order prescribed by the law applicable to that kind of payment, or if there is no such law covering order of payment, in the order set forth in 10 U.S.C. 2771; or as otherwise prescribed by the law applicable to that kind of payment.

(3) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(c) *Settlement.* (1) Settlement of claims shall be upon the basis of the decision and recommendation of the

Board, as approved by the Secretary or his designee. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment, self employment or any income protection plan for such employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulation, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from military service.

(2) Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the disbursing activity of the nature and amount of the various benefits represented by the total settlement and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

(d) *Report of settlement.* In every case where payment is made, the amount of such payment and the names of the payee or payees shall be reported to the Executive Director.

§ 723.11 Miscellaneous provisions.

(a) *Expenses.* No expenses of any nature whatsoever voluntarily incurred by the applicant, counsel, witnesses, or by any other person in the applicant's behalf, will be paid by the Government.

(b) *Indexing of decisions.* (1) Documents sent to each applicant and counsel in accordance with § 723.3(e)(5) and § 723.8(a)(4), together with the record of the votes of Board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary will be indexed and promptly made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC.

(2) All documents made available for public inspection and copying shall be indexed in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the Board and/or Secretary have granted or denied relief. The index shall be published quarterly and shall be available for public inspection and distribution by sale at the Reading Room located on the Concourse of the Pentagon Building in Room 2E123, Washington, DC. Inquiries concerning the index or the Reading Room may be addressed to the Chief, Micromation Branch/Armed Forces Discharge Review/Correction Boards Reading Room, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia 22202.

(3) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which is privileged or classified may be made only if a written statement of the basis for such deletion is made available for public inspection.

Dated: January 30, 1997.

D.E. Koenig, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4390 Filed 2–21–97; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH49–1–6072; FRL–5649–6]

Approval and Promulgation of Implementation Plans; Ohio Stage II Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: On October 20, 1994, the EPA published a direct final rule partially approving and partially disapproving the Ohio Stage II gasoline vapor recovery program. Subsequent to that publication, EPA approved additional sections of the Ohio Administrative Code (OAC) concerning control of volatile organic compounds, including Stage II test methods and a schedule for implementation. This second action inadvertently omitted mention of the OAC rules incorporated by reference in the codification of the October 20, 1994 document. This inadvertent omission of the incorporation by reference of the Stage II gasoline vapor recovery material was unintentional and is being corrected in this document.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6084.

Background

On June 13, 1996, the Ohio EPA notified the EPA that a correction was needed to the Code of Federal Regulations (CFR) regarding the codification of the Stage II gasoline vapor recovery program. The State noted that a portion of the Federal approval of the Stage II gasoline vapor recovery rules, published in the Federal Register on October 20, 1994 (59 FR 52911), was missing from the CFR. On October 20, 1994, a direct final rule was published (59 FR 52915) which partially approved the Stage II gasoline vapor recovery program for selected areas in the State of Ohio. The direct final rule incorporated by reference Ohio Administrative Code (OAC) rules 3745–21–09(DDD) (1)–(4). This reference was inadvertently omitted from the subsequent publication of a direct final rule in the Federal Register on March 23, 1995 (60 FR 15235). This direct final rule approved OAC Chapter 3745–21, regarding volatile organic compound emissions, and included revisions to 40 CFR 52.1870(c)(104). The EPA action published on March 23, 1995 (60 FR 15240), inadvertently omitted the incorporation by reference of the previous partial approval of State rules requiring Stage II gasoline vapor recovery controls, codified at OAC rules 3745–21–09(DDD) (1)–(4), from its revisions to 40 CFR 52.1870(c)(104).

Action

OAC rules 3745–21–09(DDD)(1)-(4) are hereby incorporated by reference into 40 CFR as § 52.1870(c)(104)(i)(C). This action is prompted by a request from the State of Ohio to correct the CFR to include the reference of this codification.

Administrative Requirements

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 any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by

Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it 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 the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, air pollution control, Incorporation by reference, ozone, Volatile organic compounds.

Dated: October 11, 1996.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

2. Section 52.1870 is amended by adding paragraph (c)(104)(i)(C) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(104) * * *

(i) * * *

(C) Ohio Administrative Code rules 3745–21–09(DDD)(1)-(4), effective date March 31, 1993.

[FR Doc. 97–4422 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–13–0027a; FRL 5688–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) and Yolo-Solano Air Quality Management District (YSAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from wastewater separators and pharmaceutical manufacturing operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on April 25, 1997 unless adverse or critical comments are received by March 26, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section [Air-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section [Air–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 464, Wastewater Separators, and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.35, Pharmaceutical Manufacturing Operations. These rules were submitted by the California Air Resources Board to EPA on May 13, 1991 and November 30, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the Yolo-Solano County Area and the Los-Angeles-South Coast Air Basin (LA Basin). 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Yolo-Solano County Area is classified as serious; the portion of Solano County in the Sacramento Metropolitan Area is classified as

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

serious; the portion of Solano County in the San Francisco-Bay Area is classified as moderate.[2] The LA Basin is classified as extreme;[3] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1991 and November 30, 1994, including the rules being acted on in this document. This document addresses EPA's direct-final action for YSAQMD Rule 2.35, Pharmaceutical Manufacturing Operations and SCAQMD Rule 464, Wastewater Separators. YSAQMD adopted Rule 2.35 on September 14, 1994; and SCAQMD adopted Rule 464 on December 7, 1990. These submitted rules were found to be complete on July 10, 1991 and January 30, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[4] and is being finalized for approval into the SIP.

YSAQMD Rule 2.35 controls VOC emissions from the manufacture of pharmaceutical and cosmetic products or devices; and SCAQMD Rule 464 controls VOC emissions from wastewater treatment equipment used to separate petroleum-driven compounds from wastewater, which includes separator basins, skimmers, grit chambers, and sludge hoppers. VOCs contribute to the production of ground level ozone and smog. YSAQMD Rule 2.35 and SCAQMD Rule 464 were originally adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTGs applicable to these rules are entitled, ''Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds,'' EPA–450/2–77–025; and ''Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products,'' EPA–450/2–78–029. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

YSAQMD's submitted Rule 2.35, Pharmaceutical Manufacturing Operations, is a new rule and includes:

- Specific emissions standards and control methods for equipment, maintenance and repair, and surface preparation and cleanup solvents;
- A compliance schedule for existing source modifications;
- Exemptions for small facilities and sources subject to other district rules;
- Extensive monitoring and recordkeeping requirements for small-users, organic compound processing, emission control equipment, and solvent waste/residue disposal.

SCAQMD Rule 464, Wastewater Separators, includes the following significant changes from the current SIP:

- The definition of wastewater separator was added to the rule;
- The equivalency provision in section (b)(1)(C) was deleted at the request of EPA because it allowed the Executive Director to approve the use of other equipment of equivalent effectiveness as a solid cover and/or a floating pontoon or double-deck type cover without EPA's concurrence;
- The effective dates were deleted because they were outdated.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, YSAQMD Rule 2.35, Pharmaceutical Manufacturing Operations and SCAQMD Rule 464, Wastewater Separators, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective April 25, 1997, unless, by March 26, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 25, 1997.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that these rules will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already

[2] Yolo County, the portion of Solano County in the Sacramento Metropolitan Area, and the portion of Solano County in the San Francisco-Bay Area retained their designations and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The LA Basin has retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 3, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraphs (c)(184) (i)(B)(*6*) and (c)(207)(i)(C)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*6*) Rule 464, adopted on December 7, 1990.

* * * * *

(207) * * *

(i) * * *

(C) * * *

(*5*) Rule 2.35, adopted on September 14, 1994.

* * * * *

[FR Doc. 97–4421 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 57]

RIN 3090–AG28

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1997 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 1997, and applies for RIT allowance payments made on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Groat, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 1997 on moving expense reimbursements.

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

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1996

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1996.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,885	$31,807	$12,295	$45,572	$17,027	$59,055	$8,229	$29,600
28	31,807	70,867	45,572	105,805	59,055	123,190	29,600	61,245
31	70,867	144,170	105,805	168,990	123,190	179,414	61,245	90,611
36	144,170	292,883	168,990	301,968	179,414	295,681	90,611	150,779
39.6	292,883	.....	301,968	.....	295,681	.....	150,779	.....

APPENDIX B TO PART 302–11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1996

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1996.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3	3.5	4.2	5.6
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	4	8	11
If single status [3]	4	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	4.5	4.5	4.5	4.5
8. Delaware	6	7.1	7.1	7.1
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	7.55	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
17. Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
18. Kentucky	6	6	6	6
19. Louisiana	2	4	4	6
If single status [3]	4	4	6	6
20. Maine	4.5	7	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	5
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.4	4.4	4.4	4.4
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
27. Montana	6	9	10	11
28. Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.45	5.25	6.37
32. New Mexico	3.2	6	7.1	8.5
If single status [3]	6	7.1	7.9	8.5
33. New York	5	7.125	7.125	7.125
If single status [3]	7.125	7.125	7.125	7.125
34. North Carolina	6	7	7	7.75
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	7.5
37. Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island	27.5	27.5 (See footnote 4)	27.5	27.5
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7	7	7	7
46. Vermont		(See footnote 5)		
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 27.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1997

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,067	$32,674	$12,963	$46,966	$16,798	$59,856	$8,702	$29,669
28	32,674	71,647	46,966	104,632	59,856	123,931	29,669	62,023
31	71,647	141,006	104,632	161,381	123,931	180,221	62,023	92,072
36	141,006	288,900	161,381	293,567	180,221	299,695	92,072	152,835
39.6	288,900	.....	293,567	.....	299,695	.....	152,835	.....

APPENDIX D TO PART 302–11—PUERTO RICO TAX TABLES FOR RIT ALLOWANCE

* * * * *

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1996

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
12	.....	.....	.....	$25,000
18	.....	$25,000	.....	.....
31	$25,000	$50,000	$25,000	$50,000
33	$50,000	.....	$50,000	.....

Dated: February 18, 1997.

David J. Barram,

Acting Administrator of General Services.

[FR Doc 97–4557 Filed 2–21–97;8:45am]

BILLING CODE 6820–34–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7659]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Executive Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Executive Associate Director finds that the delayed effective dates would be contrary to the public interest. The Executive Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community number	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Iowa: Gray, city of, Audobon County	190318	Jan. 10, 1997	July 19, 1977.
Pennsylvania: Jenkintown, borough of, Montgomery County.	422717	.....do.....	Dec. 19, 1996.
Alaska: Togiak, city of, unorganized borough	020090	Jan. 17, 1997	
Michigan: Zeeland, city of, Ottawa County	260983	.....do.....	
Idaho: Adams County, unincorporated areas	160204	Jan. 16, 1997	
Louisiana: Hessmer, village of, Avoyelles Parish	220294	Jan. 27, 1997	
Illinois: Lerna, village of, Coles County	171044	Jan. 29, 1997	
Michigan:			
Hay, township of, Gladwin, County	260984	.....do.....	
Secord, township of, Gladwin County	260985	.....do.....	
California: Riverbank, city of, Stanislaus County	060391	Jan. 28, 1997	
New Eligibles—Regular Program			
Washington: Vader, city of, Lewis County	530266	Jan. 17, 1997	Sept. 14, 1979.
Delaware: Ardentown, village of, New Castle County	100058	Jan. 28, 1997	Apr. 17, 1996.
Texas: Aledo, city of, Parker County	481659	Jan. 29, 1997	Jan. 3, 1997.
Reinstatements			
Pennsylvania:			
West Brandywine, township of, Chester County	421496	Aug. 6, 1975, Emerg. Sept. 28, 1979, Reg; Nov. 20, 1996, Susp; Jan. 9, 1997, Rein.	Nov. 20, 1996.
Orbisonia, borough of, Huntingdon County	421682	Oct. 15, 1975, Emerg; Dec. 31, 1982, Reg; July 3, 1995, Susp; Jan. 10, 1997, Rein.	July 3, 1995.
London Grove, township of, Chester County	422274	Oct. 17, 1974, Emerg; Feb. 11, 1983, Reg; Nov. 20, 1996, Susp; Jan. 16, 1997, Rein.	Nov. 20, 1996.
Washington: Steilacoom, town of, Pierce County	530146	June 4, 1975, Emerg; July 19, 1982, Reg; July 19, 1982, Susp; Jan. 16, 1997, Rein.	July 19, 1982.
Pennsylvania: New Garden, township of, Chester County.	422275	Nov. 3, 1975, Emerg; Oct. 15, 1982, Reg; Nov. 20, 1996, Susp; Jan. 24, 1997, Rein.	Nov. 20, 1996.
New York: Fort Ann, town of, Washington County	361231	Feb. 2, 1976, Emerg; Apr. 17, 1985, Reg; May 17, 1988, Susp; Jan. 24, 1997, Rein.	Apr. 17, 1985
Nebraska: Gibbon, city of, Buffalo and Pierce Counties.	310015	June 25, 1975, Emerg; Sept. 27, 1985, Reg; June 5, 1989, Susp; Jan. 28, 1997, Rein.	Sept. 27, 1985.
Regular Program Conversions			
Region I:			
Connecticut: Clinton, town of, Middlesex County	090061	Jan. 17, 1997, Suspension Withdrawn	Jan. 17, 1997.
Vermont: Weston, town of, Windsor County	500157	.....do.....	Do.
Region II:			
New York: Owego, town of, Tioga County	360839	.....do.....	Do.
Region III:			
Pennsylvania: Flemington, borough of, Clinton County.	420326	.....do.....	Do.
Region IV:			
Tennessee:			
Sevierville, city of, Sevier County	475444	.....do.....	Do.
Shelbyville, city of, Bedford County	470008	.....do.....	Do.
Region V:			
Michigan: Torch Lake, township of, Antrim County.	260414	.....do.....	Do.
Region VII:			
Missouri: Greene County, unincorporated areas	290782	.....do.....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: February 11, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–4459 Filed 2–21–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–177; RM–8853]

Radio Broadcasting Services; Galena and Baxter Springs, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Acorn Broadcasting Company, allots Channel 282A to Galena, Kansas. *See* 61 FR 47471, September 9, 1996. Channel 282A can be allotted to Galena in compliance with the Commission's distance separation requirements with a site restriction of 6.5 kilometers (4.0 miles) west to avoid short-spacing conflicts with Stations KBEQ(FM), Channel 282C, Kansas City, Missouri; KBCN(FM), Channel 282C, Marshall, Arkansas; and KQMO(FM), Channel 281C3, Ash Grove, Missouri. The coordinates for Channel 282A at Galena are 37–03–24 and 94–42–11. With this action, this proceeding is terminated.

DATES: Effective March 31, 1997. The window period for filing applications will open on March 31, 1997, and close on May 1, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–177, adopted February 7, 1997, and released February 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, and 307.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Galena, Channel 282A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–4394 Filed 2–21–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[Docket No. 970130016–7016–01; I.D. 012797F]

RIN 0648–XX80

Magnuson-Stevens Fishery Conservation and Management Act; Public Comments on Fishery Management Plans and Regulations

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

ACTION: Policy statement.

SUMMARY: NMFS notifies the public of how public comments on Fishery Management Plans (FMPs), FMP amendments, and their implementing regulations will be handled under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). The intent is to ensure that the public has full opportunity for input to the fishery management decision process.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Public Law 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The amendments significantly changed the process and schedules under which FMPs, FMP amendments, and most regulations are reviewed and implemented. Because of those changes, NMFS has had to revise its procedures for handling public comments on FMPs, FMP amendments, and their implementing regulations.

Specifically, the SFA decoupled the schedule for approval/disapproval of FMPs and FMP amendments submitted by Regional Fishery Management Councils (Councils) from the schedule for publication of proposed and final rules to implement them. Because both the notice of availability (NOA) of an FMP/amendment and the proposed rule request public comments, the timing of the receipt of those comments relative to the timing of decisions regarding the FMP/amendment and associated rules has been complicated. To address these issues and to inform the public of how and when public comments will be considered, NMFS will follow the procedures outlined below.

FMPs and FMP Amendments

An NOA will be published in the Federal Register as soon as possible after transmittal of an FMP/amendment from a Council, as required by sec. 304(a) of the Magnuson-Stevens Act. The NOA will request comments on the FMP/amendment and will alert the public that (1) public comments are being solicited on the FMP/amendment through the end of the 60-day comment period stated in the NOA; (2) a proposed rule that would implement the FMP/amendment may be published in the Federal Register for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures; and (3) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment to be considered in the approval/disapproval decision on the FMP/amendment. All comments received by the end of the comment period on the FMP/amendment, whether specifically directed to the FMP/amendment or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period established by the NOA.

Proposed Rules

If NMFS' evaluation of the proposed rule under procedures specified in sec. 304(b) of the Magnuson-Stevens Act determines that it is consistent with the FMP, FMP amendment, the Magnuson-Stevens Act, and other applicable laws, NMFS will publish the proposed rule with a request for public comment; the

comment period will normally be 45 days. The preamble of the proposed rule will inform the public that (1) public comments are being solicited on the FMP/amendment through the end of the comment period stated in the NOA; and (2) public comments on the proposed rule must be received by the end of the comment period on the FMP/amendment, as published in the NOA, to be considered in the approval/disapproval decision on the FMP/amendment. To be considered, comments must be received by close of business on the last day of the comment period.

Responses to Comments

All comments received during the public comment periods will be responded to in the final rule. The preamble of the final rule will contain a summary of the comments received, both on the FMP/amendment and on the proposed rule, and responses to those comments.

NMFS expects that the comment periods for the FMP/amendment (as published in the NOA) and the proposed rule will generally end on or about the same date, and NMFS will attempt to achieve that result. However, because there is the possibility that the comment period ending dates could be significantly different, it is important for commenters to focus their comments on either the FMP/amendment or on the proposed rule, if possible, and to be aware of the decisional timing issues that have resulted from the Magnuson-Stevens Act amendments. By publishing this policy statement, and through language to be included in NOAs and preambles to proposed rules, NMFS is attempting to ensure that the public has full opportunity for input to the decision process.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to authority at 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment are not required to be provided for this rule, as this is a rule of procedure. Further, because prior notice and an opportunity for public comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., are not applicable. Finally, because this rule is not substantive it is not subject to the 30-day delay in effective date required of substantive rules under 5 U.S.C. 553(d).

Dated: February 14, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4457 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 111296A]

RIN 0648–XX74

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 1997 Harvest Specifications for Groundfish

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

ACTION: Final 1997 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 1997 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1997 fishing year. NMFS is also closing fisheries as specified in the final 1997 groundfish specifications. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

EFFECTIVE DATES: The final 1997 harvest specifications are effective at noon on February 19, 1997 through 2400 hrs, Alaska local time (A.l.t.), December 31, 1997, or until changed by subsequent notification in the Federal Register. The closures to directed fishing are effective February 19, 1997 through 2400 hrs, A.l.t., December 31, 1997, or until changed by subsequent notification in the Federal Register.

ADDRESSES: Copies of the Environmental Assessment (EA) for 1997 Groundfish Total Allowable Catch Specifications, dated January 1997, may be obtained from NMFS, Fisheries Management Division, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7228. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1996, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, or by calling 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR part 679.

NMFS announces for the 1997 fishing year: (1) Specifications of total allowable catch (TAC) amounts for each groundfish species category in the GOA, and reserves; (2) apportionments of reserves; (3) allocations of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC among regulatory areas, seasons, and allocations for processing between inshore and offshore components; (5) allocations for processing of Pacific cod TAC between inshore and offshore components; (6) ''other species'' TAC; (7) closures to directed fishing; (8) Pacific halibut prohibited species catch (PSC) limits; and (9) fishery and seasonal apportionments of the Pacific halibut PSC limits. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP. Pursuant to § 679.20(a)(2), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species in § 679.20(a)(1)(ii).

The Council met from September 18 through 22, 1996, and developed recommendations for proposed 1997 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1997 fishing year. Under § 679.20(c)(1)(ii), the proposed GOA groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the GOA were published in the Federal Register on December 4, 1996 (61 FR 64310). Comments were invited through December 30, 1996. Two letters were received that expressed a comment on the environmental assessment prepared for the 1997 GOA specifications. The comment is summarized and responded to below in the Response to Comments

section. Interim amounts of one-fourth the TAC were published in the Federal Register on December 4, 1996 (61 FR 64299). The final 1997 initial groundfish harvest specifications and prohibited species bycatch allowances implemented under this action supersede the interim 1997 specifications.

The Council met December 11 through 15, 1996, to review the best available scientific information concerning groundfish stocks and to consider public testimony regarding 1997 groundfish fisheries. Scientific information is contained in the November 1996 SAFE report for the GOA. The SAFE report was prepared and presented by the GOA Plan Team (Plan Team) to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) and includes the most recent information concerning the status of groundfish stocks, based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions.

For establishment of the acceptable biological catches (ABCs) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the overfishing level (OFL) recommendations from the Plan Team, which were provided in the SAFE report, for all groundfish species categories, except for the nearshore pelagic shelf rockfish species (black rockfish and blue rockfish) in the Eastern and Western GOA. The SSC also adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except sablefish, nearshore pelagic shelf rockfish in the Eastern and Western GOA, and Atka mackerel.

The SSC did not adopt the Plan Team's recommendation of ABC for sablefish. The SSC received additional information from NMFS stock assessment scientists that both the Plan Team's ABC recommendation and an ABC based on the $F_{40\%}$ strategy adjusted by biomass would increase the actual exploitation rate. This fact, combined with 15 years of low recruitment, which could result in the biomass declining below the lowest observed levels since 1979, led the SSC to agree with the assessment authors' recommendation for ABC. The Council accepted the SSC's recommendation.

The Plan Team recommended the division of the pelagic shelf rockfish assemblage into nearshore (black rockfish and blue rockfish) and offshore (dusky, widow, and yellowtail rockfish) assemblages. The Plan Team recommended an OFL and ABC for the Central GOA based, on historic harvests, and for the Eastern and Western GOA based, on an approximation of the amount of nearshore rockfish habitat relative to the Central GOA. The SSC adopted the Plan Team's recommendations for separating the pelagic shelf rockfish assemblage into nearshore and offshore assemblages in the Central GOA but did not agree with the Plan Team's apportionment method for the Eastern and Western GOA nearshore and offshore species because very little information is available, and the method assumes an equal density-per-unit area that has not been demonstrated. The Council accepted the SSC's recommendation.

The SSC also did not accept the Plan Team's ABC (1,580 mt) for Atka mackerel. The Plan Team's recommendation was based upon the most recent year's harvest in 1996. The SSC noted that a brief directed fishery occurred in 1996, whereas none occurred in the 1995 fishing year. The SSC concluded that the gulfwide 1995 harvest of 801 mt more accurately reflects the amount of bycatch needed in other directed fisheries through the fishing year and adopted the assessment authors' recommendation of an ABC of 1,000 mt. The SSC agreed with the Plan Team that the ABC for Atka mackerel be 1,000 mt for the entire GOA. The Council accepted the SSC's recommendation.

The Council adopted the SSC ABC recommendations for each species category. The Council's recommended ABCs, listed in Table 1, reflect harvest amounts that are less than the specified overfishing amounts (Table 1). The sum of 1997 ABCs for all groundfish is 493,050 mt, which is higher than the 1996 ABC total of 475,170 mt.

1. Specifications of TAC and Reserves

The Council recommended TACs equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, northern rockfish, shortraker/rougheye rockfish, pelagic shelf rockfish including the split in the assemblage in the Central GOA between nearshore and offshore species, demersal shelf rockfish, Atka mackerel, and thornyhead rockfish. The Council recommended TACs less than the ABC for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth, other slope rockfish, and Pacific ocean perch (Table 1).

The TAC for pollock has increased gulfwide but has decreased in the Western GOA from 25,480 mt in 1996 to 18,600 mt in 1997. This apportionment of TAC in the Central and Western GOA reflects the current biomass distribution. For 1997, the State of Alaska has established a guideline harvest level (GHL) of 1,800 mt for pollock in Prince William Sound (PWS). The SSC did not have information to indicate whether the PWS pollock fishery exploits a stock that is independent of the assessed GOA pollock population. Therefore, the SSC recommended that PWS pollock harvests be applied against the total GOA ABC of pollock. NMFS will deduct harvest of pollock in PWS from the Eastern GOA TAC in 1997.

The 1997 Pacific cod TAC is affected by the State of Alaska's plan to develop a state-managed fishery for Pacific cod in state waters in the Central and Western GOA, as well as PWS. The SSC, AP, and Council recommended that the sum of all Pacific cod removals should not exceed the ABC. The Council recommended that the TAC for the Eastern GOA be lower than the ABC by 400 mt, the amount of the proposed GHL for PWS. The TACs for the Central and Western GOA are also recommended to be lower than the ABCs by 7,710 mt and 4,275 mt respectively, the amount of the proposed GHLs for these areas. The Council requested that NMFS review, by October 1997, the likelihood that the State of Alaska's GHLs of Pacific cod will be achieved in 1997. If unused amounts of the State's 1997 GHLs are anticipated, the Council requested that NMFS make these amounts available to fishermen participating in the federally managed fishery by October 1, 1997.

The Council accepted the AP recommendation that the TACs for flathead sole, shallow-water flatfish, and arrowtooth flounder be set at 1996 TAC levels, which are lower than their respective 1997 ABC specifications. With respect to ''other rockfish'' in the Eastern GOA, the Council recommended that NMFS establish a TAC that would provide for bycatch only. NMFS has reviewed bycatch needs for ''other rockfish'' and has set a TAC at 1,500 mt, which will provide enough for bycatch needs.

The Council reduced the AP's recommendation for Pacific ocean perch (POP) TACs in the Western and Central Gulf by 20 percent to 1,472 mt and 5,352 mt respectively to create a management buffer between ABC and TAC to account for harvest overages that occurred during 1996. In the Eastern GOA, the Council recommended that the POP TAC be reduced from the 1997 ABC of 4,460 mt to the 1996 TAC level of 2,366 mt to reduce the bycatch of shortraker and rougheye rockfish in the POP fishery.

Amendment 38 to the FMP was approved October 2, 1996 (61 FR 51374) giving the Council the alternative of recommending a lower POP TAC in the annual specification process for the purpose of addressing biological or resource conservation concerns that are not addressed under the Rebuilding Plan or SAFE reports.

The sum of the TACs for all GOA groundfish is 282,815 mt, which is within the OY range specified by the FMP. The sum of the TACs is higher than the 1996 TAC sum of 260,207 mt.

NMFS has reviewed the Council's recommendation for TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The TAC for ''other species'' is calculated as 5 percent of the sum of TACs for the other groundfish species categories, or 13,470 mt.

The 1997 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1997 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

Species and area [1]	ABC (mt)	TAC (mt)	Initial TAC (mt)[2]	Overfishing (mt)
Pollock:[3]				
Shumagin (610)	18,600	18,600	.....	.....
Chirikof (620)	31,250	31,250	.....	.....
Kodiak (630)	24,550	24,550		
Subtotal:				
W/C	74,400	74,400	.....	103,500
E	5,580	5,580	.....	7,770
Total	79,980	79,980	.....	111,270
Pacific cod:[4]				
W	28,500	24,225	19,380	.....
C	51,400	43,690	34,952	.....
E	1,600	1,200	960	.....
Total	81,500	69,115	55,292	180,000
Flatfish [5] (deep-water):				
W	340	340	.....	.....
C	3,690	3,690	.....	.....
E	3,140	3,140	.....	.....
Total	7,170	7,170	.....	9,440
Rex sole:[5]				
W	1,190	1,190	.....	.....
C	5,490	5,490	.....	.....
E	2,470	2,470	.....	.....
Total	9,150	9,150	.....	11,920
Flathead sole:				
W	8,440	2,000	.....	.....
C	15,630	5,000	.....	.....
E	2,040	2,040	.....	.....
Total	26,110	9,040	.....	34,010
Flatfish [6] (shallow-water):				
W	22,570	4,500	.....	.....
C	19,260	12,950	.....	.....
E	1,320	1,180	.....	.....
Total	43,150	18,630	.....	59,540
Arrowtooth flounder:				
W	31,340	5,000	.....	.....
C	142,100	25,000	.....	.....
E	24,400	5,000	.....	.....
Total	197,840	35,000	.....	280,800
Sablefish:[7]				
W	1,860	1,860	.....	.....
C	6,410	6,410	.....	.....
WYK	2,410	2,410	.....	.....

TABLE 1.—1997 ABCs, TACs, INITIAL TACs (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

Species and area [1]	ABC (mt)	TAC (mt)	Initial TAC (mt)[2]	Overfishing (mt)
SEO	3,840	3,840	.....	.....
Total	14,520	14,520	.....	39,950
Pacific [8] ocean perch:				
W	1,840	1,472	.....	2,790
C	6,690	5,352	.....	10,180
E	4,460	2,366	.....	6,790
Total	12,990	9,190	.....	19,760
Short raker/rougheye:[9]				
W	160	160	.....	.....
C	970	970	.....	.....
E	460	460	.....	.....
Total	1,590	1,590	.....	2,740
Other rockfish:[10, 11, 12]				
W	20	20	.....	.....
C	650	650	.....	.....
E	4,590	1,500	.....	.....
Total	5,260	2,170	.....	7,560
Northern Rockfish:[13]				
W	840	840	.....	.....
C	4,150	4,150	.....	.....
E	10	10	.....	.....
Total	5,000	5,000	.....	9,420
Pelagic shelf rockfish:[14]				
W combined	570	570	.....	.....
C nearshore	260	260	.....	.....
C offshore	3,320	3,320	.....	.....
E combined	990	990	.....	.....
Total	5,140	5,140	.....	8,400
Demersal shelf rockfish:[12] SEO	950	950	.....	1,450
Thornyhead rockfish: GW	1,700	1,700	.....	2,400
Atka mackerel: GW	1,000	1,000	.....	6,200
Other [15] species: GW	N/A[16]	13,470	.....	.....
Total [17]	493,050	282,815	55,292	784,860

[1] Regulatory areas and districts are defined at § 679.2.

[2] Twenty percent of Pacific cod TAC is put into a reserve. The initial TAC is the remaining TAC after subtracting the reserve (see § 679.20(b)(2) and ''Apportionments of Reserves'' below).

[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[4] Pacific cod is allocated 90 percent for processing by the inshore, and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.

[5] ''Deep water flatfish'' means Dover sole and Greenland turbot.

[6] ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[7] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[8] ''Pacific ocean perch'' means *Sebastes alutus.*

[9] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[10] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means Slope rockfish.

[11] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).

[12] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] ''Northern rockfish'' means *Sebastes polyspinis.*

[14] ''Pelagic shelf rockfish'' means *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). ''Pelagic shelf rockfish nearshore'' means *Sebastes melanops* (black) and *S. mystinus* (blue). ''Pelagic shelf rockfish offshore'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[15] ''Other species'' means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of target species.
[16] N/A means not applicable.
[17] The total ABC is the sum of the ABCs for target species.

2. Apportionments of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flounder, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). For the preceding 9 years, including 1996, NMFS has reapportioned all of the reserves in the final harvest specifications. NMFS proposed reapportionment of all reserves for 1997 in the proposed GOA groundfish specifications published in the Federal Register on December 4, 1996 (61 FR 64310). NMFS received no public comments on the proposed reapportionments. For 1997, NMFS reapportions all the reserves for pollock, flounder, and ''other species.'' NMFS is retaining the Pacific cod reserves at this time to provide for a management buffer to account for excessive fishing effort and/or incomplete or late catch reporting. In recent years, unpredictable increases in fishing effort and harvests, uncertainty of bycatch needs in other directed fisheries throughout the year, and untimely submission and revision of weekly processing reports have resulted in early and late closures of the Pacific cod fishery. NMFS believes that the retention of Pacific cod reserve amounts to provide for TAC management difficulties later in the year is a conservative approach that will lead to a more orderly fishery and provide greater assurance that Pacific cod bycatch may be retained throughout the year. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for pollock, flatfish species, and ''other species.'' Table 1 also lists the initial TACs for Pacific cod that reflect the withholding of the Pacific cod TAC reserves as follows: 4,845 mt in the Western GOA, 8,738 mt in the Central GOA, and 240 mt in the Eastern GOA.

3. Allocations of the Sablefish TACs to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. Table 2 shows the allocations of the 1997 sablefish TACs between hook-and-line and trawl gear.

TABLE 2.—1997 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

Area/district	TAC	Hook-and-line share	Trawl share
Western	1,860	1,488	372
Central	6,410	5,128	1,282
West Yakutat	2,410	2,290	120
Southeast Outside	3,840	3,648	192
Total	14,520	12,554	1,966

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Allocation for Processing Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and allocated for processing by inshore and offshore components. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western and Central GOA be apportioned among statistical areas Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to the known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further apportioned into three seasonal allowances of 25, 25, and 50 percent, respectively (§ 679.20(a)(5)(ii)(B)). As established under § 679.23(d)(2), the first, second, and third seasonal allowances are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area pollock TAC of 5,580 mt is not allocated among smaller areas or seasons.

Regulations at § 679.20(a)(6)(ii) require that the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated for processing by the inshore and offshore components. One hundred percent of the pollock TAC in each regulatory area is allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Administrator, Alaska Region, NMFS (Regional Administrator) to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 679.20(e). At this time, these bycatch amounts are unknown and will be determined during the fishing year. The distribution of pollock within the combined Western and Central Regulatory Areas is shown

in Table 3, except allocations of pollock for processing by the inshore and offshore component are not shown.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS 74,400 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT.

Statistical area	Biomass percent	1997 ABC = TAC	Seasonal allowances		
			First	Second	Third
Shumagin (610)	25	18,600	4,650	4,650	9,300
Chirikof (620)	42	31,250	7,812	7,812	15,626
Kodiak (630)	33	24,550	6,138	6,138	12,274
Total	100	74,400	18,600	18,600	37,200

5. Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These allocations of the 69,115 mt Pacific cod TAC for 1997 are shown in Table 4. The Pacific cod reserves are not included in the table.

TABLE 4.—1997 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	19,380	17,442	1,938
Central	34,952	31,457	3,495
Eastern	960	864	96

TABLE 4.—1997 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Total	55,292	49,763	5,529

6. ''Other Species'' TAC

The FMP specifies that amounts for the ''other species'' category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide ''other species'' TAC is 13,470 mt, which is 5 percent of the sum of the combined TAC amounts for the target species.

7. Closures to Directed Fishing

The ''Interim 1997 Harvest Specifications of Groundfish, Associated Management Measures, and Closures'' for the GOA (61 FR 64299, December 4, 1996) contained several closures to directed fishing for groundfish during 1997. The closures for the final specifications, which supersede the closures announced in the interim specifications, are listed in Table 5.

Under § 679.20(d)(1)(iii)(A), the Regional Administrator determined that the entire TACs or allocations of TAC of groundfish species and species groups listed in Table 5 will be needed as incidental catch to support other anticipated groundfish fisheries during 1997. The Regional Administrator is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the year for the fisheries listed in Table 5. Maximum retainable bycatch amounts for the aforementioned closures may be found at § 679.20(e).

Under authority of the interim 1997 specifications (61 FR 64299, December 4, 1996), pollock fishing opened on January 1, 1997, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock, effective 1200 hrs, A.l.t., January 26, 1997 (62 FR 4192, January 29, 1997); Statistical Area 620 to directed fishing for pollock, effective 1200 hrs, A.l.t., February 7, 1997 (62 FR 6132, February 11, 1997); and Statistical Area 630 to directed fishing for pollock, effective 1200 hrs, A.l.t., February 4, 1997 (62 FR 5781, February 7, 1997). The closures for Statistical Areas 610–630 will remain in effect until 1200 hrs, A.l.t., June 1, 1997, or until changed by subsequent notification in the Federal Register. The above closures are in addition to the closures listed in Table 5.

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] BOTH = OFFSHORE AND INSHORE COMPONENTS; OFFSHORE = OFFSHORE COMPONENT; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA

Fishery	Component	Gear	Closed areas
Atka mackerel	Both	All	GOA.
Northern rockfish	Both	All	WG, EG.
Deep-water flatfish	Both	All	WG.
Other rockfish[2]	Both	All	GOA.

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] BOTH = OFFSHORE AND INSHORE COMPONENTS; OFFSHORE = OFFSHORE COMPONENT; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA—Continued

Fishery	Component	Gear	Closed areas
Pacific cod	Offshore	All	GOA.
Pollock	Offshore	All	GOA.
Sablefish	Both	All	GOA.
Shortraker/rougheye rockfish	Both	All	GOA.
Thornyhead rockfish	Both	All	GOA.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.
[2] Other rockfish includes slope and demersal shelf rockfish in the Western and Central GOA.

8. Pacific Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear.

As in 1996, the Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 1997. The Council recommended these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (17 mt in 1996) and the jig gear fisheries (not estimated in 1996) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota program, which allows legal-sized halibut to be retained in the sablefish fishery.

As in 1996, the Council recommended a hook-and-line halibut PSC mortality limit of 300 mt. Ten mt of this limit are apportioned to the DSR fishery. The remainder is seasonally apportioned among the non-sablefish hook-and-line fisheries as shown in Table 6.

The Council continued to recommend a trawl PSC mortality limit of 2,000 mt. The PSC limit has remained unchanged since 1989. Regulations at § 679.21(d)(3)(iii) authorize separate apportionments of the trawl halibut PSC limit between trawl fisheries for deep-water and shallow-water species fisheries. Regulations at § 679.21(d)(5) authorize seasonal apportionments of halibut PSC limits.

NMFS concurs with the Council's recommendations listed above. The following types of information as presented in, and summarized from, the 1996 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from 1996 observations of the groundfish fisheries as a result of the NMFS Observer Program. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 28, 1996, is 1,964 mt, 172 mt, and 17 mt, respectively, for a total of 2,153 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries throughout the year. Trawling for the deep-water fishery complex was closed during the first quarter on March 21, 1996 (61 FR 13462), for the second quarter on April 15, 1996 (61 FR 17256) and for the third quarter on August 7, 1996 (61 FR 41523). The shallow-water fishery complex was closed in the second quarter on May 13, 1996 (61 FR 24729) and in the third quarter on August 5, 1996 (61 FR 41363). All trawling was closed in the fourth quarter on December 2, 1996 (61 FR 64487).

The amount of groundfish that trawl gear might have harvested if halibut had not been seasonally limiting in 1996 is unknown.

(B) Expected Changes in Groundfish Stocks

At its December 1996 meeting, the Council adopted higher ABCs for pollock, Pacific cod, and POP than those established for 1996. The Council adopted lower ABCs for deep-water flatfish, rex sole, flathead sole, shallow-water flatfish, arrowtooth flounder, sablefish, other rockfish, northern rockfish, shortraker and rougheye rockfish, pelagic shelf rockfish, and Atka mackerel than those established for 1996. More information on these changes is included in the Final SAFE Report dated November 1996 and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1997 TACs for the GOA is 282,815 mt, a slight increase from the 1996 TAC total of 260,207 mt. At its December 1996 meeting, the Council changed the 1997 TACs for some fisheries from the 1996 TACs. Those fisheries for which the 1997 TACs are lower than in 1996 are deep-water flatfish (decreased to 7,170 mt from 11,080 mt), rex sole (decreased to 9,150 mt from 9,690 mt), flathead sole (decreased to 9,040 mt from 9,740), sablefish (decreased to 14,520 mt from 17,080 mt), northern rockfish (decreased to 5,000 mt from 5,270 mt), shortraker and rougheye rockfish (decreased to 1,590 from 1,910 mt), pelagic shelf rockfish (decreased to 5,140 from 5,190 mt), and Atka mackerel (decreased to 1,000 mt from 3,240 mt). Those species for which the 1997 TACs are higher than in 1996 are pollock (increased to 79,980 mt from 54,810 mt), Pacific cod (increased to 69,115 mt from 65,000 mt), POP (increased to 9,190 mt from 6,959 mt), other rockfish (increased to 2,170 mt from 2,020 mt), and other species (increased to 13,470 mt from 12,390 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1996 conducted by the IPHC indicates that the total exploitable biomass and recruitment of Pacific halibut in the Bering Sea and Aleutian Islands and GOA has been underestimated in previous years. Due to substantial changes in the assessment model and methods, new estimates of exploitable biomass are not yet available but will be included in next year's SAFE.

The increase in estimated biomass under the new method can be attributed to three factors: (1) Halibut size at age information (a growth rate parameter) is better represented in the population model. Growth rates have declined, and the new method more appropriately accounts for the capture of young halibut by setline gear. The estimated abundance of young halibut has increased accordingly; (2) bycatch mortality of legal-sized halibut (32 inches or greater) is now included in the assessment along with other removals such as commercial and sport. This increases the estimated biomass to account for the increase in removals; and (3) catch rates from IPHC setline

surveys are included in the analysis. These data support trends observed in the commercial fishery that the halibut population has increased.

The old method not only underestimated the exploitable biomass of halibut in recent years, but the catch limits were set lower than they might have been if it had been known that biomass was being underestimated. This low rate of exploitation plus above average recruitment of juvenile halibut during the 1980s allowed halibut abundance to increase beyond historically normal levels. The 1987 year class of halibut, although small in individual size, appears to be very abundant. The strength of this year class has increased current estimates of abundance and suggests that halibut biomass is likely to stay high for the next several years.

(E) Other Factors

Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries and methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries were discussed in the proposed 1997 specifications (61 FR 64310, December 4, 1996). That discussion is not repeated here.

9. Fishery and Seasonal Apportionments of the Halibut PSC Limits

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut: (a) Seasonal distribution of halibut, (b) seasonal distribution of target groundfish species relative to halibut distribution, (c) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (d) expected bycatch rates on a seasonal basis, (e) expected changes in directed groundfish fishing seasons, (f) expected actual start of fishing effort, and (g) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The publication of the final 1996 initial groundfish and PSC specifications (61 FR 4304, February 5, 1996) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1996. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 6. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1997 season.

TABLE 6.—FINAL 1997 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	250 (86%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jun 30	400 (20%)	May 18–Aug 31	15 (5%)		
Jul 1–Sep 30	600 (30%)	Sep 1–Dec 31	25 (9%)		
Oct 1–Dec 31	400 (20%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit to a deep-water species fishery, comprised of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder and a shallow-water species fishery, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The apportionment for these two fishery categories is presented in Table 7.

TABLE 7.—FINAL 1997 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jun. 30	100	300	400
Jul. 1–Sep. 30	200	400	600
Jan. 20–Sep. 30[1]	800	800	1,600
Oct. 1–Dec. 31	.....	.....	400
Total	.....	.....	2,000

[1] No apportionment between shallow-water and deep-water fishery categories during the 4th quarter.

The Council recommended that the revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1997 groundfish fisheries. NMFS concurs with the Council's recommendation. Most of the IPHC's assumed halibut mortality rates were based on an average of mortality rates determined from NMFS-observer data collected during 1994 and 1995. For fisheries where a steady trend from 1992 to 1995 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's observed rate. Rates for 1994 and 1995 were lacking for some fisheries, so rates from the most recent years were used. Seasonal variation in halibut mortality rates in the deep-water flatfish and rex sole target fisheries are not recommended for 1997 as they were in 1996, nor were separate rates for

pollock harvested for processing by the inshore component and the offshore component. Most of the assumed mortality rates recommended for 1997 differ slightly from those used in 1996. The recommended mortality rates for specific targets range from 6 to 27 percent for hook-and-line gear, from 51 to 66 percent for trawl gear, and from 19 to 100 percent for pot gear. The halibut mortality rates are listed in Table 8.

TABLE 8.—1997 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Table values are percent of halibut bycatch assumed to be dead]

Gear and target	(percent)
Hook-and-line:	
Sablefish	27
Pacific cod	12
Rockfish	6
Other species	12
Trawl:	
Midwater pollock	51
Rockfish	65
Shallow-water flatfish	66
Pacific cod	59
Deep-water flatfish	58
Flathead sole	59
Rex sole	66
Bottom pollock	57
Atka mackerel	53
Sablefish	62
Other species	66
Pot:	
Pacific cod	19
Bottom pollock	100
Other species	19

Comment and Response

Comment. The draft environmental assessment prepared for the 1997 specifications provides an inadequate basis for a Finding of No Significant Impact. The environmental impact statement (EIS) prepared for the GOA groundfish fishery was drafted in 1977. Since that time, the conduct of the fisheries has changed, new information regarding the affected groundfish species exists, and substantial and unanalyzed questions exist regarding the impact of the groundfish fisheries on the GOA ecosystem. NMFS should prepare a supplement to the EIS that fully evaluates the potential impacts of the groundfish TACs on the GOA ecosystem.

Response. NMFS acknowledges that the final EIS prepared for the GOA groundfish fishery is 20 years old. Nonetheless, NMFS believes the final EA prepared for the 1997 GOA groundfish specifications, as well as the documents incorporated by reference into the EA, adequately support a Finding of No Significant Impact (FONSI). The FONSI is based on the best available information contained in the SAFE report on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the Council at its December 1996 meeting. For each species category, the Council recommended harvest amounts such that catches at or below these amounts would not result in overfishing as defined by the FMP. The Council's recommended final TACs for many groundfish species differ from the proposed TACs due to new information on status of stocks and/or changes in exploitation strategy. Each of the Council's recommended TACs for 1997 is equal to or less than the ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of the groundfish stocks.

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action adopts final 1997 harvest specifications for the GOA, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts would be overharvested, and retention of these species would become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue without interruption. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above.

Pursuant to Section 7 of the Endangered Species Act, NMFS and the U.S. Fish & Wildlife Service have determined that the groundfish fishery operating under the 1997 GOA TAC specifications is unlikely to jeopardize the continued existence or recovery of species listed as endangered or threatened or to adversely modify critical habitat.

NMFS prepared an environmental assessment (EA) on the 1997 TAC specifications. The AA concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration that this final specification will not have a significant economic impact on a substantial number of small entities. The number of fixed gear and trawl catcher vessels expected to be operating as small entities in the Gulf of Alaska groundfish fishery is 1,541, excluding catcher/processor vessels. All these small entities will be affected by the harvest limits established in the 1997 specifications but changes from 1996 are relatively minor and are expected to be shared proportionally among participants. For this reason, the expected effects would not likely cause a reduction in gross revenues of more than 5 percent, increase compliance costs by more than 10 percent, or force small entities out of business.

The Alaska commercial fishing industry is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures. Such mobility is necessary to survive in the open access fishery. Therefore, the annual specification process for Alaska groundfish for 1997 would not have significant economic impact on a significant number of small entities. No comments were received regarding this certification.

Authority: 16 U.S.C. 773 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: February 19, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4456 Filed 2–19–97; 2:14 pm]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 961107312–7012–02; I.D. 021897C]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Bering Sea Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the inshore component in the BS.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 19, 1997, until 1200 hrs, A.l.t., April 15, 1997.

FOR FURTHER INFORMATION CONTACT: David Ham, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the first seasonal allowance of pollock for vessels catching pollock for processing by the inshore component in the BS was established by the Final 1997 Harvest Specifications of Groundfish as 164,627 metric tons (mt). The Final 1997 Specifications were published in the Federal Register on February 18, 1997 (62 FR 7168).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of pollock TAC specified for vessels catching pollock for processing by the inshore component in the BS soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 150,127 mt, and is setting aside the remaining 14,500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS. This closure is effective from 1200 hrs, A.l.t., February 19, 1997, through 1200 hrs, A.l.t., April 15, 1997. Under § 679.20(a)(5)(i), the second seasonal allowance of pollock TAC will become available for directed fishing at 1200 hrs, A.l.t., September 1.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by § 679.20, and is exempt from review under E.O. 12866.

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

Dated: February 19, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4458 Filed 2–19–97; 2:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 36
Monday, February 24, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Workshop to Consider a Revised Approach for Analyzing the Manufacturer Impacts from New or Revised Appliance Energy-Efficiency Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Workshop on a Revised Manufacturer Impact Analysis Approach.

SUMMARY: The Department of Energy (the Department or DOE) is convening a public workshop to discuss a new approach to assessing the likely impacts on manufacturers of appliance energy-efficiency standards that are under consideration by the Department. All persons are hereby given notice of the opportunity to attend and participate in the public workshop.

DATES: The workshop on a revised manufacturer impact analysis approach will be held on Tuesday and Wednesday, March 11 and 12, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: A transcript of the workshop may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The Manufacturer Impact Analysis Workshop will be held in Room 1E–245, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

If you are planning to attend the workshop or wish to receive material prepared for the workshop, please contact either Qonnie Laughlin or Sandy Beall, as listed below.

FOR FURTHER INFORMATION CONTACT:

Ms. Qonnie Laughlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9632.

Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act, as amended by the National Energy Policy Conservation Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, prescribes energy conservation standards for certain major appliances and equipment and requires the Department of Energy to administer an energy conservation program for the products. Earlier appliance rulemakings have highlighted the need to address a number of complex issues concerning the impact of standards on consumers and manufacturers. In response to these issues, the Department initiated a comprehensive process improvement effort to examine, through a series of stakeholder meetings and interviews, issues surrounding the appliance standards program. On July 15, 1996, (61 FR 36974) DOE issued Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products final rule (process rule) resulting from the process improvement effort.

In the July 15, 1996, procedures, the Department committed to a comprehensive review of its existing methodology for analyzing the likely impacts on manufacturers of new or revised appliance minimum energy efficiency standards. In that review, the Department identified several ways to improve such analyses, and has incorporated these into a Manufacturer Impact Analysis Approach—Draft Workplan.

The Department intends to introduce for consideration and discussion its Draft Workplan at the Workshop that is the subject of this Notice.

A central feature of the draft approach is the incorporation of the industry-provided Government Regulatory Impact Model (GRIM). The GRIM meets a number of the Department's objectives in revising the manufacturer impact analysis approach, in that the model is transparent, relatively easy to use, and capable of being used by any individual manufacturer. The GRIM, however, also requires a number of significant inputs to be operational. These inputs include forecasts of expected prices and industry shipments, as well as information about firm-level production costs. The Department desires to address the derivation of these important inputs as soon as possible, and the workshop will be the initial opportunity for individuals to provide comments to the Department on this topic. The Department hopes to obtain guidance from individuals attending this workshop, on methods for estimating the impacts of standards on appliance prices, shipments and manufacturer costs.

While there will be some presentations, the workshop is being designed to maximize open discussions. The Manufacturer Impact Analysis Workshop will be professionally facilitated. It is expected that one outcome of this workshop will be the formation of a working group that would meet subsequent to the workshop to help the Department further develop its workplan.

Below is the preliminary agenda for the public workshop:

Preliminary Agenda, Manufacturer Impact Analyses Workshop, March 11 and 12, 1997, Room 1E–245, 1000 Independence Ave SW, Washington, D.C.

Purpose: To describe and obtain comments on the draft workplan for future manufacturer impact analysis. To describe and obtain comments on existing and proposed analytical tools.

Expected Outcomes: Formation of a working group(s) consisting of representatives of different industries and other interested parties. Guidance for further development of the workplan, including advice on the desirability of making changes to existing models or developing new tools.

Day 1—March 11

Methodology Overview and Description of Analytical Tools

9:00 a.m.—9:15 a.m.
Opening Remarks, Overview, Agenda Review
9:15 a.m.—9:30 a.m.
Description of the Review Process
—Major objectives of the process rule regarding the analysis of manufacturer impacts
—Process description
—Schedule
9:30 a.m.—9:45 a.m.
Analytical Framework
—Measures of impact
—Firms considered
—Balance of qualitative and quantitative assessments
9:45 a.m.—10:30 a.m.
Description of New Approach
—Overview
—Relationship to other standards analyses
—Phase 1, Industry Profile
—Phase 2, Industry Cash Flow
—Phase 3, Sub-Group Analysis
10:30 a.m.—10:45 a.m.
Break
10:45 a.m.—12:00 noon
Description of the GRIM Model
—Role and applicability of the GRIM Model
—Financial principles
—Input requirements
—Output results
—Open discussion, suggested modification, e.g. inclusion of return on investment
12:00 noon—1:00 p.m.
Lunch
1:00 p.m.—2:00 p.m.
Preparing the Industry Profiles
—Industry characterization
—Industry data book
2:00 p.m.—3:30 p.m.
Issues in Shipments Forecasts—*Panel and Open Discussion*
—Role of forecasting models in the manufacturer impact analyses
—General description of models, including
- Input requirements
- Outputs
- Key assumptions
- Uncertainty analysis
- Track record
- Operating characteristics

—New spread sheet approach
—Advantages and disadvantages of alternate approaches to forecasting shipments for GRIM
3:30 p.m.—5:00 p.m.
Optional hands-on computer training on the models

Day 2—March 12

Methodology Implementation

9:00 a.m.—9:15 a.m.
Opening Remarks, Agenda Review
—Objectives
9:15 a.m.—9:45 a.m.
Review of Day One Outcomes
—Key issues
—DOE perspective
—Stakeholder comments
9:45 a.m.—10:00 a.m.
Break
10:00 a.m.—11:30 a.m.
Estimating Manufacturing Costs for Input to GRIM—*Panel and Open Discussion*
—Relationship to engineering analysis
—Uncertainty in key variables
—Variability between firms
—Data collection methods e.g. ASHRAE methodology
—Costs not considered in GRIM
11:30 a.m.—12:30 p.m.
Lunch
12:30 p.m.—1:30 p.m.
Estimating Prices for Input to GRIM—*Panel and Open Discussion*
—Relationship to life-cycle cost analysis
—Economic concepts
—DOT methodology
—Alternative forecasts
—Scenario/ uncertainty analysis
—Open discussion
1:30 p.m.—2:30 p.m.
Estimating Shipments for Input to GRIM—*Panel and Open Discussion*
—Relationship to national benefits forecasts
—Appropriateness of existing forecasting models
—Simplified spreadsheet model
—Alternative forecasts
—Scenario/uncertainty analysis
—Open discussion
2:30 p.m.—2:45 p.m.
Break
2:45 p.m.—4:15 p.m.
Non-Model Impact Evaluation—*Panel and Open Discussion*
—Competitive impacts
—Manufacturing capacity, lost investment
—Employment impacts
—Information gathering and assessment methodology
—Cumulative impacts
4:15 p.m.—4:45 p.m.
Other Issues/Alternative Methods/ Stakeholder Comments
4:45 p.m.—5:00 p.m.
Discussion of Future Steps
—Working group(s) composition, role and meetings
5:00 p.m.
Adjourn

Issued in Washington, DC, on February 18, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–4427 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

10 CFR Part 835

[Docket Number EH–RM–96–835]

Occupational Radiation Protection

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Proposed Rule; Extension of Public Comment Period.

SUMMARY: The Department of Energy (DOE) published a notice of proposed rulemaking on December 23, 1996, (61 FR 67600) concerning amending its primary standards for occupational radiation protection. That notice provided the public with the opportunity to provide written comments on this issue with a written comment period to end on February 21, 1997. Today's notice extends this written comment period to March 31, 1997.

DATES: Written comments and data must be received by the Department on or before March 31, 1997.

ADDRESSES: Written comments and data (5 copies and, if possible, a computer disk) should be addressed to Dr. Joel Rabovsky, U.S. Department of Energy, Office of Environment, Safety and Health, EH–52, EH–RM–96–835, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: 202 586–3012.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Rabovsky, U.S. Department of Energy, Office of Environment, Safety and Health, EH–52, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: 301 903–2135.

For Information concerning the submission of comments, contact Ms. Andi Kasarsky on (202) 586–3012.

Issued in Washington, DC on February 18, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

[FR Doc. 97–4426 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB72

Federal Agricultural Mortgage Corporation; Receivers and Conservators

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA

Board (Board), proposes to amend the regulations that appertain to the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation) by adding a subpart to govern a receivership or conservatorship. This action is the result of changes made to the Farm Credit Act of 1971, as amended (Act), by the Farm Credit System Reform Act of 1996 (1996 Reform Act), Pub. L. 104–105 (Feb. 10, 1996). The proposed rule implements the receivership/conservatorship authorities granted to the FCA in the 1996 Reform Act and by previous law.

DATES: Written comments should be received on or before March 26, 1997.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to FAX number (703) 734–5784. Comments may also be submitted via electronic mail to ''reg-comm@fca.gov''. Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4051, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1996 Reform Act added section 8.41 to the Act, which grants the FCA the authority to place the Corporation into receivership and expands FCA's existing authority to place the Corporation into conservatorship. The 1996 Reform Act provides that the receiver or conservator appointed for the Corporation shall have such powers as are authorized in regulations adopted by the FCA and that such powers shall be comparable to those of a receiver or conservator appointed pursuant to section 4.12(b) of the Act. The proposed regulations implement these statutory provisions.

Based on the comparability requirement in section 8.41(e), the proposed regulations contain most of the provisions of existing part 627 (§§ 627.2700–627.2790) with certain modifications as necessary to implement section 8.41 and to reflect the unique characteristics of Farmer Mac.[1] The following is a section-by-section summary of the proposed regulations.

Section 650.50—Grounds for Appointment of a Receiver or Conservator

The 1996 Reform Act incorporated the grounds for receivership or conservatorship listed in existing section 4.12(b) of the Act and added an additional criterion for determining whether the Corporation is insolvent. Insolvency is defined in proposed § 650.50(a) as when: (1) The assets of the Corporation are less than its obligations to creditors and others; or (2) the Corporation is unable to pay its debts as they fall due in the ordinary course of business. The remaining grounds listed in section 4.12(b) are incorporated in proposed § 650.50(a) with one exception. Section 4.12(b)(6) is inapplicable to Farmer Mac because it pertains solely to the inability to pay the principal or interest on ''insured obligations.'' Section 5.51 of the Act defines ''insured obligations'' as those obligations issued by Farm Credit System banks and, therefore, does not include the obligations of Farmer Mac.

Proposed § 650.50(b) incorporates the three additional grounds that are in the 1996 Reform Act for appointment of a receiver for the Corporation. A receiver may be appointed if: (1) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or (2) the Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B are not satisfactory; and (3) prior to appointing a receiver under the first two conditions, the FCA determines that the appointment of a conservator would not be appropriate.

Pursuant to the 1996 Reform Act, proposed § 650.50(c) authorizes the FCA to appoint a conservator for Farmer Mac if its authority to purchase qualified loans or issue or guarantee loan-backed securities is suspended. Proposed § 650.50(c) also incorporates the authority in section 8.37 of the Act for the FCA to appoint a conservator for Farmer Mac if the Corporation is classified under section 8.35 of the Act as within enforcement level III or IV.

Section 650.51—Action for Removal of Receiver or Conservator

Proposed § 650.51 contains the procedures provided by the 1996 Reform Act for the Corporation to challenge the FCA's appointment of a receiver or conservator. Proposed § 650.51 also authorizes the Corporation's board of directors to meet following the appointment of the receiver or conservator in order to authorize the filing of an action for removal of the receiver or conservator.

Section 650.52—Voluntary Liquidation

Proposed § 650.52 incorporates the authority in the 1996 Reform Act for Farmer Mac to voluntarily liquidate with the consent of the FCA, provided that the liquidation is conducted in accordance with a plan of liquidation approved by the FCA. Although the regulation does not require that a voluntary liquidation include a receiver, the FCA may, in its discretion, appoint a receiver as part of an approved liquidation plan. If a receiver is appointed to conduct a voluntary liquidation of the Corporation, the receivership will be conducted pursuant to these regulations, except to the extent that a plan for voluntary liquidation, approved by the stockholders and FCA, provides otherwise.

In addition, proposed § 650.52 requires that the resolution of the Corporation's board of directors and the liquidation plan be submitted to the FCA for preliminary approval. If preliminary approval is given, the resolution must be approved by the Corporation's stockholders. The stockholder voting procedures would be in accordance with the Corporation's bylaws. Following an affirmative vote of the stockholders, the FCA will consider final approval of the resolution and plan for voluntary liquidation.

Section 650.55—Appointment of a Receiver

Consistent with part 627, proposed § 650.55 provides for notification of the Corporation immediately upon appointment of the receiver and for public notification in the Federal Register. Further, upon appointment of the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation would be vested exclusively in the receiver, except that the board of directors is authorized by proposed § 650.51 to maintain an action to challenge the receivership. Finally, pursuant to the 1996 Reform Act, proposed § 650.55 authorizes the FCA to cancel the charter of the Corporation upon appointment of the receiver or at such later date as the FCA determines is appropriate, but not later than the conclusion of the receivership.

[1] For more information on the regulations in 12 CFR part 627, *see* 57 FR 46482 (Oct. 9, 1992); 57 FR 23348 (Jun. 3, 1992); 54 FR 1148 (Jan. 12, 1989); 51 FR 32444 (Sept. 12, 1986).

Section 650.56—Powers and Duties of the Receiver

Pursuant to the requirement in the 1996 Reform Act that the powers of a receiver or conservator of Farmer Mac be comparable to the powers of a receiver or conservator of a Farm Credit institution, proposed § 650.56 incorporates all of the powers of receivers found in § 627.2725, except those few that deal only with the functions of banks and associations and would not be applicable to a receiver of Farmer Mac. Generally, a receiver or conservator of Farmer Mac would have all of the rights and powers that the Corporation had prior to the appointment of the conservator or receiver, including the power to issue guarantees of securities. The FCA requests comment on whether it would be appropriate to place limitations on any of these powers of Farmer Mac and if so asks for comment concerning specific reasons for any such limitation. In addition, the 1996 Reform Act authorizes a receiver or conservator of Farmer Mac to borrow funds to meet the ongoing administrative expenses and other liquidity needs of the receivership or conservatorship. Funds may be borrowed from such sources, in such amounts, and at such rates of interest as the receiver or conservator determines are necessary or appropriate to fund the working capital needs of the receivership or conservatorship.

Section 650.57—Report to Congress

Proposed § 650.57 incorporates the 1996 Reform Act requirement that the receiver submit a report to Congress on the financial condition of the receivership if the receiver determines that it is likely that there will be insufficient assets of the receivership to pay all valid claims.

Section 650.58—Preservation of Equity

Proposed § 650.58 provides for preservation of the equities of the Corporation in receivership until final distribution and also protects the equities of the Corporation in a voluntary liquidation until the stockholders and the FCA have approved the liquidation plan. If a voluntary liquidation is approved by the stockholders and the FCA and a receiver is appointed, disposition of equities of the Corporation would proceed in accordance with proposed § 650.62(b). If a receiver is not appointed, disposition would proceed according to the plan of liquidation approved by the FCA pursuant to proposed § 650.52.

Section 650.59—Notice to Stockholders

Proposed § 650.59 incorporates the provisions in part 627 for notifying stockholders of the appointment of a receiver.

Section 650.60—Creditor Claims

The requirements for publication of a notice to creditors, allowance of claims, and payment of claims contained in part 627 are incorporated in proposed § 650.60.

Section 650.61—Priority of Claims

Proposed § 650.61 governs the priority of claims that apply to the distribution of assets of the Corporation in receivership. Distribution of assets begins with the first class of claims and will continue with each succeeding class until all claims are paid or the assets of the Corporation are exhausted. First in priority would be administrative expenses of the Corporation in receivership, including any amounts borrowed for working capital pursuant to proposed § 650.56(b)(3). Also included in this class would be FCA's annual assessment of the Corporation pursuant to section 5.15 of the Act,[2] including any unpaid amounts as of the date of appointment of the receiver. Section 5.15 requires that the FCA determine, assess and collect the costs of supervising and examining the Corporation separate from the costs of administering the Act with regard to other Farm Credit System institutions. The intent of separate apportionment is to ensure, in accordance with section 8.1(a)(3), that Farmer Mac does not pay for the costs of supervising and examining the other Farm Credit System institutions and that the other institutions do not pay FCA's similar costs related to Farmer Mac. The FCA believes that providing for FCA assessments as an administrative expense of the receivership and a first priority claim is necessary to ensure that the provisions of the Act regarding separate assessments are not violated.

Next in priority are administrative expenses of the Corporation, incurred within 60 days prior to the receiver's taking possession, claims for wages and salaries of employees of the Corporation, and claims for taxes, respectively. Following these claims, all claims of creditors that are secured by specific assets of the Corporation would be paid. Finally, payments would be made for the claims of general creditors of the Corporation.

The FCA notes that pursuant to these priorities, obligations of Farmer Mac, whether general obligations issued under section 8.6(e)(2) or obligations issued to the Secretary of the Treasury under section 8.13, will fall in either the category of secured obligations (§ 650.61(f)) or unsecured obligations (§ 650.61(g)) depending on the terms of each individual debt issuance. The FCA is considering whether the Secretary of the Treasury should be afforded a priority higher than other creditors and requests comments.

In addition, the maximum amount for wage and salary claims of employees not engaged by the receiver in proposed § 650.61(d) is stated in terms of the 1992 baseline of $3,000. The baseline will be adjusted to compute the maximum compensation limit at the time of any receivership.[3]

Section 650.62—Payment of Claims

Proposed § 650.62 provides for payment of claims according to the priorities set forth in proposed § 650.61 and distribution of the remainder of the assets of the Corporation according to the Corporation's bylaws.

Section 650.63—Inventory, Audit, and Reports

The requirements in part 627 for an inventory of assets, annual audit of the receivership, annual accounting to stockholders (available upon request), and a report to each stockholder at the conclusion of the receivership summarizing the disposition of the assets and claims are incorporated into proposed § 650.63.

Section 650.64—Final Discharge and Release of the Receiver

Proposed § 650.64 provides that after the receiver has made a final distribution of the assets of the receivership, the receivership will be terminated and the receiver finally discharged and released. In addition, if the charter of the Corporation has not been canceled pursuant to proposed § 650.55(c), the charter will be canceled at the time of discharge and release of the receiver.

[2] Such assessments will continue until the Corporation's charter is canceled and the Office of Secondary Market Oversight is abolished.

[3] If the FCA were to compute the maximum compensation limit based on 1996 and include the 1996 number as the baseline year, the maximum claim amounts under part 627 and part 650, as calculated in any year subsequent to 1996, would be slightly different due to the different base amounts. The FCA believes that the maximum claim amount for wages and salaries of employees not retained by a receiver should be the same when computed under any FCA receivership regulation.

Section 650.65—Appointment of a Conservator

Consistent with part 627, proposed § 650.65 provides for notification of the appointment of a conservator and authorizes the Board to terminate the conservatorship at any time and direct the conservator to turn over the Corporation's operation to such management as the Board may designate.

Section 650.66—Powers and Duties of the Conservator

Pursuant to the requirement in the 1996 Reform Act that a conservator of the Corporation have powers comparable to those of a conservator of a Farm Credit institution appointed under section 4.12(b) of the Act, proposed § 650.66 incorporates the powers and duties of conservators that are contained in part 627. A conservator for Farmer Mac will have all of the powers of a receiver of Farmer Mac with the exception of those listed in proposed § 650.56(b)(2) and (b)(16).

Section 650.67—Inventory, Examination, and Reports to Stockholders

Proposed § 650.67 requires the conservator to prepare an inventory of assets and liabilities of the Corporation and clarify that the FCA has authority to examine the Corporation in conservatorship. Further, the Corporation in conservatorship will be required to file financial reports with the FCA in accordance with § 620.40 and part 621 and will be required to comply with the applicable provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Section 650.68—Final Discharge and Release of the Conservator

Proposed § 650.68 requires the conservator to file a report on its activities with the FCA at such time as the conservator is relieved of its duties and will then be completely and finally released.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, banking, Conflicts of interests, Rural areas.

For the reasons stated in the preamble, part 650 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

1. The authority citation for part 650 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

2. Part 650 is amended by adding a new subpart C to read as follows:

Subpart C—Receiver and Conservator

Subpart C—Receiver and Conservator

§ 650.50 Grounds for appointment of a receiver or conservator.

(a) The grounds for the appointment of a receiver or conservator for the Corporation are:

(1) The Corporation is insolvent. For purposes of this paragraph, insolvent means:

(i) The assets of the Corporation are less than its obligations to its creditors and others; or

(ii) The Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(2) There has been a substantial dissipation of the assets or earnings of the Corporation due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The Corporation is in an unsafe or unsound condition to transact business;

(4) The Corporation has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration Board;

(5) The Corporation is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the Corporation for inspection to any examiner or any lawful agent of the Farm Credit Administration Board.

(b) In addition to the grounds set forth in paragraph (a) of this section, a receiver can be appointed for the Corporation if the Farm Credit Administration determines that the appointment of a conservator would not be appropriate when one of the following conditions exists:

(1) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(2) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B of title VIII of the Act are not satisfactory.

(c) In addition to the grounds set forth in paragraph (a) of this section, a conservator can be appointed for the Corporation if:

(1) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV; or

(2) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended.

§ 650.51 Action for removal of receiver or conservator.

Upon the appointment of a receiver or conservator for the Corporation by the Farm Credit Administration Board pursuant to § 650.50 of this subpart, the Corporation may, within 30 days of such appointment, bring an action in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove the receiver or conservator and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of this part, the Corporation's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by the Corporation's board of directors.

§ 650.52 Voluntary liquidation.

(a) The Corporation may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution, the Corporation shall submit the resolution and proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Corporation as part of a voluntary

liquidation, the receivership shall be conducted pursuant to the regulations of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Corporation shall submit the resolution to liquidate to the stockholders for a vote in accordance with the bylaws of the Corporation.

(c) The Farm Credit Administration Board will consider final approval of the resolution to voluntarily liquidate and the liquidation plan after an affirmative stockholder vote on the resolution.

§ 650.55 Appointment of a receiver.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a receiver for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist.

(b) Upon the appointment of the receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the Corporation and shall publish a notice of the appointment in the Federal Register.

(c) Upon the issuance of the order placing the Corporation into liquidation and appointing the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation shall be vested exclusively in the receiver. The Farm Credit Administration Board may cancel the charter of the Corporation on such date as the Farm Credit Administration determines is appropriate, but not later than the conclusion of the receivership and discharge of the receiver.

§ 650.56 Powers and duties of the receiver.

(a) *General.* Upon appointment as receiver, the receiver shall take possession of the Corporation in order to wind up the business operations of the Corporation, collect the debts owed to the Corporation, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of the Corporation's operation as provided for in this part.

(2) Upon its appointment as receiver, the receiver automatically succeeds to:

(i) All rights, titles, powers, and privileges of the Corporation and of any stockholder, officer, or director of the Corporation with respect to the Corporation and the assets of the Corporation; and

(ii) Title to the books, records, and assets of any other legal custodian of the Corporation.

(3) The receiver of the Corporation serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the Corporation under law and the articles and bylaws of the Corporation.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the Corporation during the process of liquidating its assets and winding up its affairs.

(3) Borrow funds in accordance with section 8.41(f) of the Act to meet the ongoing administrative expenses or other liquidity needs of the receivership.

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the Corporation's assets or property or rehabilitate or improve such property and assets.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the Corporation has a lien or in which the Corporation has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(6) Investigate any matter related to the conduct of the business of the Corporation, including, but not limited to, any claim of the Corporation against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(7) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the Corporation or in which the Corporation or its creditors or stockholders have any interest, and represent in every way the Corporation, its stockholders and creditors.

(8) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(9) Hire any agents or employees necessary for proper administration of the receivership.

(10) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the Corporation's officers by authority of its board of directors.

(11) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the Corporation, or any property (real or personal, tangible or intangible).

(12) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(13) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(14) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the Corporation or receiver.

(15) Pay, out of the assets of the Corporation, all expenses of the receivership (including compensation to personnel employed to represent or assist the receiver) and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(16) Pay, out of the assets of the Corporation, all approved claims of indebtedness in accordance with the priorities established in this part.

(17) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(18) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

§ 650.57 Report to Congress.

On a determination by the receiver that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury and Congress a report on the financial condition of the receivership.

§ 650.58 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the Corporation pursuant to § 650.62 of this subpart, no capital stock, equity reserves, or other allocated equities of the Corporation in receivership shall be issued, allocated, retired, sold, distributed, transferred, or assigned.

(b) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate the Corporation,

the capital stock, equity reserves, and allocated equities of the Corporation shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Corporation or the Farm Credit Administration Board disapprove the resolution. In the event the resolution is approved by the stockholders of the Corporation and the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Corporation, except that if the Corporation is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the Corporation.

§ 650.59 Notice to stockholders.

As soon as practicable after a receiver takes possession of the Corporation, the receiver shall notify, by first class mail, each holder of stock of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the Corporation may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the stockholders; and

(c) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 650.60 Creditor claims.

(a) Upon appointment, the receiver shall promptly publish a notice to creditors to present their claims against the Corporation, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the Corporation's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed except as the receiver may approve them for full or partial payment from the Corporation's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority that is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final unless, within 30 days after the notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this part and in such manner and amounts as the receiver deems appropriate. In the event the Corporation has a claim against a creditor of the Corporation, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

§ 650.61 Priority of claims.

The following priority of claims shall apply to the distribution of the assets of the Corporation in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership, all FCA assessments for the costs of supervising and examining the Corporation, and any amounts borrowed pursuant to § 650.56(b)(3).

(b) Administrative expenses of the Corporation, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees that were authorized and reimbursable under a preexisting expense reimbursement policy and that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the Corporation.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the Corporation whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the Corporation not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets of the Corporation, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§ 650.62 Payment of claims.

(a) All claims of each class described in § 650.61 of this subpart shall be paid in full or provisions shall be made for such payment prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay all claims in a class in full, distribution to that class will be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the Corporation, if any, to the owners of stock and other equities in accordance with the priorities for impairment set forth in section 8.4(e)(3) of the Act and the bylaws of the Corporation.

§ 650.63 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of the Corporation, the receiver shall take an inventory of the assets and liabilities as of the date possession was taken.

(b) The receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the Corporation or any member of the public, with a copy provided to the Farm Credit Administration.

(d) As soon as practicable after final distribution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 650.64 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

§ 650.65 Appointment of a conservator.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a conservator for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist;

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the Corporation and shall publish a notice of the appointment in the Federal Register.

(c) As soon as practicable after the conservator takes possession of the Corporation, the conservator shall notify, by first class mail, each holder of stock in the Corporation of the establishment of the conservatorship and shall describe the effect of the conservatorship on the Corporation's operations and equity holdings.

(d) Upon the issuance of the order placing the Corporation in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the Corporation are vested exclusively in the conservator.

(e) The Farm Credit Administration Board may, at any time, terminate the conservatorship and direct the conservator to turn over the Corporation's operations to such management as the Farm Credit Administration Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 650.66 Powers and duties of the conservator.

(a) The conservator shall direct the Corporation's further operation until the Farm Credit Administration Board decides that the Corporation can operate without the conservatorship or places the Corporation into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment, the Farm Credit Administration Board may turn the Corporation over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the Corporation, to conserve and preserve the Corporation's assets and property, and otherwise protect the interests of the Corporation, its stockholders, and creditors as provided in this subpart.

(c) The conservator serves as the trustee of the Corporation and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(d) The conservator may exercise the powers that a receiver of the Corporation may exercise under any of the provisions of § 650.56(b) of this subpart, except paragraphs (b)(2) and (b)(16). In interpreting the applicable paragraphs for purposes of this section, the terms ''conservator'' and ''conservatorship'' shall be read for ''receiver'' and ''receivership''.

(e) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the Corporation.

§ 650.67 Inventory, examination, and reports to stockholders.

(a) As soon as practicable after taking possession of the Corporation, the conservator shall take an inventory of the assets and liabilities of the Corporation as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The conservatorship shall be examined by the Farm Credit Administration in accordance with section 8.11 of the Act.

(c) The conservatorship shall prepare and file financial reports and other documents in accordance with the requirements of § 620.40 and part 621 of this chapter. The conservator of the Corporation shall provide the certification required in § 621.14 of this chapter.

§ 650.68 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

Dated: February 19, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–4475 Filed 2–21–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; I. A. M. Rinaldo Piaggio Model P180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain I. A. M. Rinaldo Piaggio (Piaggio) Model P180 airplanes. The proposed action would require repetitively inspecting for cracks around the vertical pin and the torque tube bottom flange of the rudder and the fasteners that connect the torque tube to the bottom flange. If cracks are evident, the proposed action would require modifying the rudder torque tube bottom flange assembly by replacing the cracked part with a part of improved design which would terminate the repetitive inspection. The proposed AD is the result of several reports of fatigue cracks around the pin that vertically supports the rudder axle. The actions specified by the proposed AD are intended to prevent fatigue cracks in the rudder torque tube bottom flange which could result in loss of rudder control and possible loss of the airplane.

DATES: Comments must be received on or before April 30, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to

the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–56–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio P180 airplanes. The RAI reports that fatigue cracks are appearing in the area of the vertical pin support and around the torque tube bottom flange of the rudder. These cracks were discovered during routine inspections on high flight hour Piaggio P180 airplanes. This condition, if not detected and corrected, could result in loss of rudder control and possible loss of the airplane.

Relevant Service Information

Piaggio has issued Service Bulletin 80–0076, ORIGINAL ISSUE: May 30, 1995 which specifies procedures for inspecting for cracks and modifying the torque tube bottom flange and fasteners, if cracks are found.

The RAI classified this service bulletin as mandatory and issued AD No. 95–183, Issued July 3, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

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

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio P180 airplanes of the same type design registered in the United States, the proposed AD would require inspecting for cracks around the torque tube bottom flange, the fasteners, and vertical support pin of the rudder; and, if cracks are found, modifying the rudder torque tube bottom flange assembly by replacing the cracked part with a part of improved design. If no cracks are found, the proposed action would require repetitively inspecting the area until cracks appear and then modifying the rudder torque tube bottom flange by replacing the cracked part with a part of improved design. Accomplishment of the proposed modification would be in accordance with Piaggio Service Bulletin 80–0076, ORIGINAL ISSUE: May 30, 1995.

Differences Between the Proposed AD, Service Bulletin, and RAI AD

I.A.M. Rinaldo Piaggio SB 80–0076, Original Issue May 30, 1995, and the RAI AD No. 95–183, dated July 3, 1995, specify repetitively inspecting every 500 hours time-in-service (TIS) using a dye penetrant method, and if the crack lengths are greater than 6 mm, the part must be replaced prior to further flight. If the crack lengths are greater than 3 mm, but less than 6 mm, the part must be replaced within the next 50 hours TIS; and, if the cracks are less than 3 mm, then the parts must be replaced within the next 100 hours TIS. The proposed AD, if adopted, would not allow any continued flight with any crack found. FAA policy is to disallow airplane operation when known cracks exist in primary structure (the rudder is considered primary structure).

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed initial inspection and that the average labor rate is approximately $60 an hour. Parts are not accounted for in this cost analysis because, on some airplanes, cracks may never be discovered during one of these inspections. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,440 ($360 per airplane). The FAA is not taking into account the cost for the repetitive inspections because there is no way to determine the number of repetitive inspections that might be incurred over the life of the airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 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:

I.A.M. Rinaldo Piaggio: Docket No. 96–CE–56–AD.

Applicability: Model P180 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter as indicated in the body of this AD, unless already accomplished.

To prevent fatigue cracks in the rudder torque tube bottom flange which could result in loss of rudder control and possible loss of the airplane, accomplish the following:

(a) Inspect the area around the torque tube, bottom flange, and vertical support pin of the rudder for cracks (using a dye penetrant method) and visually inspect for cracks in the fasteners that connect the torque tube to the bottom flange.

Note 2: The inspection in Part A of the Compliance section of Piaggio Service Bulletin (SB) 80–0076, ORIGINAL ISSUE: May 30, 1995, uses different criteria than the inspection required in paragraph (a) of this AD. This AD takes precedence over Piaggio SB 80–0076.

(b) If cracks are found, prior to further flight, modify the rudder torque tube bottom flange by replacing any cracked part with a part of improved design in accordance with Part B and Attachment #1 of the ACCOMPLISHMENT INSTRUCTIONS of Piaggio SB 80–0076, ORIGINAL ISSUE: May 30, 1995.

(c) If no cracks are found, continue to inspect at intervals not to exceed 100 hours TIS thereafter until cracks appear. If cracks appear during any inspection required by this AD, prior to further flight, modify the rudder torque tube bottom flange by the replacing cracked part with a part of improved design in accordance with Part B and Attachment #1 of the ACCOMPLISHMENT INSTRUCTIONS of Piaggio SB 80–0076, ORIGINAL ISSUE: May 30, 1995.

(d) Modifying the rudder torque tube flange by replacing a cracked torque tube bottom flange, part number (P/N) 80–373108–103, with an improved torque tube bottom flange (P/N 80–373201–001) is considered a terminating action for the repetitive inspections required in paragraph (c) of this AD.

(e) 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.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; or the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or Manager, Small Airplane Directorate.

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

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 14, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4371 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–ANE–08]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires for front compressor front hubs (fan hubs), cleaning; initial and repetitive eddy current (ECI) and fluorescent penetrant inspections (FPI) of tierod and counterweight holes for cracks; removal of bushings; the cleaning and ECI and FPI of bushed holes for cracks; and, if necessary, replacement with serviceable parts. In addition, the current AD requires reporting the findings of cracked fan hubs. This action will not change the current AD's inspection procedures, or the effectivity date that starts the cycle count for the initial inspection schedules. This AD will, however, add an additional inspection schedule that requires the initial inspection of certain fan hubs with standard drilled holes and coolant channel drilled (CCD) holes to occur earlier than the existing AD requires. This proposal is prompted by additional investigation since publication of the current AD that reveals that certain fan hubs with standard drilled holes and CCD holes may be more susceptible to cracking. This proposal also requires reporting the results of the initial fan hub inspections. The actions specified by the proposed AD are intended to prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by April 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal

Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–

5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–08.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 13, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive AD 97–02–11, Amendment 39–9896 (62 FR 4902, February 3, 1997), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, to require cleaning, initial and repetitive eddy current inspections (ECI) and fluorescent penetrant inspections (FPI) for cracks of tierod and counterweight holes; removal of bushings; the cleaning and initial and repetitive ECI and FPI of bushed holes for cracks; and, if necessary, replacing with serviceable parts. The compliance requirements allow selection of inspection schedules depending on front compressor front hub (fan hub) Serial Numbers (S/Ns) listed in PW Alert Service Bulletin (ASB) No. A6272, dated September 24, 1996, and includes an inspection schedule for those fan hubs whose S/Ns are not listed in the ASB. In addition, the AD requires reporting findings of cracked fan hubs. That action was prompted by a report of an uncontained failure of a fan hub. That condition, if not corrected, could result in fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

Since the issuance of that AD, the FAA has conducted additional investigation of fan hub cracking and has determined it necessary to include an additional inspection schedule for certain fan hubs with standard drilled holes and coolant channel drilled (CCD) holes. The FAA reviewed the manufacturing records of all fan hubs, a total of 253 which had notations related to the tierod or counterweight holes. Notations are made in the manufacturing records if an event occurred during manufacture of the hole such as a tool break, which can result in work hardened material, which is more susceptible to cracking. Of the 253 fan hubs with such notations, 113 were manufactured with a CCD and the remaining 140 were manufactured with a standard drill. Although CCD fan hubs are more prone to a work hardened layer, a standard drill, under certain circumstances, may also cause a work hardened layer and subsequent cracking.

The FAA has reviewed and approved the technical contents of PW ASB No. A6272, dated September 24, 1996, that describes procedures for cleaning and ECI and FPI of tierod and counterweight holes for cracks; removal of bushings; and the cleaning, FPI, and ECI of bushed holes for cracks. Even though the ASB contains three of the S/Ns of the fan hubs that were removed from service in accordance with AD 96–15–06, the manufacturer has informed the FAA that these fan hubs have been destroyed during the investigation to confirm the failure mode.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–02–11 to include an additional inspection schedule for certain fan hubs with standard drilled holes and CCD holes without changing inspection procedures, the existing inspection schedules, or the current effectivity date of March 5, 1997.

There are approximately 2,624 engines of the affected design in the worldwide fleet. The FAA estimates that 1,279 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take 20 work hours per engine for 360 engines to disassemble, remove, inspect, and reassemble engines, and 4 work hours per engine for 919 engines to inspect at piece-part exposure, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $862,560.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9896 (62 FR 4902, February 3, 1997) and by adding

a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–08. Supersedes AD 97–02–11, Amendment 39–9896.

Applicability: Pratt & Whitney JT8D–209, –217, –217C, and –219 series turbofan engines with front compressor front hub (fan hub), Part Number (P/N) 5000501–01, installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect fan hubs for cracks in accordance with the Accomplishment Instructions, Paragraph A, Part 1, and, if applicable, Paragraph B, of PW ASB No. A6272, dated September 24, 1996, as follows:

(1) For fan hubs identified by Serial Numbers (S/Ns) in Table 2 of this AD, after the fan hub has accumulated more than 4,000 cycles since new (CSN), as follows:

(i) Initially inspect within 790 cycles in service after March 5, 1997 (the effective date of AD 97–02–11), or 4,790 CSN, whichever occurs later.

(ii) Thereafter, reinspect after accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

(2) For fan hubs identified by S/Ns in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, as follows:

(i) Select an initial inspection interval from Table 1 of this AD, and inspect accordingly.

TABLE 1

Initial inspection	Reinspection
1. Within 1,050 cycles in service (CIS) after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 5,050 CSN, whichever occurs later;	After accumulating 2,500 CIS since last inspection, but not to exceed 6,000 CIS since last inspection.
or	
2. Within 990 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,990 CSN, whichever occurs later;	After accumulating 2,500 CIS since last inspection, but not to exceed 8,000 CIS since last inspection.
or	
3. Within 965 CIS after the effective date of AD 97–02–11, March 5, 1997, or prior to accumulating 4,965 CSN, whichever occurs later.	After accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

TABLE 2

[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
M67663	M67802	P66880	S25545
M67671	M67812	P66885	S25558
M67675	M67826	R32732	S25564
M67681	M67829	R32733	S25598
M67685	M67830	R32735	S25618
M67686	M67831	R32740	S25621
M67687	M67832	R32741	S25637
M67697	M67834	R32810	S25640
M67700	M67843	R32849	T50693
M67706	M67849	R32850	T50752
M67710	M67858	S25222	T50785
M67712	M67866	S25464	T50791
M67713	M67868	S25481	T50792
M67714	M67869	S25483	T50819
M67715	M67872	S25484	T50823
M67716	M67888	S25486	T50827
M67717	N71771	S25488	T50874
M67722	N71804	S25489	T50875
M67723	N71806	S25490	T51058
M67725	N71810	S25491	T51104
M67726	N71811	S25492	R33186
M67730	N71875	S25494	S25528
M67731	N71876	S25495	
M67746	N71921	S25497	
M67751	N71965	S25498	
M67753	N72062	S25499	
M67764	N72126	S25500	
M67765	N72152	S25501	
M67784	N72162	S25502	
M67791	N72207	S25505	
M67792	N72216	S25506	
M67793	N72219	S25507	
M67794	N72242	S25508	
M67795	P66693	S25509	

TABLE 2—Continued

[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
M67796	P66695	S25514	
M67797	P66696	S25529	
M67798	P66698	S25532	
M67799	P66699	S25541	
M67800	P66737	S25543	
M67801	P66753	S25544	
CCD Hub	CCD Hub	CCD Hub	
P66747	R33099	S25292	
P66756	R33107	S25299	
P66800	R33113	S25301	
P66814	R33124	S25302	
P66819	R33131	S25308	
P66831	R33132	S25312	
R32767	R33133	S25316	
R32787	R33136	S25323	
R32792	R33152	S25334	
R32795	R33157	S25335	
R32796	R33163	S25337	
R32800	R33165	S25344	
R32807	R33168	S25369	
R32856	R33171	S25377	
R32860	R33173	S25378	
R32870	R33180	S25381	
R32883	R33181	S25394	
R32905	R33189	S25399	
R32926	R33194	S25402	
R32930	R33198	S25406	
R32952	R33201	S25411	
R32964	R33202	S25413	
R32966	R33207	S25414	
R32971	S25193	S25415	
R32976	S25195	S25418	

TABLE 2—Continued

[Hubs with traveler notations]

Non CCD	Non CCD	Non CCD	Non CCD
R32981	S25207	S25419	
R32990	S25208	S25421	
R32994	S25221	S25422	
R33000	S25229	S25430	
R33004	S25238	S25437	
R33040	S25246	S25439	
R33055	S25248	S25449	
R33059	S25250		
R33077	S25256		
R33080	S25262		
R33082	S25268		
R33086	S25278		
R33087	S25287		
R33089	S25288		
R33090			

(ii) Thereafter, reinspect at intervals that correspond to the selected inspection interval.

(3) If a fan hub is identified in both Table 2 of this AD and Appendix A of PW ASB No. A6272, dated September 24, 1996, inspect in accordance with paragraph (a)(1) of this AD.

(4) For fan hubs with S/Ns not listed in Table 2 of this AD or in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, inspect the next time the fan hub is in the shop at piece-part level, but not to exceed 10,000 CIS after March 5, 1997.

(5) Prior to further flight, remove from service fan hubs found cracked or that exceed the bushed hole acceptance criteria described

in PW ASB No. A6272, dated September 24, 1996.

(b) Report the number of completed inspections on a monthly basis and report findings of cracked fan hubs in accordance with Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, within 48 hours after inspection to Robert Guyotte, Manager, Engine Certification Branch, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7142, fax (617) 238–7199; Internet: Robert.Guyotte@faa.dot.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

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

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

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

Issued in Burlington, Massachusetts, on February 14, 1997.

James C. Jones,

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

[FR Doc. 97–4370 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215–AA99

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Extension of Comment Period

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments regarding the proposed rule to amend and revise the regulations implementing the Black Lung Benefits Act. This action is taken to permit additional comment from interested persons.

DATE: Comments must be received on or before May 23, 1997.

ADDRESSES: Send written comments on the proposed rule to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219–6692.

SUPPLEMENTARY INFORMATION: In the Federal Register of the January 22, 1997 (62 FR 3338–3435), the Department of Labor published a proposed rule intended to amend and revise the regulations implementing the Black Lung Benefits Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Interested persons were requested to submit comments on or before March 24, 1997.

The Department has received requests for an extension of the comment period from groups representing coal mine operators, coal mine construction companies, the insurance industry, organized labor, and black lung claimants. Because of the interest in this proposal, the Department believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, amending and revising 20 CFR parts 718, 722, 725, 726 and 727, is extended through May 23, 1997.

Signed at Washington, DC, this 18 day of February, 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 97–4467 Filed 2–21–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH41

Service Connection of Dental Conditions for Treatment Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to amend its adjudication regulations for determining service connection of dental conditions for purposes of eligibility for outpatient dental treatment. Current regulations contain overlapping provisions which do not clearly state requirements for service connection, and provide that service connection will be granted for certain dental conditions shown after a ''reasonable period of service'' without defining what constitutes such a period. We intend to consolidate the information, and replace the term ''reasonable period of service'' with a precise period of 180 days. We also propose to eliminate redundant material, and to clearly state requirements for service connection for purposes of eligibility for outpatient dental treatment.

DATES: Comments must be received on or before April 25, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH41.'' All written comments will be made available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service (213), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 1712 (restated in 38 CFR 17.123) set forth eligibility requirements for VA outpatient treatment of dental conditions and disabilities. This section provides that veterans with non-compensable service-connected dental conditions are entitled to a one-time correction of the dental condition provided that certain requirements are met, including application for dental treatment made within 90 days of service discharge. Following completion of this initial care, subsequent additional treatment may be provided in certain other cases, i.e., if the veteran was a prisoner of war, if the dental condition or disability is due to combat or other in-service trauma, or if the veteran has service-connected disabilities rated at 100 percent.

38 CFR part 4, the Schedule for Rating Disabilities, provides evaluations for dental conditions considered disabling in nature. (See § 4.150, Schedule of ratings—dental and oral conditions.) There are other dental conditions, however, which are not considered disabling and thus do not generally fall under the purview of § 4.150. The issue of service connection arises for these conditions only for the purpose of

determining eligibility for outpatient dental treatment. These conditions are listed at 38 CFR 4.149, ''Rating diseases of the teeth and gums'', and include treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, periodontal disease, and Vincent's stomatitis (also referred to as Vincent's infection, Vincent's disease, or acute necrotizing gingivitis).

The Schedule for Rating Disabilities is a guide for evaluating disabilities for compensation purposes. Because the dental conditions listed in § 4.149 are not evaluated for compensation, but only to determine eligibility for treatment, it is more appropriate to list them in 38 CFR part 3, which contains general rules for determining service connection. We therefore propose to list these non-compensable dental conditions in § 3.381(a) and to delete section § 4.149.

The current regulations at 38 CFR 3.381 and 3.382 set forth the principles for determining whether a dental condition was incurred or aggravated during service for purposes of treatment. Provisions for determining which conditions are service connected for outpatient treatment purposes, and which are not, are scattered throughout both sections. Section 3.381 establishes the conditions under which dental conditions that were present at entry into service will be service connected; § 3.382 (a) and (b) list the evidence requirements for establishing service connection; and § 3.382(c) states that certain dental conditions will not be service connected. We propose to rewrite the regulations to consolidate the information, make requirements for service connection for treatment purposes clear, list specific conditions that will not be service connected, and eliminate redundant material.

The regulations at §§ 3.381 and 3.382 currently state that service connection for certain non-compensable dental conditions is warranted only if the conditions are shown after a ''reasonable period of service.'' The condition of ''reasonable period of service'' was intended to provide a basis for determining those dental conditions which would be considered as incurred or aggravated during active duty. (See 38 U.S.C. 1110, 1131.) In the absence of a definition for the term ''reasonable period of service,'' the Court of Veterans Appeals held in *Manio* v. *Derwinski*, 1 Vet. App. 140 (1991), that four months ''is sufficient to satisfy the 'reasonable period of service' requirement'' under the facts of that case.

We propose to revise § 3.381 to replace the subjective term ''reasonable period of service'' with the objective requirement of 180 days or more of active service. Dental caries and other dental pathology take time to develop, often a year or two in permanent teeth. Thus it is more likely than not that caries or pathology that became apparent within the first 180 days of a person's active service pre-existed that service. Periodontal disease, which results from the long term effects of plaque on the periodontium, also develops over time, and we believe the same period is appropriate for effects of this condition.

In § 3.381, paragraph (c) currently states that effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their association with other service-connected diseases and injuries will be observed. The provisions governing such secondary service connection are contained in § 3.310. Therefore, inclusion of this statement here is unnecessary and we propose to delete it.

In § 3.381, paragraph (d) currently states that the presumption of soundness does not apply to non-compensable dental conditions. However, 38 CFR 3.304(b) provides that a veteran shall be considered to have been in sound condition when entering service ''except as to defects, infirmities, or disorders noted at entrance into service.'' In order to maintain consistency between the provisions of 38 CFR part 3, we propose to eliminate the statement in § 3.381, paragraph (d) that the presumption of soundness does not apply to non-compensable dental conditions.

In § 3.381, paragraph (b) currently states that treatment during service is not considered per se as aggravation of a condition noted as present at entry because such treatment is considered ameliorative. We propose to retain that principle in proposed § 3.381, paragraph (c) but will replace the phrase ''per se'' with a statement that treatment in service is not evidence that a condition noted at entry has been aggravated, unless additional pathology developed after 180 days or more of service. The use of the 180-day time period has already been explained.

We propose to place in § 3.381, paragraph (d), specific rules for determining whether dental conditions that are noted at entry into service and treated during active duty are service connected for treatment purposes. This paragraph will incorporate provisions now listed at § 3.381(b) for teeth that are noted as carious but restorable, filled, and defective but not restorable. We propose to include new provisions for teeth normal at entry but which are filled or extracted during service and teeth missing at entry because these situations frequently require decision but are not addressed in the current regulation.

In § 3.381, paragraph (d)(1), we propose to state that teeth noted as normal at the time of entry into service will be service connected only if filled or extracted after 180 days or more of active service. Setting a precise period of 180 days for development of dental pathology as a requirement for service connection is consistent with our statement that conditions that manifested before expiration of 180 days of active service more likely than not pre-existed that service.

In § 3.381, paragraph (d)(2), we propose to state that teeth noted as filled at entry into service will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of service. This is not a change from the current provision, but substitutes a precise period of 180 days for the ''reasonable time'' provision of the current rule.

In § 3.381, paragraph (d)(3), we propose to state that teeth that are carious but restorable at entry will not be service connected if they are filled during service, but that if new caries develop in the same tooth 180 days or more after a filling has been placed, service connection will be granted. This substitutes a precise period for the current language granting service connection if such new caries develop ''a reasonable time'' after the original cavity has been filled.

In § 3.381, paragraph (d)(4), we propose to state that teeth noted as carious but restorable at entry will be service connected, regardless of whether or not they are filled, if extraction is required after 180 days or more of active service. This is not a change from the current provision, but substitutes the precise period of 180 days for the ''reasonable time'' provision of the current rule.

In § 3.381, paragraph (d)(5), we propose to state that teeth noted to be defective and non-restorable at entry will not be service connected, regardless of treatment during service. This is not a change from the current provision.

In § 3.381, paragraph (d)(6), we propose to state that teeth noted at entry as missing will not warrant service connection for treatment purposes, notwithstanding treatment which may have been administered during active duty. This provision is consistent with proposed § 3.381(c) which states that treatment in service for a pre-existing condition does not represent aggravation of that condition.

In § 3.381, paragraph (e), we propose to list conditions that will not be service connected for treatment purposes. Conditions now listed at § 3.382(c) for which service connection will not be granted include: salivary deposits; gingivitis; acute Vincent's disease; pyorrhea; impacted or malposed teeth and third molars (wisdom teeth).

Impacted and malposed teeth are considered developmental defects, as is the presence of third molars. As noted above, these conditions are not service connected under current provisions, unless separate pathology develops ''after a reasonable time.'' In the revised § 3.381 (e)(3) and (e)(4), we propose to replace this term with the precise period of 180 days or more of active service. We have already explained our use of the 180-day time period.

We have incorporated current medical terminology in the regulation, and; therefore, have substituted the term ''calculus'' for ''salivary deposits'' and ''periodontal disease'' for the terms ''gingivitis,'' ''Vincent's disease,'' and ''pyorrhea.''

The current regulation states that gingivitis is not a disease entity and thus is not ratable. Gingivitis is an inflammatory condition which is usually an acute condition, but can be a precursor of more serious inflammatory processes. Vincent's disease is a form of gingival inflammation also called ''trench mouth'' or ''necrotizing ulcerative gingivitis'' which the current regulation does not service connect in its acute state. Periodontitis is a more current term for pyorrhea. All of these conditions are encompassed by the broader, more general term periodontal disease. Periodontal disease is related to dental hygiene and can be affected by such other factors as diet, abnormal stress, other disease processes, and reaction to certain drugs or chemicals. With proper treatment, most periodontal disease resolves with no residuals. For this reason, service connection for acute periodontal disease is not warranted. However, under the current regulation, chronic periodontal disease (pyorrhea), which may result in tooth extraction, warrants service connection for the lost teeth. We propose to retain this provision, with the clarification that such tooth loss will be service connected only if extraction is required after at least 180 days of service.

We propose to eliminate as unnecessary paragraphs (a) and (b) of § 3.382, ''Evidence to establish service connection for dental disabilities.'' These paragraphs contain information about kinds of evidence needed to establish service connection and alternate sources of evidence when service medical records are unavailable. Evidence requirements are adequately covered elsewhere in the regulations and stating them here is unnecessary. (*See* regulations at 38 CFR 3.303, ''Principles relating to service connection'' and § 3.304 ''Direct service connection; wartime and peacetime.'.)

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The proposed amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Pesticides and pests, Radioactive materials, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pensions, Individuals with disabilities, Veterans.

Approved: November 6, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3 and 4 are proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.381 is revised to read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in section 17.123 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Chronic periodontal disease. Teeth extracted because of chronic periodontal disease will be service connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

§ 3.382 [Removed]

3. Section 3.382 is removed.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 38 U.S.C. 1155.

§ 4.149 [Removed]

5. Section 4.149 is removed.

[FR Doc. 97–4419 Filed 2–21–97; 8:45 am]
BILLING CODE 8320–01–P

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38 CFR Part 4

RIN 2900–AI22

Intervertebral Disc Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for diagnostic code 5293, intervertebral disc syndrome. The intended effect of this amendment is to clarify the criteria to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: Comments must be received by VA on or before April 25, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington DC 20420. Comments should indicate that they are in response to ''RIN 2900–AI22.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: The central portion of one or more intervertebral discs, cartilages that separate the spinal vertebrae, may protrude or rupture through the outer fibrous part of the disc and compress or irritate the adjacent nerve root. Intervertebral disc syndrome is a group of signs and symptoms due to nerve root irritation that commonly includes back pain and sciatica (pain along the course of the sciatic nerve) in the case of lumbar disc disease, and neck and arm or hand pain in the case of cervical disc disease. It may also include scoliosis, paravertebral muscle spasm, limitation of motion of the spine, tenderness over the spine, limitation of straight leg raising, and neurologic findings corresponding to the level of the disc. If the disc compresses the cauda equina (the collection of nerve roots extending from the lower end of the spinal cord), bowel or bladder sphincter functions or sexual function may also be affected.

Intervertebral disc syndrome has a variable course and variable manifestations. Many people have a series of relapses and remissions of back pain and sciatica over a long period of time with no symptoms during remission; other patients experience chronic signs and symptoms.

The current evaluation criteria for intervertebral disc syndrome (DC 5293) include: a 60-percent evaluation for persistent sciatic neuropathy or other neurologic findings, with little intermittent relief; a 40-percent evaluation for severe recurring attacks; a 20-percent evaluation for moderate recurring attacks; a 10-percent evaluation if the condition is mild; and a zero-percent evaluation if the condition is postoperative, cured. These criteria require rating agencies to make a subjective determination as to whether the condition is ''mild,'' ''moderate,'' or ''severe.'' In addition, they raise questions as to whether any neurologic manifestation, regardless of severity, warrants a 60-percent evaluation, or whether intervertebral disc syndrome with neurologic manifestations may be evaluated higher or lower than 60 percent.

In order to clarify the evaluation criteria, and thereby assure more consistent evaluations, we propose to eliminate subjective terms such as mild, moderate, and severe in favor of more objective criteria, and to provide specific instructions for evaluating both the orthopedic and neurologic manifestations of intervertebral disc syndrome. We also propose that these criteria apply both pre-operatively and post-operatively.

We propose to evaluate intervertebral disc syndromes that are primarily disabling because of periods of acute symptoms that require bed rest according to the cumulative amount of time over the course of a year that the patient is incapacitated, i.e., requires bed rest and treatment by a physician. Incapacitating episodes of at least six weeks total duration per year would be evaluated at 60 percent; incapacitating episodes of at least four but less than six weeks total duration per year at 40 percent; incapacitating episodes of at least two but less than four weeks total duration per year at 20 percent; and incapacitating episodes of at least one but less than two weeks total duration per year at 10 percent. Evaluating the condition in this manner will assure more consistent evaluations when the disc disease is episodic because percentage evaluations will be assigned based on an objective standard—yearly cumulative duration of incapacitating episodes—rather than a subjective assessment of whether the condition is mild, moderate, or severe.

We propose to evaluate intervertebral disc syndromes that are disabling primarily because of chronic orthopedic manifestations (e.g., painful muscle spasm or limitation of motion), chronic neurologic manifestations (e.g., footdrop, muscle atrophy, or sensory loss), or a combination of both, by assigning separate evaluations for the orthopedic and neurologic manifestations, using DC 5293 hyphenated with the appropriate orthopedic or neurologic code. Assigning separate evaluations for the orthopedic and neurologic manifestations will assure that evaluations accurately reflect the actual disabling effects of the condition, and that neurologic manifestations in particular will not be over-or under-evaluated by being considered categorically rather than individually.

When an intervertebral disc syndrome is disabling both because of incapacitating episodes and persistent orthopedic or neurologic manifestations, we propose that the rating agency use whichever alternative method of evaluation results in a higher evaluation.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b),

this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: November 5, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155.

2. Section 4.71a is amended by revising diagnostic code 5293 and adding an authority citation at the end of the section to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

The Spine

* * * * *

5293 Intervertebral disc syndrome: Evaluate intervertebral disc syndrome (preoperatively or postoperatively) based on either its chronic manifestations or on the annual duration of incapacitating episodes, whichever results in a higher evaluation.

With incapacitating episodes having a total duration of at least six weeks per year	60
With incapacitating episodes having a total duration of at least four weeks but less than six weeks per year	40
With incapacitating episodes having a total duration of at least two weeks but less than four weeks per year	20
With incapacitating episodes having a total duration of at least one week but less than two weeks per year	10

Note (1): An incapacitating episode of intervertebral disc syndrome means a period of acute symptoms (orthopedic, neurologic, or both), requiring bed rest and treatment by a physician.

Note (2): When evaluating on the basis of chronic manifestations, evaluate orthopedic manifestations, such as limitation of motion of lumbar or cervical spine, paravertebral muscle spasm, or scoliosis of the spine, under DC 5293, using evaluation criteria for an appropriate diagnostic code; evaluate neurologic manifestations, such as footdrop, muscle atrophy, sensory loss, or neurogenic bladder separately under DC 5293, using evaluation criteria for an appropriate diagnostic code.

* * * * *

(Authority: 38 U.S.C. 1155.)

[FR Doc. 97–4415 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–13–0027b; FRL–5688–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from wastewater separators and pharmaceutical manufacturing operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 26, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Section [Air-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section [Air-4], Air Division, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 464, Wastewater Separators; and Yolo-Solano Air Quality Management District, Rule 2.35, Pharmaceutical Manufacturing Operations, submitted to EPA on May 13, 1991 and November 30, 1994, respectively, by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 3, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–4420 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 96–130; Notice 01]

RIN 2127–AG56

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in Appendices A, B, and C of Part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1994 calendar year not later than October 25, 1997. Further, as long as they remain listed, they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than April 25, 1997. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1997.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term ''small insurer'' is defined in Section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR Part 544, NHTSA exercises its exemption authority by listing in Appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that Appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new Appendix C, which consists of an annually updated list of the self-insurers that are subject to Part 544. Following the same approach as in the case of Appendix A, NHTSA has included in Appendix C each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News.*

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1994 calendar year A.M. Best data for market shares, NHTSA proposes to amend the list in Appendix A of insurers which must report because each had at least one percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on August 13, 1996 (See 61 FR 41985). One company, Allmerica Property and Casualty Company erroneously included in the August 1996 listing, is proposed to be removed from Appendix A.

Each of the 18 insurers listed in Appendix A of this notice would be required to file a report not later than October 25, 1997, setting forth the information required by Part 544 for each State in which it did business in the 1994 calendar year. As long as those 18 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1994, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1994 calendar year A.M. Best data for market shares, it is proposed that Amica Mutual Insurance Company, reporting on its activities in the State of Rhode Island be removed from Appendix B. One company, Integon Corporate Group, that was not listed in Appendix B, is proposed to be added.

The 12 insurers listed in Appendix B of this notice would be required to report on their calendar year 1994 activities in every State in which they had a 10 percent or greater market share. These reports must be filed no later than October 25, 1997, and set forth the information required by Part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1994, the most recent year for which data are available, NHTSA is proposing several changes in Appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it is proposed that two rental and leasing companies, ARI (Automotive Rentals, Inc.) and A T & T Automotive Services, Inc., be included in Appendix C. Accordingly, each of the 15 companies (including franchisees and licensees) listed in this notice in Appendix C would be required to file reports for calendar year 1994 no later than October 25, 1997, and set forth the information required by Part 544. As long as those 15 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

NHTSA notes that on July 5, 1994, the Cost Savings Act (including Title VI—Theft Prevention) was revised and codified ''without substantive change.'' The passenger motor vehicle theft insurers' reporting provisions, formerly at 15 U.S.C. 2032 are now at 49 U.S.C. 33112. In this NPRM, NHTSA proposes to make minor technical amendments to make Part 544 reflect its changed statutory authority.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the 1987 final regulatory evaluation, the agency estimates that the cost of compliance will be about $50,000 for any insurer that is added to Appendix A, about $20,000 for any insurer added to Appendix B, and about $5,770 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one insurer; for Appendix B, the agency would remove one insurer and add one insurer; and for Appendix C, the agency would add two additional companies. The agency therefore estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately $38,460.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and was approved for use through October 31, 1996. The agency has begun the process of seeking reinstatement of OMB's approval of the collection of information. It expects that process to be complete well before October 25, 1997, when the next reports are due. The agency will publish a Federal Register notice with the control number when it receives notice from OMB that it has approved the requirement.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued

by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

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

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would be revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Section 544.2 would be revised to read as follows:

§ 544.2 Purpose.

The purpose of the reporting requirements in this part is to aid in implementing and evaluating the provisions of 49 U.S.C. chapter 331 *Theft Prevention* to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.4 [Amended]

3. Paragraph (a) of § 544.4 would be revised to read as follows:

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in 49 U.S.C. 32101 and 33112 are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

* * * * *

§ 544.5 [Amended]

4. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1997 shall contain the required information for the 1994 calendar year).

* * * * *

5. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Metropolitan Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group

6. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Integon Corporate Group ''
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

7. Appendix C to Part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.) [1]

[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1997.

A T & T Automotive Services, Inc.[1]
Avis, Inc.
Budget Rent-A-Car Corporation
Citicorp Bankers Leasing Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan International
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capital Fleet Services

Issued on: February 18, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–4355 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

49 CFR Part 1136

[STB Ex Parte No. 624]

Removal of Obsolete Regulations Concerning Rail Passenger Fare Increases

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes to remove from the Code of Federal Regulations obsolete regulations concerning rail passenger carrier commutation or suburban fare increases.

DATES: Comments are due on March 26, 1997.

ADDRESSES: Submit comments to Surface Transportation Board, Office of the Secretary, Case Control Board, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.''

The regulations at 49 CFR part 1136 require that a rail passenger carrier proposing commutation or suburban fare increases concurrently file tariffs and verified statements with the ICC and the Governor and appropriate state or county regulatory agency. The carrier is also to certify that the notice provisions of 49 CFR 1312.5 have been met.[1]

The ICC issued these regulations, in *Notice of Increases* in Frt. Rates and Pass. Fares, 349 I.C.C. 741 (1975), to ensure that rail and motor carriers would give advance notice of and justification for commutation and suburban passenger fare increases. The rules were designed to facilitate the filing of potential protests seeking the suspension and/or investigation of fare increases. Subsequently, the ICC modified these regulations by removing their application to motor passenger carriers. *Practice and Procedure-Misc. Amendments-Revisions,* 6 I.C.C.2d 587 (1990). The ICC reasoned that it could not investigate, suspend, revise or revoke for being unreasonable a rate proposed by a motor passenger carrier acting independently and noted, moreover, that there had been no complaints or protests under these rules regarding ratemaking activity by passenger carriers. *See Practice and Procedure-Miscellaneous Amendments-Revision,* Ex Parte No. 55 (Sub-No.73) (ICC served Oct. 10, 1989).

We believe that the remaining regulations in Part 1136 are now also obsolete. Under the ICCTA, with certain exceptions not relevant here, ''the Board does not have jurisdiction * * * over mass transportation provided by a local governmental authority.'' 49 U.S.C. 10501(c)(2). Even as to rail passenger transportation that might not qualify for that exemption, our regulatory authority is quite limited. The tariff filing requirements formerly applicable to rail carriers, at former 49 U.S.C. 10761 and 10762, have been repealed.[2] Moreover, although the Board has the authority to issue injunctions ''when necessary to prevent irreparable harm,''[3] there is no longer a procedure for protesting, investigating, and suspending rates or fares prior to their going into effect. Under these circumstances, we do not believe that the regulations at 49 CFR 1136 are necessary. We seek comments concerning their proposed removal.

The Board preliminarily concludes that the removal of the rule, if adopted, would not have a significant effect on a substantial number of small entities. The effect, if any, of this rule's removal will be to lessen the regulatory filing requirements of rail passenger carriers. We believe that the removal of the notice provision is unlikely to significantly affect small governmental jurisdictions. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1136

Administrative practice and procedure, Buses, Railroads.

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1136—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is proposed to be amended by removing part 1136.

[FR Doc. 97–4502 Filed 2–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1997.

[1] These regulations describe, *inter alia,* the placement, form, and content of the notice given when a rail passenger carrier seeks a fare increase. The Board has proposed that these regulations be eliminated. *Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade,* STB Ex Parte No. 618 (STB served Dec. 20, 1996).

[2] New 49 U.S.C. 11101 (b) and (d) require disclosure of rail common carrier rates and service terms. New 49 U.S.C. 11101(c) further requires rail carriers providing common carriage to give advance notice of rate increases to those who have requested such notification. *See Disclosure, Pub. & Notice of Change of Rates—Rail Carriage,* 1 S.T.B. 153 (1996) and 49 CFR 1300.

[3] *See* 49 U.S.C. 721(b)(4).

Notices

Federal Register
Vol. 62, No. 36
Monday, February 24, 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

Special Provisions for Canadian Fresh Fruit and Vegetable Imports Under the North American Free Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination of Existence of Conditions Necessary for Imposition of Temporary Duty on Cabbage From Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended by the North American Free Trade Agreement Implementation Act (''FTA Implementation Act''), this is a notification that the Secretary of Agriculture has determined that the necessary conditions exist with respect to United States acreage and import price criteria for cabbage classifiable to subheadings 0704902000 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary to consider recommending to the President that imposition of a temporary duty (''snapback duty'') by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement, Special Provisions for Fresh Fruits and Vegetables, as incorporated by reference and made a part of the North American Free Trade Agreement (NAFTA) pursuant to Annex 702.1, paragraph 1 of NAFTA.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the NAFTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables from Canada when certain conditions exist. Cabbage, classified under subheadings 0704902000 of the HTS is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the five preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From November 18 to November 22, 1996, the price conditions with respect to cabbage were met.

The most recent revision of planted acreage for cabbage shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, D.C. the 12th day of February 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–4413 Filed 2–21–97; 8:45 am]

BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 96–101–1]

Revision of the International Plant Protection Convention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and solicitation of comments.

SUMMARY: We are giving notice that the International Plant Protection Convention (IPPC), an international treaty developed to control the global spread of plant pests, is currently being revised to meet the changing needs of plant protection and international trade. The United States is a signatory to the IPPC, and the United States Department of Agriculture's Animal and Plant Health Inspection Service is the lead U.S. agency participating in the technical discussions with other member countries and the Food and Agriculture Organization of the United Nations to revise the IPPC. This notice contains the entire text of the current IPPC with guidance on which areas are being considered for updates or revisions. We are soliciting public comment on any aspect of the scope, coverage, or institutions of the current IPPC.

DATES: Consideration will be given only to comments received on or before April 10, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–101–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin, Senior Plant Pathologist, Risk Analysis Systems, PPD, APHIS, 4700 River Road Unit 117, Riverdale, MD 20737–1228, (301) 734–3576, rgriffin@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

As the result of the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary measures (commonly referred to as the ''SPS Agreement''), contracting parties, including the United States, are committed to harmonizing their human, animal, and plant health import requirements by basing their sanitary and phytosanitary (SPS) import measures on international standards (SPS Agreement Article 3.1). The SPS Agreement recognizes three international standard-setting bodies as

the official entities for developing health-related standards, guidelines, and recommendations (SPS Agreement Article 3.4): Codex Alimentarius for food safety standards, International Plant Protection Convention (IPPC) for plant health standards, and Office of International Epizootics for animal health standards.

IPPC Membership and Secretariat

The IPPC, in effect since 1952, is a multilateral treaty that promotes ''* * * common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control (IPPC Preamble).'' The treaty is administered by the Food and Agricultural Organization (FAO) of the United Nations. Currently, 105 signatory countries adhere to IPPC principles. Because of the technical and regulatory nature of plant health issues covered by the IPPC, the Animal and Plant Health Inspection Service (APHIS) is the lead U.S. agency participating in IPPC activity.

In 1989, FAO member countries considered the creation of an IPPC Secretariat to coordinate activities for the IPPC and to support the development and administration of international phytosanitary standards under the IPPC. The IPPC Secretariat, located at FAO headquarters in Rome, Italy, became operational in 1993.

Revision of the IPPC

The IPPC was amended in 1979 in response to changing plant pest conditions and quarantine concerns. The amendment came into force in 1991, upon ratification by two-thirds of the signatory countries. In October 1995, IPPC contracting parties agreed to revise the IPPC again in response to changes in global agriculture and the signing of the WTO SPS Agreement promoting the use of international standards, including plant health standards developed under the IPPC.

In June 1995, the IPPC Secretariat took the lead in gathering recommendations from countries regarding potential revisions to the current scope, coverage, and institutions of the IPPC. The proposed revisions were reviewed in September 1995 and formed the basis for identifying changes in the text. In March 1996, plant quarantine experts from various signatory countries met to further discuss and develop the draft text. The resulting second draft is currently under review by all signatory countries. The signatory countries met to discuss the current amended version of the IPPC at a Technical Consultations meeting at FAO headquarters from January 13–17, 1997.

The IPPC Secretariat set a timetable for reviewing, approving, and adopting an amended version of the IPPC by October 1997. However, completion of the process is dependent on the progress of the signatory countries to propose language acceptable to the majority of contracting parties. FAO adoption of the amended IPPC can occur either through consensus or by a two-thirds vote of FAO members in favor.

We are soliciting public comment on any aspect of the scope, coverage, or institutions of the current IPPC. The entire text of the current IPPC, with guidance on which areas are being considered for updates or revisions, follows:

Done in Washington, DC, this 18th day of February 1997.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

International Plant Protection Convention	Issues identified for revision or proposals for review
PREAMBLE	
The contracting parties, recognizing the usefulness of international co-operation in controlling pests of plants and plant products and in preventing their spread, and especially their introduction across national boundaries, and desiring to ensure close coordination of measures directed to these ends, have agreed as follows:	Does not discuss the harmonization of phytosanitary measures through standards and ensuring that measures are not unjustified barriers to trade.
ARTICLE I—Purpose and responsibility	
1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote measures for their control, the contracting parties undertake to adopt the legislative, technical, and administrative measures specific in this Convention and in supplementary agreements pursuant to Article III.	Clarify the scope of the Convention with respect to plant protection, plant quarantine, and the environment. Demonstrate recognition of SPS principles and obligations.
2. Each contracting party shall assume responsibility for the fulfillment within its territories of all requirements under this Convention.	Clarify the obligations and role of ''regional economic integration organizations'' such as the European Union here and in various other articles.
ARTICLE II—Scope	Clarify scope in Article I and use Article II to define key terms.
1. For the purpose of this Convention the term ''plants'' shall comprise living plants and parts thereof, including seeds insofar as the supervision of their importation under Article VI of the Convention or the issue of phytosanitary certificates in respect of them under Articles IV(1)(a)(iv) and V of this Convention may be deemed necessary by contracting parties; and the term ''plant products'' shall comprise unmanufactured material of plant origin (including seeds insofar as they are not included in the term ''plants'') and those manufactured products which, by their nature or that of their processing, may create a risk for the spread of pests.	Define key terms by updating existing definitions and adding new terms. Proposed terms include: Commission on Phytosanitary Measures, Harmonization, Introduction, Pest, Phytosanitary measures, Plants, Plant products, Quarantine pest, Regulated article, Secretariat, and Standards.
2. For the purpose of this Convention, the term ''pest'' means any form of plant or animal life, or any pathogenic agent, injurious or potentially injurious to plants or plant products; and the term ''quarantine pest'' means a pest of potential national economic importance to the country endangered thereby and not yet present there, or present but not widely distributed and being actively controlled.	Definitions for quarantine pests and phytosanitary measures will be linked to decisions concerning the scope of the Convention with respect to nonquarantine pests.

International Plant Protection Convention	Issues identified for revision or proposals for review
3. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend to storage places, conveyances, containers, and any other object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved. 4. This Convention applies mainly to quarantine pests involved with international trade. 5. The definitions set forth in this Article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of contracting parties.	
ARTICLE III—Supplementary agreements	
1. Supplementary agreements applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplementing the provisions of this Convention, may be proposed by the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO) on the recommendation of a contracting party or on its own initiative, to meet special problems of plant protection which need particular attention or action. 2. Any such supplementary agreements shall come into force for each contracting party after acceptance in accordance with the provisions of the FAO Constitution and General Rules of the Organization.	Clarify intent and application; possibly delete or replace with a discussion of regulated-non quarantine pests.
ARTICLE IV—National organization for plant protection	Cover general provisions for a national plant protection organization in terms of functions and responsibilities.
1. Each contracting party shall make provision, as soon as possible and to the best of its ability, for (a) An official plant protection organization with the following main functions: (I) the inspection of growing plants, of areas under cultivation (including fields, plantations, nurseries, gardens, and greenhouses), and of plants and plant products in storage or in transportation, particularly with the object of reporting the existence, outbreak, and spread of plant pests and of controlling those pests; (ii) the inspection of consignments of plants and plant products moving in international traffic, and, where appropriate, the inspection of consignments of other articles or commodities moving in international traffic under conditions where they may act incidentally as carriers of pests of plants and plant products, and the inspection and supervision of storage and transportation facilities of all kinds involved in international traffic whether of plants and plant products or of other commodities, particularly with the object of preventing the dissemination across national boundaries of pests of plants and plant products; (iii) the disinfestation or disinfection of consignments of plants and plant products moving in international traffic, and their containers (including packing material or matter of any kind accompanying plants or plant products), storage places, or transportation facilities of all kinds employed; and (iv) the issuance of certificates relating to phytosanitary condition and origin of consignments of plants and plant products (hereinafter referred to as ''phytosanitary certificates''); (b) The distribution of information within the country regarding the pests of plants and plant products and the means of their prevention and control; (c) Research and investigation in the field of plant protection. 2. Each contracting party shall submit a description of the scope of its national organization for plant protection and of changes in such organization to the Director-General of FAO, who shall circulate such information to all contracting parties.	Expand scope from cultivated systems to include wild flora. Include responsibilities for risk analysis or technical justifications forming the basis for requirements. Include the designation of pest free areas as a responsibility. Update the concept of inspection using surveillance. Note responsibility for issuing regulations.
ARTICLE V—Phytosanitary certificates	

International Plant Protection Convention	Issues identified for revision or proposals for review
1. Each contracting party shall make arrangements for the issuance of phytosanitary certificates to accord with the plant protection regulations of other contracting parties, and in conformity with the following provisions: (a) Inspection shall be carried out and certificates issued only by or under the authority of technically qualified and duly authorized officers and in such circumstances and with such knowledge and information available to those officers that the authorities of importing countries may accept such certificates with confidence as dependable documents. (b) Each certificate for the export or re-export of plants or plant products shall be as worded in the Annex to this Convention. (c) Uncertified alterations or erasures shall invalidate the certificates. 2. Each contracting party undertakes not to require consignments of plants or plant products imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the Annex to this Convention. Any requirement for additional declarations shall be kept to a minimum.	Refer to a standard and/or the model annex. Consider new certifying statements. Limit issuance to national officials but allow for the accreditation of personnel for supporting activities. Limit declarations to those technically justified. Recognize electronically equivalent certification.
ARTICLE VI—Requirements in relation to imports	Reorganize in terms of rights and obligations.
1. With the aim of preventing the introduction of pests of plants and plant products into their territories, contracting parties shall have full authority to regulate the entry of plants and plant products and to this end, may: (a) Prescribe restrictions or requirements concerning the importation of plants or plant products; (b) Prohibit the importation of particular plants or plant products, or of particular consignments of plants or plant products; (c) Inspect or detain particular consignments of plants or plant products; (d) Treat, destroy, or refuse entry to particular consignments of plants or plant products that do not comply with the requirements prescribed under subparagraph (a) or (b) of this paragraph, or require such consignments to be treated or destroyed or removed from the country; (e) List pests the introduction of which is prohibited or restricted because they are of potential economic importance to the country concerned. 2. In order to minimize interference with international trade, each contracting party undertakes to carry out the provisions referred to in paragraph 1 of this Article in conformity with the following: (a) Contracting parties shall not, under their plant protection legislation, take any of the measures specified in paragraph 1 of this Article unless such measures are made necessary by phytosanitary considerations. (b) If a contracting party prescribes any restrictions or requirements concerning the importation of plants and plant products into its territories, it shall publish the restrictions or requirements and communicate them immediately to FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned. (c) If a contracting party prohibits, under the provisions of its plant protection legislation, the importation of any plants or plant products, it shall publish its decision with reasons and shall immediately inform FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned. (d) If a contracting party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not unnecessarily to impede international commerce. The contracting party shall publish a list of such points of entry and communicate it to FAO, any regional plant protection organization of which the contracting party is a member, and all other contracting parties directly concerned. Such restrictions on points of entry shall not be made unless the plants or plant products concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment.	Clarify sovereign authority with respect to other agreements. Clarify right to restrict pests and biocontrol organisms. Extend reporting for noncompliance beyond commercially certified consignments. Note obligation to use international standards. Clarify obligations concerning the movement of people. Note the importance of pest risk analysis or the technical justification for restrictive measures. Broaden and strengthen provisions for emergency action. Add a separate article covering regulated nonquarantine pests.

International Plant Protection Convention	Issues identified for revision or proposals for review
(e) Any inspection by the plant protection organization of a contracting party of consignments of plants or plant products offered for importation shall take place as promptly as possible with due regard to the perishability of the plants or plant products concerned. If any commercial or certified consignment of plants or plant products is found not to conform to the requirements of the plant protection legislation of the importing country, the plant protection organization of the importing country must ensure that the plant protection organization of the exporting country is properly and adequately informed. If the consignment is destroyed, in whole or in part, an official report shall be forwarded immediately to the plant protection organization of the exporting country.	
(f) Contracting parties shall make provisions which, without en dangering their own plant production, will keep certification requirements to a minimum, particularly for plants or plant products not intended for planting, such as cereals, fruits, vegetables, and cut flowers.	
(g) Contracting parties may make provisions, with adequate safeguards, for the importation for purposes of scientific research or education, of plants and plant products and of specimens of plant pests. Adequate safeguards likewise need to be taken when introducing biological control agents and organisms claimed to be beneficial.	
3. The measures specified in this Article shall not be applied to goods in transit throughout the territories of contracting parties unless such measures are necessary for the protection of their own plants.	
4. FAO shall disseminate information received on importation restrictions, requirements, prohibitions, and regulations (as specified in paragraph 2(b), 2(c), and 2(d) of this Article) at frequent intervals to all contracting parties and regional plant protection organizations.	
ARTICLE VII—International cooperation	
The contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, in particular as follows:	
(a) Each contracting party agrees to cooperate with FAO in the establishment of a world reporting service on plant pests, making full use of the facilities and services of existing organizations for this purpose and, when this is established, to furnish FAO periodically, for distribution by FAO to the contracting parties, with the following information:.	Cooperate in the exchange of information for pest risk analysis. Identify contact points for the exchange of information.
(I) reports on the existence, outbreak, and spread of economically important pests of plants and plant products which may be of immediate or potential danger;	
(ii) information on means found to be effective in controlling the pests of plants and plant products.	
(b) Each contracting party shall, as far as is practicable, participate in any special campaigns for combating particular destructive pests that may seriously threaten crop production and need international action to meet the emergencies.	
ARTICLE VIII—Regional plant protection organizations	
1. The contracting parties undertake to cooperate with one another in establishing regional plant protection organizations in appropriate areas.	Strengthen or weaken the role of regional plant protection organizations.
2. The regional plant protection organizations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.	
ARTICLE IX—Settlement of disputes	Add a new Article describing the establishment of standards and the role of a Commission in standard setting.
1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VI of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants or plant products coming from its territories, the government or governments concerned may request the Director-General of FAO to appoint a committee to consider the question in dispute.	Encourage country consultation as the first level of resolution. Involve the Commission.

International Plant Protection Convention	Issues identified for revision or proposals for review
2. The Director-General of FAO shall thereupon, after consultation with the governments concerned, appoint a committee of experts which shall include representatives of those governments. This committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the governments concerned. This committee shall submit a report to the Director-General of FAO, who shall transmit it to the governments concerned and to the governments of other contracting parties. 3. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the governments concerned of the matter out of which the disagreement arose. 4. The governments concerned shall share equally the expenses of the experts.	
ARTICLE X—Substitution of prior agreements	Add an Article describing the role and function of a Commission on Phytosanitary Measures.
This Convention shall terminate and replace, between contracting parties, the International Convention respecting measures to be taken against the Phylloxera vastatrix of 3 November 1881, the additional Convention signed at Berne on 15 April 1889, and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.	No changes proposed.
ARTICLE XI—Territorial application	Add an Article describing the role and function of the IPPC Secretariat
1. Any state may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible and this Convention shall be applicable to all territories specified in the declaration as from the thirtieth day after the receipt of the declaration by the Director-General. 2. Any state which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this Article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the thirtieth day after the receipt of the declaration by the Director-General. 3. The Director-General of FAO shall inform all signatory and adhering states of any declaration received under this Article.	Clarify the role of regional economic integration organizations.
ARTICLE XII—Ratification and adherence	
1. This Convention shall be open for signature by all states until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory states. 2. As soon as this Convention has come into force in accordance with Article XIV, it shall be open for adherence by non-signatory states. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all signatory and adhering states.	Clarify the role of regional economic integration organizations.
ARTICLE XIII—Amendment	
1. Any proposal by a contracting party for the amendment of this Convention shall be communicated to the Director-General of FAO. 2. Any proposed amendment of this Convention received by the Director-General of FAO from a contracting party shall be presented to a regular or special session of the Conference of FAO for approval and, if the amendment involves important technical changes or imposes additional obligations on the contracting parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference. 3. Notice of any proposed amendment of this Convention shall be transmitted to the contracting parties by the Director-General of FAO not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched. 4. Any such proposed amendment of this Convention shall require the approval of the Conference of FAO and shall come into force as from the thirtieth day after acceptance by two-thirds of the contracting parties. Amendments involving new obligations for contracting parties, however, shall come into force in respect of each contracting party only on acceptance by it and as from the thirtieth day after such acceptance.	Add provisions for a Commission.

International Plant Protection Convention	Issues identified for revision or proposals for review
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all contracting parties of the receipt of acceptance and the entry into force of amendments.	
ARTICLE XIV—Entry into force	
As soon as this Convention has been ratified by three signatory states it shall come into force between them. It shall come into force for each state ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.	Clarify the role of regional economic integration organizations.
ARTICLE XV—Denunciation	
1. Any contracting party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all signatory and adhering States. 2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.	Clarify the role of regional economic integration organizations.
ANNEX	Replace with standard for certification.
1. Model Phytosanitary Certificate	Continue to maintain annexes, replace or supplement with standards.
2. Model Phytosanitary Certificate for Re-Export	Amend certifying statements.

[FR Doc. 97–4477 Filed 2–21–97; 8:45 am]
BILLING CODE 3410–34–P

Commodity Credit Corporation

Notice and Request for Comment for an Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to revise procedures for accepting vendor bids to supply commodities for use under export donation programs. An Electronic Bid Entry System (EBES) will provide for electronic submission of bids via the Internet. This will replace the current system, which requires hard-copy bids and manual entry into CCC's system. The new procedure will be more reliable and more efficient than the current procedure.

DATES: Comments on this notice must be received on or before April 25, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503 and to Donna Ryles, Chief Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–6767.

SUPPLEMENTARY INFORMATION:

Title: Electronic Bid Entry System (EBES)—7 CFR 1496.

OMB Number: New submission.

Expiration Date: Not yet determined.

Type of Request: Approval of a new information collection.

Abstract: The United States donates agricultural commodities overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480) to meet famine or other relief requirements to combat malnutrition and to promote economic development.

CCC issues invitations to purchase or process commodities for food donation programs monthly. Vendors respond by making offers using the CCC Commodity Bid Form (form PBI170). CCC verifies that the PBI170 is responsive and manually enters the information on the form into the bid evaluation program to determine the lowest landed cost and award data for the creation of contracts.

The current keypunching process requires entering hand-written data and then verifying the results. The sensitivity of the data and the high value of the contracts at stake requires a reliable and efficient system for capturing the bid data.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from OMB. In accordance with those regulations, CCC is seeking approval for EBES to provide for the submission of bids through the Internet.

Under OMB regulations, comments concerning EBES must be submitted to OMB within 30 days of this notice's publication in the Federal Register. Within 60 days ''after receipt of the proposed collection of information or publication of the notice'' in the Federal Register, whichever is later, OMB shall notify CCC of its decision to approve, require modifications to, or disapprove EBES.

Bid Process Modifications

In August 1996, the Export Operations Division, Kansas City Commodity Office (KCCO), issued a survey to all active vendors requesting specifics about their computer capabilities. Based on the response to that survey, it was determined that a majority of vendors have IBM-compatible Personal Computers (PC's), and are currently involved in some form of electronic commerce. Therefore, this project will require IBM-compatible PC's. We anticipate having the final PC configuration requirements for this project by March 1997. In addition to meeting the PC specifications, each vendor will be required to obtain an Internet Service Provider to participate in the EBES.

KCCO will provide vendor training and offer hotline assistance for EBES. It is anticipated EBES will be put into operation in the summer of 1997. Vendor participation in the EBES shall be required to submit bids to CCC for the purchase of agricultural commodities intended for food donation programs for export distribution. The EBES will capture commodity vendor bid data for the regular monthly purchases of agricultural commodities for food donation programs for export distribution in a more reliable and efficient way than the current system. EBES provides the data in an electronic and linear format.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 30 minutes 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.

Respondents: Business and other for profit.

Respondents: 60.

Estimated Number of Annual Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 720 hours.

Proposed topics for comment include: (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; ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Donna Ryles, Chief Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–6767.

Signed at Washington, D.C., on February 13, 1997.

Alan King,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–4414 Filed 2–21–97; 8:45 am]

BILLING CODE 3410–05–P

Forest Service, Eastern Region

Waterville Valley Ski Area Ltd. Snowmaking Ponds; Notice of Availability for Review of Draft Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service has prepared a Draft Environmental Impact Statement (DEIS) issued on February 28, 1997 for the Waterville Valley Ski Area Snowmaking Pond Impoundments Project (Waterville Valley Impoundments Project), on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, New Hampshire. The New Hampshire Department of Environmental Services participated as a cooperating agency. The U.S. Corps of Engineers the Fish and Wildlife Service, Department of Interior and the Town of Waterville Valley provided assistance in the preparation of the document.

The DEIS is for the proposed action of the construction of five water impoundments (ponds) for the storage of approximately 130 million gallons of water for snowmaking purposes. In addition, the project would result in the change of the February Median Flow (FMF) from the presently approved 0.50 csm to 0.75 csm (recommended by the Fish and Wildlife FMF) for the Mad River. The project would be phased in over a five to ten year period. The DEIS describes alternatives to and environmental effects of the proposal on National Forest System lands where the ponds would be constructed.

The project area is located in the town of Waterville Valley, NH. Waterville Valley Ski Area operates under a Special Use Permit issued by the USDA Forest Service. Currently, Waterville Valley Ski Area withdraws water from the Mad River for the purposes of snowmaking on the mountain. They are allowed to withdraw water from the Mad River down to 0.50 csm, as identified in the White Mountain Land and Resource Management Plan. Given the small size of the watershed and periodic droughts that result in the availability of no water, the Mad River is an unreliable water source for snowmaking at Waterville Valley Ski Area. In addition, to utilizing the Mad River the ski area also uses Cochranes Pond, located in the town of Waterville Valley as a supplemental source of water. Cochranes pond only holds approximately 5 million gallons of water. This combination results in Waterville Valley only being able to provide adequate snowmaking coverage 68% of the time over the ski season. Water Valley would like to be able to provide adequate snowmaking so to be able to provide 100% coverage in 95% of the years.

In April 1996 the USDA Forest Service issued a Notice of Intent (NOI) to prepare a Environmental Impact Statement. At the same time a scoping letter was mailed to the public that requested if there were concerns to the proposed action that they submit their concerns to the Forest Supervisor of the White Mountain National Forest. During the 45-day comment period (April 26 to June 10, 1996) fifteen letters were received that brought forth issues/concerns to the proposal. The four main issues identified through scoping were; (1) Changes in Water Withdrawal from the Mad River, (2) Increase in Water Withdrawal Rates and Total Water Withdrawal Needed, and (3) Impacts to Wetlands. Additional issues were identified that were important in the overall analysis and development of the alternatives, but were not the ''driving issues'' for the purposes of alternative development.

DISCUSSION ON PREFERRED ALTERNATIVE: The agency gives notice that a complete DEIS is available for public review and requests input from the public to the Preferred Alternative. The analysis was completed by a third party contractor, Sno.Engineering (Sno.e) of Littleton, NH, and overseen by the USDA Forest Service. The Forest Supervisor has identified Alternative 2 (Proposed Action) as the ''Preferred Alternative.'' Alternative 2 (Proposed Action) includes the construction of four ponds (Pond Sites 2, 3a, 3b and 5). This Alternative would allow for the storage of 130 million gallons (mg) of water, which would achieve coverage of 100% of the mountain, 91% of the time.

Alternative 2 is preferred because it would allow for the necessary storage and upgrade of facilities needed to provide for improved alpine skiing opportunities at Waterville Valley Ski Area. This alternative should allow Waterville Valley Ski Area to become more competitive with other New England ski areas that offer the same facilities to skiers. Aquatic resources should be improved by having a stepped increase of the February median flow over the 5 to 10 year implementation period. Loss of wetlands in the project area would be mitigated through the improvement, creation and preservation of wetlands outlined in Option 2 (described in Chapter IV Effects to Wetlands section).

Finally, the U.S. Army Corps of Engineers (Corps) has jurisdiction over portions of the project under Section 404 of the Clean Water Act. A Corps permit is required under Section 404 for the placement of dredged or fill material, excavation, or mechanized land clearing in waters of the United States. Areas under Corps jurisdiction include wetlands associated with: the construction of the snowmaking ponds with wetlands (Pond Sites 2, 3a, 3b and 4), upgrade of the intake structure in the Mad River, upgrade of the piping form its present 10″ diameter to 18″, and the improvement, creation and preservation wetland projects as discussed in the environmental analysis.

DATES: The public comment period for the DEIS will end on April 14, 1997. If you would like to comment, please review the entire DEIS. You may receive a copy of the DEIS by writing to the Forest Service, 719 Main Street,

Loconia, NH 03246, or calling (603) 528–8721/TTY (603) 528–8722.

In addition, there will be two Open Houses held that will allow for the opportunity for the public to collect additional information on the project and comment on the DEIS. These forums will be held March 12, 1997 and March 19, 1997 at the Waterville Valley Conference Center, Waterville Valley, NH and at the Pease Public Library, Plymouth, NH, respectively. The Open Houses will be from 6 p.m. to 9 p.m. For those individuals who require sign language interpretation for these open houses please contact the Forest Service office in Laconia, NH through their TTY phone number—(603) 528–8721. Please call within three days of the meeting to allow us time to contact an interpreter for the meeting.

ADDRESSES: Submit written comments to Jerry Perez, Project Coordinator for WV DEIS, Green Mountain National Forest, Rochester, VT 05767.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and DEIS to Jerry Perez, Eastern Region Winter Sports Team Environmental Coordinator, Green Mountain National Forest, Rochester, VT 05767, (phone/TTY 802–767–4261).

SUPPLEMENTARY INFORMATION: The DEIS describes four alternatives to the proposed action. The alternatives were developed to respond to issues, concerns and opportunities identified during the analysis. Alternative 2 has been identified as the Preferred Alternative in the DEIS.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the agency in preparing the Final Environmental Impact Statement (FEIS).

The FEIS is scheduled to be completed and available to the public approximately 6 months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 215.

The Forest Service official responsible for approving the proposed action is Forest Supervisor Donna Hepp, 719 Main St., Laconia, NH 03245.

Dated: February 18, 1997.

Donna L. Hepp,

Forest Supervisor.

[FR Doc. 97–4455 Filed 2–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Under Secretary for Technology; National Medal of Technology Nomination Evaluation Committee; Notice of Open Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for March 7, 1997.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The Committee's recommendations are made after reviewing all nominations received in response to a public solicitation and based on criteria made available to the public through nomination application forms. From time to time the Committee convenes to evaluate the criteria and nomination process to ensure continued relevance to the current environment for technological innovation. The Committee is chartered to have twelve members.

TIME AND PLACE: The meeting will begin at 10:30 a.m. and end at 2:00 p.m. on March 7, 1997. The meeting will be held in Room 1411 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Agenda

1. Review existing criteria, categories, and procedures for nominating candidates for the National Medal of Technology.

2. Make recommendations for revisions to the nomination criteria, categories and procedures for the National Medal of Technology to be forwarded to the Under Secretary of Technology.

Public Participation

The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments or questions. Seats will be available on a first-come, first-served basis. Members of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. A copy of the minutes will be available for public inspection and copying in the National Medal of Technology Program Office by April 4, 1997. Inquires should be addressed to the Director of the National Medal of Technology as indicated below.

FOR FURTHER INFORMATION CONTACT: Katie Wolf, Director, National Medal of Technology, U.S. Department of Technology, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover, Building, Room 4823, Washington, DC 20230, phone: 202/482–5572, email:kwolf@doc.gov.

Dated: February 14, 1997.

Graham R. Mitchell,

Assistant Secretary for Technology Policy.

[FR Doc. 97–4395 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–18–M

Bureau of the Census

Quarterly Financial Report

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 25, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Lee, Bureau of the Census, Room 301–11 Iverson Mall, Washington, DC 20233, Telephone (301) 763–5435.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census plans to revise three of four data collection forms it uses in its Quarterly Financial Report (QFR) Program. QFR Forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form are being revised. Form QFR–103(NB)-Nature of Business Report will not be revised. The purpose of these revisions is to bring the data collection forms up-to-date from an accounting and financial statement presentation viewpoint and to provide more meaningful data to users. These forms have not been substantially revised since their introduction in 1973.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to the calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 103–105 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 1998.

The purpose of the QFR Program is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. An extensive subscription mailing list attests to the diverse groups using these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are governmental organizations charged with economic policy-making responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

While the Office of Management and Budget's (OMB) current approval for the QFR Program's data collection forms runs through September 30, 1998, the current quarterly report forms are outdated and have not undergone substantial revision for more than 20 years. There have been sweeping changes in financial statement presentation and the underlying accounting principles since the form's introduction in 1973. We have been able to forestall form revision because QFR ''catchall'' data line items provided corporations with a dumping ground for new data items spawned by these accounting changes. The published values in the ''catchall'' items however, have increased measurably, and will continue to do so, as the number of accounting changes since 1973 mounts.

Our primary data users, the Bureau of Economic Analysis (BEA) and the Federal Reserve Board (FRB), want less data item aggregation particularly in the QFR. This would allow separation of recurring and nonrecurring income/expense items. Others in the user community repeatedly request QFR data presentation to be more consistent with other financial data sets, such as SEC filings and request the addition of new line items for improved calculation of ratios measuring industry performance. Also, large reporting companies frequently call for assistance because there is insufficient space on the forms to accommodate the reporting of data items they usually report separately in their financial statements.

In order to bring the QFR data collection forms up-to-date and provide more meaningful data to users, we plan to make changes to the quarterly financial report forms QFR–101(MG)-long form, QFR–102(TR)-long form, and QFR–101A(MG)-short form. Form QFR–103(NB)-Nature of Business Report which is used to determine industry classification, verify corporate identity, and analyze parent-subsidiary relations will not be revised. The proposed new forms retain the single-page format. The number of reportable data items increases from 35 to 36 for form QFR–101A to accommodate for interest expense. The number of reportable data items remain the same for forms QFR–101 and QFR–102. These two forms do, however contain more detailed reporting of significant economic events such as asset sales and disposal of business segments. This additional level of detail will enable BEA to adjust more accurately the ''income before tax'' numbers for these events. Currently, we and BEA do ad hoc research of newspapers for these items and often must telephone companies for their detail. The proposed new forms also contain separate information on interest expense and corporate bonds. Both of these data items have been long standing requests from a variety of users, including the FRB, business economists, and the banking community.

We began addressing the issue of form redesign with a draft of the revised forms in January 1993. We sent these forms to more than 100 trade associations, interested parties, and user agencies for comment. Most of the comments received were positive. A number of the trade associations asked their members to comment on the proposed revision and they in turn passed these comments back to us. Suggestions for rewording and clarification of requirements were incorporated in a revised draft. The most notable change was the dropping of the research and development expense request. The comments we received indicated that these data are not uniformly available on a quarterly basis.

In July 1994, pursuant to the OMB generic clearance for questionnaire pretesting research (OMB number 0607–0725), we conducted a pretest of the revised forms and instructions. Revised QFR data collection forms were sent to 100 corporations currently participating in the QFR Program. Thirty of these cases were selected from the noncertainty or sample segment of the program and 70 cases were selected from the certainty or ''take all'' segment.

The results of the test were favorable. Response rates for the test cases were similar to those having to file the old or ''current'' form. The average time it took to complete the revised form for the noncertainty cases did not differ significantly from the time we estimate it takes to complete the current form. However, the average time it took for the certainty cases was significantly less than we estimate it takes to complete the current form. We believe this difference is primarily due to an over-estimate of the time it takes to complete the current form, rather than a result of the revised form. This is corroborated by the responses to the question on the debriefing questionnaire that compared the difficulty of the new form to the current form. Over 80% of the certainty

cases reported that the revised and current forms required about the same level of effort to complete.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 25 days of the end of the quarter the data are being requested for. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0432

Form Number: QFR–101 (Sent to manufacturing, mining, and wholesale trade corporations with assets of $50 million or more at time of sampling), QFR–102 (Sent to retail trade corporations with assets of $50 million or more at time of sampling), QFR–101A (Sent to manufacturing corporations with assets of less than $50 million at time of sampling), and QFR–103 (Sent at the beginning of sample selection and at 2-year intervals if the corporation is included in the sample for more than eight quarters)

Type of Review: Regular Review

Affected Public: Manufacturing corporations with assets of $250 thousand or more and mining and wholesale and retail trade corporations with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR–101—3,475 per quarter, 13,900 annually

Form QFR–102—575 per quarter, 2,300 annually

Form QFR–101A—4,500 per quarter, 18,000 annually

Form QFR–103—1,225 per quarter 4,900 annually

Estimated Time Per Response: The average for all respondents is about 2.1 hours. For companies completing form the QFR–101 or QFR–102, the range is from less than 1 to 10 hours, averaging 2.9 hours. For companies completing form QFR–101A, the range is less than 1 hour to 3 hours, averaging 1.2 hours. For companies completing form QFR–103, the range is from 1 to 4 hours, averaging 2.4 hours.

Estimated Total Annual Burden Hours: The total annual burden for fiscal years 1997 and 1998 is estimated to be 78,600 hours.

Estimated Total Annual Cost: $2,950,000

Respondents' Obligation: Mandatory

Legal Authority: Title 13 United States Code, Sections 91 and 224

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4398 Filed 2–21–97; 8:45 a.m.]

BILLING CODE 3510–07–P

International Trade Administration

Format for Petition Requesting Relief Under U.S. Countervailing Duty Law

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before April 25, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Roy A. Malmrose, AD/CVD Enforcement I, Room 3707, 1400 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–5414, and fax: (202) 501–5439.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. anti-dumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–366P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the countervailing duty law and the petition process. The Form is designed for potential petitioners that believe a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

II. Method of Collection

Form ITA–366P is sent by request to potential U.S. petitioners and completed in written form.

III. Data

OMB Number: 0625–0148

Form Number: ITA–366P

Type of Review: Renewal—Regular submission

Affected Public: U.S. companies or industries that suspect the presence of unfair competition from subsidized foreign enterprises

Estimated Number of Respondents: 5

Estimated Time Per Response: 40 hours

Estimated Total Annual Burden Hours: 200 hours

Estimated Total Annual Cost: Assuming the number of petitioners remains the same, with a total of 40 hours per respondent, at an estimated cost of $70 per hour, the total annual cost is $14,000.

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4397 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DS–P

Environmental Technologies Trade Advisory Committee (ETTAC) Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its eighth plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: February 27, 1997 from 9:00 a.m to 3:00 p.m. The meeting will take place in Room 3407 of the Department of Commerce, 14th Street and Constitution Ave., N.W., Washington D.C. 20230.

The agenda will include a discussion of ETTAC recommendations that were presented to the Secretary of Commerce in October, 1996; future steps for the ETTAC; and the current status of ETTAC memberships.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Amy Bellanca, Department of Commerce, Room 1002, Washington D.C. 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665 TDD 1–800–833–8723.

Dated: February 10, 1997.

Eric Fredell,

Acting Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 97–4396 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

Notice of Solicitation for Sea Grant Review Panelists

SUMMARY: This notice responds to Section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by March 26, 1997.

ADDRESSES: Dr. Ronald C. Baird, Director, National Sea Grant College Program, 1315 East-West Highway, Room 11716, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448, or fax number (301) 713–0799.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a sea grant review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice of such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205 and section 208 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) the formulation and application of the planning guidelines and priorities under section 204(a) and (1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under Section 205 or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. The positions on the panel will become vacant during 1997. Candidates who are selected to fill these vacancies will be appointed for a 3-year term.

Dated: February 18, 1997.

Alan R. Thomas,

Acting Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 97–4429 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–12–P

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Tuesday, March 18, 1997, from 9:00 a.m. to 4:00 p.m., and on Wednesday, March 19, 1997, from 9:00 a.m. to 4:00 p.m. The session on Wednesday, March 19, 1997, will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make

recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. on March 19, 1997. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on March 18, 1997, at 9:00 a.m. and adjourn at 4:00 p.m. and convene again on March 19, 1997, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation on March 18, 1997, and closed on March 19, 1997. Approximately thirty minutes will be set aside on March 18, 1997, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: February 19, 1997.

Donald R. Johnson,

Director.

[FR Doc. 97–4430 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in Honduras

February 18, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of Honduras, the U.S. Government agreed to increase the 1996 guaranteed access level for Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 38237, published on July 23, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 18, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 18, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Honduras and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on February 24, 1997, you are directed to increase the guaranteed access level for Category 435 to 50,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–4448 Filed 2–21–97; 8:45 am]

BILLING CODE 3510–DR–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

Time and Date: 9:00 a.m., March 19, 1997.

Place: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

Matters to be Considered: The Defense Nuclear Facilities Safety Board will reconvene and continue the open meeting conducted on February 5, 1997, regarding the status of DOE's Implementation Plan for Board Recommendation 95–2, Integrated Safety Management. Specifically, the Board will be given status reports by DOE relative to the Department's efforts to improve the technical expertise necessary to review and implement safety management systems, including establishment of a Core Technical group, and the development of guidance for implementation of the Safety Management System.

Contact Person for More Information: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Supplementary Information: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: February 20, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–4570 Filed 2–20–97; 10:38 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 12, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 25, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Study of Barriers, Benefits, and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools.

Abstract: This congressionally-mandated study will examine the extent to which private schools (including religious schools) might be used to alleviate overcrowding in urban public schools by accepting public school students in exchange for tuition reimbursement. The study is examining the extent of overcrowding in urban public schools and the extent to which private schools in these areas have spaces available that might be used to accommodate students from overcrowded public schools. The study will also examine the costs that would be involved in such a program (including tuition reimbursement, transportation, and administration), program design and implementation issues that would need to be considered in developing such a proposal, and the constitutional issues and other legal impediments that might be raised if such a proposal were adopted.

Additional Information: The study was mandated in the Conference Report for H.R. 3610 (Report 104–863, September 28, 1996, p. 1060) and is due to the Appropriations Committees by September 1, 1997. An emergency clearance is needed in order to meet this deadline.

Frequency: One Time.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,035.

Burden Hours: 345.

[FR Doc. 97–4410 Filed 2–21–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 18, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Bilingual Education and Minority Languages and Affairs

Type of Review: REINSTATEMENT.

Title: Biennial Report Form for the Emergency Immigrant Education Program.

Frequency: Biennially.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 944.

Burden Hours: 5,620.

Abstract: This form is used by State educational agencies to submit a biennial report to the Secretary concerning expenditures of EIEP funds by their local educational agencies as well as national origin of immigrant children served under the Emergency Immigrant Education Act (Title VI of Public Law 98–511, 20 U.S.C. 4101–4108, as amended by Pub. L. 103–382, 20 U.S.C. 7541–7549).

[FR Doc. 97–4411 Filed 2–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–09: Biotechnological Investigations—Ocean Margin Program (BI–OMP)

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE) announces its interest in receiving research applications involving the use of molecular biological and biogeochemical techniques to understand the linkages between coastal carbon and nitrogen cycles (primary production and microbial processes) in the Northern and Temperate latitudes. This information is crucial to the responses of ocean margin ecosystems to atmospheric radiative budgets and global biogeochemical cycles. Specifically, DOE seeks applications to:

- Apply new and innovative techniques in marine molecular biology and marine biotechnology to assess fixation of carbon dioxide from the atmosphere, determine the mechanisms and processes that control the dynamics of nitrogen fixation or denitrification in coastal waters and sediments, define the coupling and/or decoupling of carbon and nitrogen cycles in coastal environments, and determine the linkages between the function and structure of microbial communities mediating carbon and nitrogen cycling in coastal environments, and
- Examine the environmental factors (including nutrient availability, temperature, irradiance, and biopolymer lability) that affect the linkages between primary productivity, the utilization of particulate and dissolved organic matter (POM and DOM) by bacterial populations, and nitrogen cycling in coastal areas.

Applications must involve mutually collaborative partnerships between institutions with a strong tradition of research in marine sciences and those institutions with developing research capabilities in marine science. Partnerships are particularly encouraged with institutions that traditionally have served groups underrepresented in the sciences. The goals of such collaborative research projects are to enhance the research capabilities of both institutions, to promote significant interactions between institutions, and to foster long term collaboration among investigators.

DATES: To permit timely consideration for awards in Fiscal Year 1997 and early Fiscal Year 1998, formal applications submitted in response to this notice should be received by 4:30 p.m., E.D.T., May 6, 1997.

ADDRESSES: Formal applications referencing Program Notice 97–09 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 97–09. This address also must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Sciences Division, ER–74, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4183, e-mail anna.palmisano@oer.doe.gov, fax (301) 903–8519.

SUPPLEMENTARY INFORMATION: The primary research goal of the Biotechnological Investigations—Ocean Margin Program is to establish a more thorough understanding of the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbial activity, primary productivity, carbon and nitrogen cycles and remotely-sensed ocean color data. This information is crucial to understanding the responses of marine biological systems to changes in atmospheric radiative budgets and global biogeochemical cycles.

Program Relationships

The Biotechnological Investigations—Ocean Margins Program is expected to build on past research results and accomplishments within the Ocean Margins Program (OMP) component of the Biological and Environmental Research (BER) program. The main objective of OMP was determining whether primary productivity on continental shelves is quantitatively significant in removing carbon dioxide (CO_2.) from the atmosphere. Other objectives of the OMP were: (1) Quantifying the ecological and biogeochemical processes that affect the cycling, flux, and storage of carbon and other biogenic elements at the land/ocean interface; and (2) Defining ocean margin sources and sinks in global biogeochemical cycles.

Under the OMP, molecular biological techniques were developed, adapted, and applied to determine how biological processes are regulated and controlled by genetic limitations and environmental variables. Research emphasis was placed on molecular regulation of photosynthetic carbon reduction by phytoplankton; molecular diagnostic markers of bacterial growth, production, and nutrient limitations to growth, and; molecular techniques for elucidating metabolic pathways.

Biotechnological Investigations—Ocean Margins Program (BI–OMP)

BI–OMP is the second phase of the Ocean Margins Program (OMP); it places an increased emphasis on the application of modern molecular tools to marine microbes and their role in carbon and nitrogen cycling, and processes affecting global change. Photosynthetic rates in the ocean, and sequestration of atmospheric CO_2 by marine primary production greatly depend on the availability of fixed inorganic nitrogen. Hence, any increase in the net sequestration of CO_2 by oceanic photosynthetic organisms requires an addition of nitrogen or other limiting elements external to the ocean. Three major external sources of fixed inorganic nitrogen are cultural eutrophication of the coastal zone; atmospheric deposition of anthropogenic and naturally produced oxides of nitrogen; and nitrogen fixation from the atmosphere by microorganisms.

Research in Temperate and High Latitude coastal areas indicates that the availability and cycling of nitrogen is likely to be the major control on primary productivity and carbon cycling in these areas. In general, coastal areas are believed to be net heterotrophic on an annual basis. This means that they receive more organic substrate than is produced within the system by photosynthesis. Bacteria metabolize a large fraction of the organic pool, both dissolved and particulate, and it appears that most of the excess organic matter in coastal areas is degraded by microbial processes.

Moreover, it appears that denitrification (the reduction of fixed nitrogen to N_2) overwhelms nitrogen fixation by cyanobacteria in Northern Latitude waters and sediments. In these areas, there does not appear to be paucity of iron (Fe) to limit nitrogen fixation, but nitrogenase activity may be inhibited by the elevated concentrations of ammonia (NH_3) that occur in Arctic waters following phytoplankton blooms. Since little is known about the rates of nitrogen fixation, primary productivity, and bacterial respiration in cold water areas, this notice calls for applications to help understand the molecular to global scale links and feedback mechanisms between solar irradiance, marine microbiology, coastal nitrogen and carbon cycles, primary productivity, and remotely-sensed ocean color data in the low-temperature waters off Alaska and the Pacific Northwest.

Although it is anticipated that most of the research performed will be laboratory-based, if field studies are necessary, they should be conducted in the coastal waters off the North Slope of Alaska and Pacific Northwest; or, in the estuarine and shelf waters of the Mississippi River and Gulf of Mexico; Savannah River and South Atlantic Bight; or Chesapeake Bay and Mid-Atlantic Bight. Applications that are solely concerned with the taxonomic characterization or distributions of bacteria, or the identification of new biochemicals or enzymes from marine organisms, are excluded from consideration within this notice.

Application of Molecular Tools to Microbes Mediating Carbon and Nitrogen Cycling

This announcement encourages applications that use molecular approaches to study marine microbial processes, in particular, carbon and nitrogen cycling. Insights can be gained from application of biotechnology to carbon sequestration and storage, nitrogen fixation and denitrification. Knowledge of the genes responsible for these processes, and most importantly, the expression of these genes in marine environments is needed. The mechanisms by which environmental factors regulate gene expression in ocean margin environments will help us to understand the natural controls on these processes.

The advent of modern molecular biology has provided powerful tools for examining genes and gene expression. Molecular methods are now being applied to research problems in marine biology, including the enzymes involved in carbon fixation (e.g., ribulose bisphosphate carboxylase), nitrogen fixation (e.g., nitrogenase) and denitrification (e.g., nitrate reductase). Examples of enabling biotechnologies include *in situ* polymerase chain reaction (PCR) to amplify specific catabolic genes within bacterial cells, and fluorescent *in situ* hybridization (FISH) to elucidate genotypes in microbial communities. A fundamental knowledge of molecular regulatory mechanisms of photosynthesis and nitrogen cycling in the oceans is needed.

Environmental Factors That Affect Linkages Between Carbon and Nitrogen Cycling

Environmental factors such as nutrient availability, temperature, irradiance, and biopolymer lability affect the coupling and decoupling of primary production, bacterial respiration, POM and DOM formation, and nitrogen metabolism in coastal areas. The impact of individual environmental factors, and synergistic effects of multiple environmental factors, on these processes is poorly understood. This announcement encourages applications that address the environmental controls on carbon and nitrogen cycles, and their coupling and decoupling. An understanding of these linkages is critical to monitoring and predicting potential changes due to physical, chemical or biological factor, and may ultimately contribute to the development of algorithms for remotely sensed ocean color data.

Collaborative Partnerships

Research applications shall include a mutually collaborative partnership between institutions that have a strong tradition of research in the marine sciences and those institutions with developing research capabilities in marine science. Participation of institutions with a high proportion of groups that are under represented in the sciences are particularly encouraged. Examples of collaborative activities include co-investigator status, periodic exchanges of researcher-in-residence between institutions, and joint supervision of research students. It is critical that both institutions have key roles in the collaboration. One institution should serve as the primary applicant with a subcontract to the collaborative institution. The applications should:

- Clearly state the nature of the collaborative research agreement between the institutions;
- Define respective research roles and responsibilities of scientists at each institution; describe how the partnership between the institutions will be effected (e.g., team meetings, shared students, etc.), and
- Provide separate institutional budgets.

In addition, the applicants will need to show how their proposed collaborative research addresses the goals stated in this notice and convey a commitment to developing research partnerships between respective institutions.

It is anticipated that up to $4 million will be available for multiple grants awarded in FY 1997 and FY 1998, contingent upon availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from approximately $50,000 to $500,000. Applications should include detailed budgets for each year of support requested. The technical portion of the application should not exceed twenty-five (25) double-spaced pages. Lengthy application appendices are not encouraged.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605. Access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 13, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–4429 Filed 2–21–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–243–000]

ANR Pipeline Company; Notice of Application

February 18, 1997.

Take notice that on February 12, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–243–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to utilize temporary work spaces associated with a pipeline replacement project located in Berrien County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to replace 1.12 mile of 22-inch pipeline with heavier wall pipe in order to continue to meet the safety requirements of the U.S. Department of Transportation (DOT) regulations. ANR states that the required replacement has been triggered by an increase in population density in Berrien County, Michigan. ANR states that in this area, ANR's main line consists of three parallel pipelines: a 22-inch O.D. mainline; a 30-inch O.D. loop line; and a 42-inch O.D. loop line. ANR maintains that both loop lines are currently in compliance with DOT regulations.

ANR states that the pipeline replacement project consists of removing and replacing in the same trench 5,905 feet of the 22-inch O.D. main line. ANR states that the replacement project will not include replacement of the pipeline crossing under the St. Joseph River and 61 and 81 feet on the west and east sides of the river, respectively. ANR states that the replacement will begin at Mile Post 927.45 and proceed northeast for 5,361 feet toward the southwest bank of the St. Joseph River where it will connect with the existing 22-inch O.D. main line. ANR further states that the replacement will continue on the northeast side of the St. Joseph River for an additional 544 feet where it will connect with the existing 22-inch O.D. main line. ANR maintains that when the pipeline replacement has been completed, the entire length of the pipeline, including the crossing under the St. Joseph River, will be hydrostatically tested to DOT standards.

ANR states that the pipeline replacement will be made within ANR's existing permanent right-of-way and will be placed in the same trench as the pipe being removed. ANR states that the pipeline replacement will not alter the capacity of ANR's main line and no compression or above ground facilities are associated with the project. It is stated that during the period that the pipeline replacement is taking place, service will continue to be provided to customers through the adjacent 30-inch and 42-inch loop lines.

ANR states that in order to make the replacement it will have to utilize work areas which may not have been included in the scope of the original authorization, 5 FPC 953, to construct the facilities. Therefore, ANR requests the temporary use of work space in order to make the replacement. ANR states that the construction will be done under Section 2.55(b) of the Commission's Regulations and has an estimated cost of $1,471,140.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 11, 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 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 a grant of the certificate is 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 ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4402 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–161–006]

Avoca Natural Gas Storage; Notice of Amendment

February 18, 1997.

Take notice that on February 11, 1997, Avoca Natural Gas Storage (Avoca), One Bowdoin Square, Boston, MA 02114, filed in Docket No. CP94–161–006, pursuant to Section 7(c) of the Natural Gas Act, an amendment to the certificate of public convenience and necessity issued by the Commission on September 20, 1994, in Docket No. CP94–161–000. Avoca seeks to construct a brine pipeline, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Avoca seeks to amend its certificate to change the method of brine disposal. Avoca proposes to construct a 45-mile brine pipeline from its storage facility in Avoca, NY to two salt processing plants in Watkins Glen, NY. Avoca states that this will provide it with a viable means of disposing of the brine that will be generated from solution mining of the salt caverns that will be used to store natural gas. As authorized, Avoca was to drill disposal wells into which the brine created by the solution mining of the salt caverns would be injected. However, it has been determined that this method is no longer a viable option for disposal of brine.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 11, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 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 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 amendment if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 Avoca to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4400 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–519–000]

Bangor Hydro-Electric Company; Notice of Filing

February 18, 1997.

Take notice that on January 31, 1997, Bangor Hydro-Electric Company (''Bangor'') tendered for filing pursuant to Order No. 889, its Code of Conduct.

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 210, 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.210, 385.211 and 385.214). All such petitions or protests should be filed on or before February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4404 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–520–000]

Citizens Utilities Company; Notice of Filing

February 18, 1997.

Take notice that on January 31, 1997, Citizens Utilities Company (Citizens) tendered for filing in Docket No. OA97–520–000, Standards of Conduct and Procedures for Compliance applicable to its Vermont Electric Division (''VED''). In addition, Citizens requests waiver of Section 37.4 of the Commission's regulations, 18 CFR 37.4, in order to allow one employee of its VED to engage in both wholesale merchant functions and transmission operations of a six-month period.

Citizens, as more fully detailed in its filing, states that its Standards of Conduct are in substantial compliance with the requirements of Order No. 889 and Section 37.4 of the Commission's regulations issued thereunder.

Citizens states that it served copies of this filing on all affected state commissions and customers, as well as on certain other interested parties.

Any person desiring to be heard or to protest said filings 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 February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4405 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–149–000]

Gas Research Institute; Notice of Public Conference

February 18, 1997.

Take notice that on March 21, 1997, the members of the Federal Energy Regulatory Commission will hold a public conference to discuss the future funding of research and development (R&D) in the natural gas industry. Specifically, the members of the Commission are interested in a public policy discussion of the appropriate role

of the Gas Research Institute (GRI) in funding R&D.

The conference will be divided into four parts. The first part will consist of a presentation by GRI describing its current program, including the various sources of funding for the program.

The second part will consist of a panel focusing on whether GRI's current program is appropriate. As a threshold matter, the panel should address the question of what is the appropriate role of joint research and development in today's market environment. The Commission seeks input on (1) whether the program should stay at its current funding level; (2) whether it should be increased and, if so, to what level; or (3) whether it should be decreased to a core program and, if so, what should be included.

The third and fourth parts of the conference will address the matters contained in GRI's January 24, 1997, motion for an expedited technical conference. In that filing GRI proposed a two stage technical conference. GRI said:

GRI proposes that the *first stage* of the requested technical conference be devoted to the following questions: Whether there is an equitable mechanism under FERC auspices that in today's regulatory environment would fund a core gas industry/GRI cooperative R&D program with widely dispersed benefits that are not subject to capture by a single party? And, if so, what would be the fundamental attributes of such a long-term funding mechanism and the appropriate scope and design of such a core R&D program?

GRI further proposes that the *second stage* of the technical conference be devoted to the following question: Whether the currently pending proposal is appropriate for use in transitioning to a long-term funding mechanism or as a basis for developing a long-term funding mechanism?

During this portion of the conference, the Commission seeks input on whether the proposed GRI funding mechanism requires captive customers to shoulder more than their fair share of R&D funding and is thereby unduly discriminatory.

The conference will be convened at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. The Commission will issue a supplemental notice that will further describe the structure of the conference.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4399 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–55–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1997.

Take notice that on February 11, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Sub First Revised Sheet No. 20, to be effective June 1, 1997.

Great Lakes states that the above named tariff sheet is being filed to clarify the Heat Content provision of Section 8.1 of the General Terms and Conditions as proposed in its January 29, 1997 filing to convert its rates and tariff from a volumetric to a thermal basis in compliance with the Commission's Order No. 582 and to convert its Btu measurement from a wet to a dry basis in compliance with the Commission's Order No. 587.

Great Lakes intends that when the heat content of gas received at any point drops below 1013 Btu per cubic foot and it is unable to transport a shipper's scheduled daily delivery due to this drop, Great Lakes will utilize the Curtailment provision of Section 11.4 of the General Terms and Conditions, but only for those shippers from whom gas was received at that point.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4407 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–004]

NE Hub Partners, L. P. Notice of Amendment

February 18, 1997.

Take notice that on February 13, 1997, NE Hub Partners, L.P. (NE Hub) filed in Docket No. CP96–53–004 an amendment to its pending application filed in Docket No. CP96–53–000 requesting to omit the original request for authorization to provide hub services and firm or interruptible transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition to amend should, on or before March 11, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, a motion to intervene or 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4401 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–518–000 and ER97–1477–000]

New Hampshire Electric Cooperative, Inc.; Notice of Filing

February 18, 1997.

Take notice that New Hampshire Electric Cooperative, Inc., on January 30, 1997, tendered for filing its FERC Open Access Transmission Tariff, two rate schedules and a petition for waiver from requirements under Part 37 of the Commission's regulations, as promulgated in Order 889.

On January 30, 1997 the New Hampshire Electric Cooperative will complete the payment and retirement of all debts issued by the Rural Utilities Service of the United States Department of Agriculture, and it accordingly will become a Public Utility subject to the general regulatory jurisdiction of the Federal Energy Regulatory Commission under Part II of the Federal Power Act. At the present time, the Cooperative provides transmission service to one customer, Goodrich Falls Hydroelectric Company, and it sells its share of the output of Seabrook Nuclear Power Plant Unit No. 1 to the Public Service Company of New Hampshire. Regulatory jurisdiction over these two

transactions is being transferred from the New Hampshire Public Utilities Commission to the Federal Energy Regulatory Commission as of January 30, 1997. Accordingly, NHEC has submitted for filing rate schedules for these transactions pursuant to Section 205(c) of the Federal Power Act and Section 35.12 of FERC's regulations. Pursuant to Section 35.28 of FERC's regulations, NHEC is also filing a nondiscriminatory Open Access Transmission Tariff. In addition, because NHEC operates limited, discrete transmission facilities rather than an integrated grid, it is applying for a waiver of Part 37 of the Commission's regulations, as promulgated in Commission Order No. 889.

Copies of the filing were served upon the Cooperative's jurisdictional customers Goodrich Falls Hydroelectric Company and the Public Service Company of New Hampshire, and upon New Hampshire Public Utilities 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 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 February 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for pubic inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4403 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–025]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1997.

Take notice on February 12, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing.

On June 19, 1996 Transco filed a Stipulation and Agreement (Agreement) in Docket Nos. RP95–197, et al. which, among other things, resolves Transco's cost of service, overall throughput level and mix of throughput for the Docket No. RP95–197 rate period commencing September 1, 1995. In addition, the Agreement resolves, pursuant to Article V of the Agreement, certain tariff issues, including (1) Implementation of a new open-access, interruptible storage service (ISS) and a new Interconnect Transfer Service (ICTS), and (2) revised tariff provisions regarding Delivery Point Entitlements (DPE) and Intra-Day Scheduling (Intra-Day) procedures to be implemented upon the effectiveness of the Agreement. Consistent with Article V of the Agreement, the instant filing proposes to implement the new services under Rate Schedules ISS and ICTS and the revised tariff provisions regarding DPE and Intra-Day. Such tariff sheets are proposed to be effective April 1, 1997.

In addition to the foregoing, included therewith are tariff sheets submitted in the instant filing, proposed to be effective April 1 and July 1, 1996, which reflect the settlement rates updated to incorporate approved tracker filings made subsequent to the date the Agreement was filed (i.e. subsequent to June 19, 1996). Finally, the filing includes a revision to its Index of Provisions of its General Terms & Conditions (Section 29) to reflect a reference to tariff provisions regarding ''latest estimated allocated data'' which became effective August 1, 1996.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4406 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–251–000]

Viking Gas Transmission Company; Notice of Penalty Revenue Crediting Report

February 18, 1997.

Take notice that on February 12, 1997, Viking Gas Transmission Company (Viking) filed a report of penalty revenues and credit for the period of November 1, 1995 through October 31, 1996.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4408 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3026–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER96–3026–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Chewton Glen Energy-Ford Heights LLC

[Docket Nos. EL97–27–000 and QF92–101–000]

Take notice that on February 5, 1997, Chewton Glen Energy-Ford Heights LLC tendered for filing a Petition for

Declaratory Order and request for waiver of filing fee.

Comment date: March 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–102–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER97–536–000]

Take notice that on January 27, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Toledo Edison Company

[Docket No. ER97–738–000]

Take notice that on January 28, 1997, Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER97–777–000]

Take notice that on February 10, 1997, West Texas Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wasatch Energy Corporation

[Docket No. ER97–1248–000]

Take notice that on February 5, 1997, Wasatch Energy Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services Inc.

[Docket No. ER97–1274–000]

Take notice that on January 31, 1997, Cinergy Services Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER97–1311–000]

Take notice that on January 21, 1997, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Vitol Gas & Electric LLC
2. Coral Power, L.L.C.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER97–1318–000]

Take notice that on January 27, 1997, South Carolina Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services Inc.

[Docket No. ER97–1416–000]

Take notice that on February 6, 1997, Cinergy Services Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER97–1426–000]

Take notice that on January 23, 1997, Louisville Gas and Electric Company, tendered for filing a submission of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER97–1487–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Agreement between itself and Minnesota Power & Light Company dated October 15, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER97–1488–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Arkansas Electric Cooperative Corporation dated October 1, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–1489–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Energy Louisiana, Inc., Entergy Mississippi, Inc., and Energy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Southwestern Public Service Company dated January 10, 1997.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–1490–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Scana Energy Marketing, Inc. (SCANA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SCANA as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCANA and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER97–1491–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with City of Gainesville, FL (GAINESVILLE) under PECO's FERC

Electric tariff Original Volume No. 1 (Tariff). The Service Agreement adds GAINESVILLE as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to GAINESVILLE and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Texas Utilities Electric Company

[Docket No. ER97–1492–000]

Take notice that on January 31, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing five executed transmission service agreements (TSAs) with AES Power, Inc., UtiliCorp United Inc., PanEnergy Trading and Market Services, L.L.C., VTEC Energy, Inc. and Sonat Power Marketing L.P. for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the five TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on AES Power, Inc., UtiliCorp United Inc., PanEnergy Trading and Market Services, L.L.C., VTEC Energy, Inc. and Sonat Power Marketing L.P. as well as the Public Utility Commission of Texas.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–1493–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Stand Energy Corporation (SEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SEC as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to SEC and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER97–1494–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Hoosier Energy (HOOSIER) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds HOOSIER as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to HOOSIER and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER97–1495–000]

Take notice that on January 31, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing the First Amendment to the Non-Firm Point-to-Point Transmission Agreement between itself and Entergy Power Marketing Corporation dated October 1, 1996.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1496–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers) filed Service Agreements for Network Integration Transmission Service with the Cities of Bay City, Eaton Rapids, Hart, Portland and St. Louis, the Village of Chelsea, Southeastern Rural Electric Cooperative, Inc. and Wolverine Power Supply Cooperative, Inc.

Consumers states the filed agreements will take effect January 1, 1997, extend for a five-year term and provide the transmission arrangements required to implement the power sale agreements previously filed with and accepted by the Federal Energy Regulatory Commission in Docket No. ER97–294–000.

Copies of the filed agreements were served upon the Michigan Public Service Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northern Indiana Public Service Company

[Docket No. ER97–1497–000]

Take notice that on January 31, 1997, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Cinergy Operating Companies (The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.).

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Cinergy Operating Companies under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Cinergy Operating Companies request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1498–000]

Take notice that on January 31, 1997, Consumers Power Company, d/b/a Consumers Energy Company (Consumers), tendered for filing an unexecuted Transmission Service Agreement with the Lansing Board of Water & Light (Lansing). The filed Service Agreement makes available non-firm point-to-point transmission service. A copy of the filing was served upon Lansing and the Michigan Public Service Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER97–1499–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 8, 1997 with Montaup Electric Company (MONTAUP) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MONTAUP as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to MONTAUP and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER97–1500–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO), filed a Service Agreement dated January 22, 1997 with Western Power Services (WPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPS as a customer under the Tariff.

PECO requests an effective date of January 22, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPS and to the Pennsylvania Public Utility Commission.

Comment date: February 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4436 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–32–000, et al.]

GPUI Lake Holdings, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 13, 1997.

Take notice that the following filings have been made with the Commission:

1. GPUI Lake Holdings, Inc.

[Docket No. EG97–32–000]

On February 5, 1997, GPUI Lake Holdings, Inc. (''GPUI Lake Holdings'') of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware corporation which was formed to acquire an indirect ownership interest in a 106 MW natural gas fueled, topping cycle cogeneration facility located in Umatilla, Florida, which is an eligible facility as defined in the Public Utility Holding Company Act of 1935. All of the electric energy produced by the facility is sold at wholesale to Florida Power Corporation.

Comment date: March 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. TransCanada Energy Ltd.

[Docket No. ER97–1417–000]

Take notice that on January 27, 1997, TransCanada Power Corporation tendered for filing a letter stating that effective January 1, 1997, TPC was amalgamated with affiliated corporations to become TransCanada Energy Ltd.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. ER97–1456–000]

Take notice that on January 30, 1997, Delmarva Power & Light Company (Delmarva) tendered for filing its quarterly report of short-term transactions under Delmarva's Market Rate Sales Tariff.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Grumman Aerospace Corporation

[Docket No. ER97–1469–000]

Take notice that on January 29, 1997, Grumman Aerospace Corporation tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER97–1472–000]

Take notice that on January 29, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with Southern Energy Trading and Marketing, Inc. (Southern).

A copy of this filing has been served on Southern and the Arizona Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER97–1473–000]

Take notice that on January 29, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888 with DuPont Power Marketing, Inc. (DuPont).

A copy of this filing has been served on the DuPont and the Arizona Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER97–1474–000]

Take notice that on January 2, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission changes to its FERC Electric Tariff, Second Revised Volume No. 1. These changes are required by Commission Order No. 888 and unbundle Montana's power supply and transmission services. In addition, Montana tendered for filing Service Agreements under FERC Electric Tariff, Second Revised Volume No. 1 with Flathead Electric Cooperative, Inc. (Flathead), Public Utility District No. 1 of Benton County (Benton), The City of McMinnville, a Municipal corporation of the State of Oregon (McMinnville), and Questar Energy Trading (Questar). Questar previously filed in Docket No. ER96–3049–000.

A copy of the filing was served Flathead, Benton, McMinnville and Questar.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Soyland Power Cooperative, Inc.

[Docket No. ER97–1475–000]

Take notice that on January 22, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing an initial rate schedule pursuant to Section 205 of the Federal Power Act and 35.12 of the regulations of the Federal Energy Regulatory Commission (Commission). Soyland determined that its change in status to a Commission-regulated

''public utility'' from a rural electric cooperative regulated by the Administrator of the Rural Utilities Service necessitated the filing of this contract.

The filing consists of an Interconnection Agreement dated September 1, 1983, between Soyland and City of Springfield, Illinois (Springfield). Soyland is not currently engaged in any transactions under the Interconnection Agreement, nor has it engaged in any such transactions since September 13, 1996, the date it became a Commission-regulated public utility.

Copies of the filing were served upon Springfield, Springfield's Washington, DC counsel, and the Illinois Commerce Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–1476–000]

Take notice that on January 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating companies), tendered for filing a Network Integration Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating companies, and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER97–1478–000]

Take notice that on January 31, 1997, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (collectively, the ''CSW Operating Companies'') submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff accepted for filing in Docket No. OA97–24–000.

The Companies state that portions of the filing have been served on each customer and that the entire filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company Massachusetts Electric Company Ashburnham Municipal Light Department

[Docket No. ER97–1479–000]

Take notice that on January 31, 1997, New England Power Company (NEP), Massachusetts Electric Company (MECo) and Ashburnham Municipal Light Department (Ashburnham) tendered for filing a Joint Use Agreement which permits each of the parties to make specified uses of NEP's Substation No. 610. NEP also tendered an Interconnection Service Agreement with Ashburnham pursuant to NEP's Tariff No. 9.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER97–1480–000]

Take notice that on January 31, 1997, Southern California Edison Company (Edison), tendered for filing the following 1997 Settlement Agreement (Settlement) with the City of Banning, California (City) and Amendment No. 2 to the 1990 Integrated Operations Agreement, FERC Rate Schedule No. 248:

1997 Settlement Agreement Between Southern California Edison Company and the City Of Banning, California

Amendment No. 2 to the 1990 Integrated Operations Agreement Between Southern California Edison Company and the City Of Banning

The Settlement sets forth the terms and conditions by which Edison agrees to integrate new Capacity Resources, supersedes parts of Appendix B to the 1992 Settlement regarding integration of resources, and terminates the 1995 Power Sale Agreement between Edison and the City. Additionally, Edison and the City have agreed to amend the termination provisions of the 1990 IOA to require only three years notice for termination. Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of February 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER97–1481–000]

Take notice that on January 31, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an Application for Order Approving Rate Schedule and Granting Certain Authority.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Corp.

[Docket No. ER97–1482–000]

Take notice that on January 31, 1997, Arizona Public Service Corporation tendered for filing a Notice of Cancellation of its Firm Point-to-Point Transmission Service Agreement.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER97–1483–000]

Take notice that on January 31, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements under WWP's FERC Electric Tariff Original Volume No. 9. WWP requests an effective date of January 1, 1997.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1484–000]

Take notice that on January 31, 1997, Northern States Power Company, Minnesota (NSP), tendered its filing of Amendment No. 1 to the Municipal Interconnection and Interchange Agreement between NSP and the city of Kasota, Minnesota. The filing contains cost support and the unbundled power sale rate information.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER97–1485–000]

Take notice that on January 31, 1997, Wisconsin Public Service Corporation

(''WPSC''), tendered for filing an executed Electric Service Agreement for partial requirements service with the Washington Island Electric Cooperative (''the Cooperative) under the WPSC's W–2A Tariff and an unexecuted Network Integration Transmission Service Agreement under WPSC's Open Access Transmission Tariff. WPSC requests that the Commission make the service agreements effective on February 1, 1997.

WPSC states that copies of this filing have been served on the Cooperative, on the Michigan Public Service Commission and on the Public Service Commission of Wisconsin.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER97–1486–000]

Take notice that on January 31, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Progress Power Marketing, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 23, 1997.

Comment date: February 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York

[Docket No. ER97–1523–000]

New York Power Pool

[Docket No. OA97–470–000]

Take notice that on January 31, 1997, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, and the Power Authority of the State of New York filed Agreements to form an Independent System Operator, New York Power Exchange, and New York State Reliability Council, and to provide statewide transmission service.

In addition, New York Power Pool amended its compliance filing pursuant to Order No. 888 in Docket No. OA97–470–000.

Comment date: February 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Lake Cogen, Ltd.

[Docket No. QF92–198–002]

On February 5, 1997, Lake Cogen, Ltd. (Applicant), c/o GPU International, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Umatilla, Florida. The Commission previously certified the facility as a qualifying cogeneration facility in *Lake Cogen, Ltd.*, 61 FERC ¶ 62,109 (1992) and recertified the facility in Lake Cogen, Ltd., 76 FERC ¶ 62,102 (1996). The instant request for recertification is due to a change in ownership of the facility.

Comment date: February 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4435 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 1494–136, et al.]

Hydroelectric Applications [Grand River Dam Authority (GRDA), et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Non-project Use of Project Lands (Construction of a New Marina).

b. *Project No.:* 1494–136.

c. *Date Filed:* January 14, 1997.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Project.

f. *Location:* The proposed marina expansion would be located in the Honey Creek arm of Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)-825(r).

h. *Applicant contact:* Marsha Hawkins, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Comment date:* MARCH 17, 1997.

k. *Description of the Application:* GRDA requests approval to permit Brian Miller and Dennis Blakemore, d/b/a Honey Creek Landing, Ltd., LLC, to build a new marina consisting of 7 docks containing 242 boat slips. The marina is located near Honey Creek Bridge (U.S.Route 59).

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Borough of Cheswick, Pennsylvania and the Allegheny Valley North Council of Governments.

c. *Project No.:* The proposed Allegheny River Lock & Dam No. 3 Hydroelectric Project, FERC No. 4474–061, is to be located on the Allegheny River in Allegheny County, Pennsylvania.

d. *Date Filed:* January 7, 1997.

e. *Pursuant to:* Public Law 104–254.

f. *Applicants Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, N.W., Washington, DC 20006, (202) 783–4141.

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* MARCH 21, 1997.

i. *Description of the Request:* The licensees for the subject project have requested that the deadline for commencement of construction be extended. The deadline to commence project construction for FERC Project No. 4474 would be extended to September 26, 1999. The deadline for completion of construction would be extended to September 26, 2003.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

3a. *Type of Application:* Surrender of License.
b. *Project No:* 11285–003.
c. *Date Filed:* December 31, 1996.
d. *Applicant:* Casitas Municipal Water District.
e. *Name of Project:* Lake Casitas Power Project.
f. *Location:* Lake Casitas, Ventura County, CA.
g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).
h. *Applicant Contact:* John J. Johnson, 1055 Ventura Avenue, Oak View, CA 93022, (805) 649–2251.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* MARCH 25, 1997.
k. *Description of Application:* The licensee states that the project is not economical. No construction has occurred.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.
4a. *Type of filing:* Notice of Intent to File Application for New License.
b. *Project No.: 2016.*
c. *Date filed:* November 29, 1996.
d. *Submitted By:* City of Tacoma, current licensee.
e. *Name of Project:* Cowlitz River.
f. *Location:* On the Cowlitz River, in Lewis County, Washington.
g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
h. *Effective date of original license:* January 1, 1952.
i. *Expiration date of original license:* December 31, 2001.
j. The 462-megawatt project consists of the Mayfield Dam and Powerhouse, Mossyrock Dam and Powerhouse, Cowlitz Salmon Hatchery, Cowlitz Trout Hatchery, Mossyrock Park, Taidnapam Park, and other associated facilities.
k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Tacoma Public Utilities, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411–0007, ATTN: Barbara Werelius, Records Management Supervisor, (206) 502–8764.
l. *FERC contact:* Hector M. Perez (202) 219–2843.
m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.
5a. *Type of filing:* Notice of Intent to File Application for New License.
b. *Project No.:* 2030.
c. *Date filed:* December 6, 1996, by Portland General Electric Company and December 26, 1996, by the Confederated Tribes of the Warm Springs Reservation of Oregon.
The project is currently licensed to PGE and the Tribes to the extent of their interests.
d. *Name of Project:* Pelton-Round Butte.
e. *Location:* On the Deschutes River, in Jefferson County, Oregon.
f. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
g. *Effective date of original license:* January 1, 1952.
h. *Expiration date of original license:* December 31, 2001.
i. *The existing project consists of: The Pelton Development* consisting of a 205-foot-high concrete arch dam, a reservoir, a powerhouse with an installed capacity of 108,000 kilowatts, a 7-mile-long transmission line, and other appurtenant facilities; the *Round Butte Development* consisting of a 440-foot-high rock-fill dam, a reservoir, a powerhouse with an installed capacity of 300,000 kilowatts, a 96-mile-long transmission line, and other appurtenant facilities; and the *Reregulating Development* consisting of a concrete gravity and earth reregulating dam, a reservoir, a powerhouse with an installed capacity of 15,000 kilowatts, a 3-mile-long transmission line, and other appurtenant facilities.
j. *Pursuant to 18 CFR 16.7, information on the project is available at:* Portland General Electric Company, 121 SW Salmon, 3WTC–BRLH, Portland, OR 97204, ATTN: Richard Dyer, Senior Vice President, (503) 464–8454.
Warm Springs Power Enterprises, The Confederated Tribes of the Warm Springs Reservation of Oregon, P.O. Box 960, 5180 Jackson Trail Road, Warm Springs, OR 97761, (541) 553–1161.
k. *FERC contact:* Hector M. Perez (202) 219–2843.
l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1999.
6a. *Type of filing:* Notice of Intent to File Application for New License.
b. *Project No.:* 2042.
c. *Date filed:* January 16, 1997.
d. *Submitted By:* Public Utility District No. 1 of Pend Oreille County.
e. *Name of Project:* Box Canyon.
f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho.
g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
h. *Effective date of original license:* February 1, 1952.
i. *Expiration date of original license:* January 31, 2002.
j. *The project consists of:* (1) a 46-foot-high and 160-foot-long reinforced concrete dam with an integral spillway; (2) a 8,850-acre reservoir; (3) a 217-foot-long horseshoe shaped diversion tunnel with reinforced concrete lining; (4) a 1,170-foot-long forebay channel; (5) a reinforced concrete powerhouse with an installed capacity of 60,000 kilowatts; and (5) other appurtenances.
k. *Pursuant to 18 CFR 16.7, information on the project is available at:* Public Utility District No. 1 of Pend Oreille County, District Headquarters, 130 N. Washington, Newport, WA 99156, ATTN: Robert Geddes, (509) 447–3137.
l. *FERC contact:* Hector M. Perez (202) 219–2843.
m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2000.
7a. *Type of Application:* Exemption From Licensing.
b. *Project No.:* P–11549–001.
c. *Date Filed:* January 21, 1997.
d. *Applicant:* Dunkirk Water Power Company, Inc.
e. *Name of Project:* Dunkirk Hydro Project.
f. *Location:* On the Yahara River in Dane County, near Dunkirk, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).
h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., President, Dunkirk Water Power Company, Inc., P.O. Box 353, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.
i. *FERC Contact:* Ed Lee (202) 219–2809.
j. *Comment Date:* APRIL 7, 1997.
k. *Description of Project:*
The existing run-of-river project consists of: (1) a dam and reservoir; (2) a powerhouse containing two generating units for a total installed capacity of 345 kW; (3) a transmission line; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,000 MWh. The applicant has secured a long term lease from the owner, Dunkirk Dam Lake District, P.O. Box 83, Stoughton, WI 53589, which provides all necessary real property interests to develop and operate the project.

l. With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

8a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11592–000.

c. *Date filed:* September 25, 1996.

d. *Applicant:* Herman Allmaras.

e. *Name of Project:* Debeque GV Project.

f. *Location:* At the Bureau of Reclamation's Grand Valley Diversion dam, on the Colorado river, near the town of Palisade, in Mesa County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Herman Allmaras, 731 353/10 Road, Palisade, CO 81526, (970) 464–7686.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* April 11, 1997.

k. *Description of Project:* The proposed run-of-river project would utilize the Bureau of Reclamation's existing Grand Valley Diversion dam, and would consist of: (1) an intake; (2) four ten-foot-long penstocks; (3) a powerhouse containing four generating units with a total installed capacity of 1,600 kW; (4) a tailrace; (5) a 250-foot-long transmission line interconnecting with an existing Tri State Generating and Transmission Association, Inc. Transmission line; and (6) and appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 12, 1997, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4434 Filed 2–21–97; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

February 19, 1997.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.
DATE AND TIME: February 26, 1997, following adjournment of the Commission's 10:00 a.m. open meeting.
PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Koch Gateway Pipeline Company.
CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4600 Filed 2–20–97; 11:25 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

February 19, 1997.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.
DATE AND TIME: February 26, 1997 10:00 a.m.
PLACE: Room 2C 888 First Street, N.E. Washington, D.C. 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda—* Note—Items listed on the agenda may be deleted without further notice.
CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 668TH MEETING—FEBRUARY 26, 1997, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# DI95–3, 001, GEORGIA-PACIFIC CORPORATION
OTHER#S P–2618, 010, GEORGIA-PACIFIC CORPORATION,
P–2660, 009, GEORGIA-PACIFIC CORPORATION

CAH–2.
DOCKET# P–11128, 006, ODELL HYDROELECTRIC COMPANY

CAH–3.
DOCKET# P–2145, 029, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
OTHER#S EL97–12, 000, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

CAH–4.
DOCKET# P–2306, 014, CITIZENS UTILITIES COMPANY
OTHER#S P–2306, 015, CITIZENS UTILITIES COMPANY
P–2306, 017, CITIZENS UTILITIES COMPANY
P–2306, 021, CITIZENS UTILITIES COMPANY

CAH–5.
DOCKET# P–11446, 000, MID-ATLANTIC ENERGY ENGINEERS, LTD.
OTHER#S P–11481, 000, CUFFS RUN ENERGY PARTNERS

CAH–6.
DOCKET# P–11524, 001, MOKELUMNE RIVER WATER AND POWER AUTHORITY

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER97–1068, 000, COMMONWEALTH ELECTRIC COMPANY AND CAMBRIDGE ELECTRIC LIGHT COMPANY

CAE–2.
DOCKET# OA97–221, 000, DUQUESNE LIGHT COMPANY
OTHER#S ER97–881, 000, CENTRAL POWER & LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
ER97–976, 000, SOUTHERN COMPANY SERVICES, INC.
ER97–978, 000, PUBLIC SERVICE COMPANY OF COLORADO
ER97–987, 000, WESTERN SYSTEMS POWER POOL
ER97–1023, 000, DETROIT EDISON COMPANY
ER97–1055, 000, JERSEY CENTRAL POWER AND LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER97–1062, 000, PUBLIC SERVICE COMPANY OF COLORADO
ER97–1079, 000, NEW ENGLAND POWER POOL
ER97–1080, 000, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY
ER97–1082, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS & ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, ET AL.
ER97–1083, 000, MOKAN POWER POOL
ER97–1162, 000, MID-CONTINENT AREA POWER POOL
ER97–1165, 000, DUQUESNE LIGHT COMPANY
ER97–1166, 000, CONSUMERS POWER COMPANY AND DETROIT EDISON COMPANY
ER97–1167, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
ER97–1168, 000, CONSUMERS POWER COMPANY
ER97–1169, 000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY
ER97–1523, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.
OA97–21, 000, WASHINGTON WATER POWER COMPANY
OA97–24, 000, CENTRAL POWER & LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
OA97–163, 000, MID-CONTINENT AREA POWER POOL
OA97–197, 000, DUKE POWER COMPANY
OA97–210, 000, DUKE POWER COMPANY
OA97–220, 000, WESTERN SYSTEMS POWER POOL
OA97–237, 000, NEW ENGLAND POWER POOL
OA97–238, 000, MASS. MUN. WHOLESALE ELECTRIC CO.
OA97–249, 000, CONSUMERS POWER COMPANY AND DETROIT EDISON COMPANY
OA97–261, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS & ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, ET AL.
OA97–262, 000, MOKAN POWER POOL
OA97–281, 000, NORTHEAST UTILITIES SERVICE COMPANY
OA97–296, 000, TAMPA ELECTRIC COMPANY
OA97–470, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.
OA97–472, 000, DETROIT EDISON COMPANY
OA97–480, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
OA97–489, 000, SOUTHERN COMPANY SERVICES, INC.
OA97–496, 000, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
OA97–497, 000, PUBLIC SERVICE COMPANY OF COLORADO
OA97–500, 000, ALLEGHENY POWER SERVICE CORPORATION
OA97–501, 000, PUBLIC SERVICE COMPANY OF COLORADO

CAE–3.
DOCKET# ER97–913, 000, CONNECTICUT YANKEE ATOMIC POWER COMPANY

CAE–4.
DOCKET# ER97–988, 000, TEXAS-NEW MEXICO POWER COMPANY

CAE–5.
DOCKET# ER96–1315, 000, FLORIDA POWER CORPORATION

CAE–6.
DOCKET# ER96–1471, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OTHER#S ER96–1471, 002, CLEVELAND ELECTRIC ILLUMINATING COMPANY

CAE–7.

DOCKET# OA96–146, 001, NIOBRARA VALLEY ELECTRIC MEMBERSHIP COMPANY
OTHER#S ER97–1412, 000, NIOBRARA VALLEY ELECTRIC MEMBERSHIP COMPANY
CAE–8.
DOCKET# ER96–2830, 001, WASHINGTON GAS ENERGY SERVICES, INC

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–240, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP97–246, 000, ANR PIPELINE COMPANY
CAG–3.
DOCKET# RP97–236, 000, NORTHWEST PIPELINE CORPORATION
CAG–4.
DOCKET# RP97–239, 000, NORTHWEST PIPELINE CORPORATION
CAG–5.
OMITTED
CAG–6.
OMITTED
CAG–7.
DOCKET# RP97–248, 000, NORTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET# RP97–104, 000, KENTUCKY WEST VIRGINIA GAS COMPANY
CAG–9.
DOCKET# RP97–105, 000, NORA TRANSMISSION COMPANY
CAG–10.
DOCKET# RP97–109, 000, SABINE PIPE LINE COMPANY
CAG–11.
DOCKET# RP97–138, 000, SHELL GAS PIPELINE COMPANY
OTHER#S RP97–138, 001, SHELL GAS PIPELINE COMPANY
CAG–12.
DOCKET# RP97–145, 000, CROSSROADS PIPELINE COMPANY
CAG–13.
DOCKET# RP97–146, 000, U–T OFFSHORE SYSTEM
CAG–14.
DOCKET# RP97–150, 000, RICHFIELD GAS STORAGE SYSTEM
CAG–15.
DOCKET# RP97–157, 000, GAS TRANSPORT, INC.
CAG–16.
DOCKET# RP97–159, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–17.
DOCKET# RP97–162, 000, COVE POINT LNG LIMITED PARTNERSHIP
CAG–18.
DOCKET# RP97–166, 000, COLUMBIA GULF TRANSMISSION COMPANY
CAG–19.
DOCKET# RP97–170, 000, BLUE LAKE GAS STORAGE COMPANY
CAG–20.
DOCKET# RP97–177, 000, STEUBEN GAS STORAGE COMPANY
CAG–21.
DOCKET# RP97–182, 000, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–22.
DOCKET# RP97–197, 000, CHANDELEUR PIPE LINE COMPANY
CAG–23.
DOCKET# RP97–224, 000, SEA ROBIN PIPELINE COMPANY
CAG–24.
DOCKET# RP96–348, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–25.
DOCKET# RP97–110, 000, BLACK MARLIN PIPELINE COMPANY
CAG–26.
OMITTED
CAG–27.
OMITTED
CAG–28.
DOCKET# RP97–134, 000, PACIFIC GAS TRANSMISSION COMPANY
CAG–29.
DOCKET# RP97–139, 000, CAPROCK PIPELINE COMPANY
CAG–30.
DOCKET# RP97–140, 000, LOUISIANA-NEVADA TRANSIT COMPANY
CAG–31.
OMITTED
CAG–32.
DOCKET# RP97–143, 000, T C P GATHERING COMPANY
CAG–33.
DOCKET# RP97–144, 000, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–34.
DOCKET# RP97–156, 000, VIKING GAS TRANSMISSION COMPANY
CAG–35.
OMITTED
CAG–36.
DOCKET# RP97–169, 000, RIVERSIDE PIPELINE COMPANY, L.P.
CAG–37.
DOCKET# RP97–174, 000, GULF STATES TRANSMISSION CORPORATION
CAG–38.
DOCKET# RP97–176, 000, MIGC, INC.
CAG–39.
DOCKET# RP97–178, 000, KERN RIVER GAS TRANSMISSION COMPANY
CAG–40.
DOCKET# RP97–179, 000, OZARK GAS TRANSMISSION SYSTEM
CAG–41.
DOCKET# RP97–187, 000, ARKANSAS WESTERN PIPELINE COMPANY
OTHER#S RP97–187, 001, ARKANSAS WESTERN PIPELINE COMPANY
RP97–187, 002, ARKANSAS WESTERN PIPELINE COMPANY
CAG–42.
DOCKET# RP97–244, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–43.
DOCKET# TM97–2–76, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–44.
DOCKET# PR97–1, 000, CONSUMERS POWER COMPANY
CAG–45.
DOCKET# RP92–149, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–46.
DOCKET# RP97–97, 001, TENNESSEE GAS PIPELINE COMPANY
CAG–47.
DOCKET# RP94–72, 008, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S FA92–59, 006, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–48.
DOCKET# RP91–229, 022 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP88–262, 033 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
RP92–166, 016 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
RS92–22, 014 ET AL., PANHANDLE EASTERN PIPE LINE COMPANY
CAG–49.
OMITTED
CAG–50.
OMITTED
CAG–51.
OMITTED
CAG–52.
DOCKET# RM96–1, 004, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–53.
DOCKET# MG97–7, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–54.
DOCKET# CP96–820, 001, QUESTAR PIPELINE COMPANY
CAG–55.
DOCKET# CP96–52, 002, PINE NEEDLE LNG COMPANY, LLC
OTHER#S CP96–134, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–56.
DOCKET# CP96–311, 001, WILLIAMS NATURAL GAS COMPANY
CAG–57.
DOCKET# CP96–591, 001, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–58.
DOCKET# CP96–212, 000, COLORADO INTERSTATE GAS COMPANY
OTHER#S CP96–212, 001, COLORADO INTERSTATE GAS COMPANY
CAG–59.
DOCKET# CP94–38, 000, OUACHITA RIVER GAS STORAGE COMPANY, L.L.C.
OTHER#S CP94–38, 001, OUACHITA RIVER GAS STORAGE COMPANY, L.L.C.
CAG–60.
DOCKET# CP94–183, 000, EL PASO NATURAL GAS COMPANY
CAG–61.
DOCKET# CP96–288, 000, WYOMING INTERSTATE COMPANY, LTD.
OTHER#S CP96–288, 001, WYOMING INTERSTATE COMPANY, LTD.
CAG–62.
DOCKET# CP96–589, 000, KOCH GATEWAY PIPELINE COMPANY
OTHER#S CP96–585, 000, SOUTHERN NATURAL GAS COMPANY
CP96–620, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–63.
DOCKET# CP96–806, 000, TENNESSEE GAS PIPELINE COMPANY AND

COLUMBIA GULF TRANSMISSION COMPANY
CAG–64.
DOCKET# CP96–53, 000, NE HUB PARTNERS, L.P.
CAG–65.
DOCKET# CP96–214, 000, TRANSWESTERN PIPELINE COMPANY
CAG–66.
DOCKET# CP96–739, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–67.
DOCKET# CP94–207, 003, SOUTHERN CALIFORNIA GAS COMPANY
CAG–68.
DOCKET# RP96–81, 002, CARNEGIE INTERSTATE PIPELINE COMPANY
CAG–69.
OMITTED
CAG–70.
DOCKET# CP96–9, 001, SHELL GAS PIPELINE COMPANY
CAG–71.
DOCKET# CP96–796, 000, MANTA RAY OFFSHORE GATHERING COMPANY, L.L.C.
CAG–72.
DOCKET# CP96–711, 000, DISCOVERY PRODUCER SERVICE LLC
OTHER#S CP96–712, 000, DISCOVERY GAS TRANSMISSION LLC
CP96–719, 000, DISCOVERY GAS TRANSMISSION LLC
CAG–73.
DOCKET# RP96–352, 000, TRANSWESTERN PIPELINE COMPANY, PACIFIC GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY
OTHER #S RP96–352, 001, TRANSWESTERN PIPELINE COMPANY
RP96–352, 003, TRANSWESTERN PIPELINE COMPANY
RP96–352, 004, TRANSWESTERN PIPELINE COMPANY
RP96–352, 005, TRANSWESTERN PIPELINE COMPANY

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# RM95–8, 001, PROMOTING WHOLESALE COMPETITION THROUGH OPEN-ACCESS NON-DISCRIMINATORY TRANSMISSION SERVICES, ETC.
OTHER#S RM94–7, 002, RECOVERY OF STRANDED COSTS BY PUBLIC UTILITIES AND TRANSMITTING UTILITIES

ORDER ON REHEARING

E–2.
DOCKET# RM95–9, 001, OPEN ACCESS SAME-TIME INFORMATION SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT

ORDER ON REHEARING

E–3.
DOCKET# EC96–36, 000, ENRON CORPORATION AND PORTLAND GENERAL CORPORATION
OTHER#S ER96–3065, 000, ENRON POWER MARKETING, INC.
ER97–708, 000, COOK INLET ENERGY SUPPLY L.P.

ORDER ON MERGER AND RELATED FILINGS

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS

PR–1.
DOCKET# RM91–11, 006, PIPELINE SERVICE OBLIGATIONS AND REVISIONS TO REGULATIONS GOVERNING SELF-IMPLEMENTING TRANSPORTATION, ETC.
OTHER#S RM87–34, 072, REGULATION OF NATURAL GAS PIPELINES AFTER PARTIAL WELLHEAD DECONTROL

ORDER ON REMAND

PR–2.
DOCKET# PL97–1, 000, CURRENT ISSUES IN NAT. GAS INDUSTRY

NOTICE OF PUBLIC CONFERENCE

II. PIPELINE CERTIFICATE MATTERS

PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–4601 Filed 2–20–97; 11:25 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5693–1]

Acid Rain Program: Permit and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: The permits and permit modifications issued in this direct final action will be final on April 7, 1997 or 40 days after publication of a similar notice in a local publication, whichever is later, unless significant, adverse comments are received by March 26, 1997 or 30 days after publication of a similar notice in a local publication, whichever is later. If significant, adverse comments are timely received on any permit or permit modification in this direct final action, that permit or permit modification will be withdrawn through a notice in the Federal Register.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Connecticut, EPA Region 1, JFK Building, One Congress Street, Boston, MA, 02203; for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101; and for plants in Oregon, EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, Washington, 98101.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for plants in Connecticut, EPA Region 1, Air, Pesticides and Toxics Management Division, Attn: Ian Cohen (address above); for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above); and for plants in Oregon, EPA Region 10, Air and Toxics Division, Attn: Joan Cabreza (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Connecticut, call Ian Cohen, (617) 565–3568; for plants in Iowa, Kansas, Missouri, and Nebraska, call Jon Knodel, (913) 551–7622; and for plants in Oregon, call Joan Cabreza (206) 553–8505.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing permits and permit modifications that include approval of early election plans for NO_X. The units that are included in the early election plans will be required to meet an actual annual average emissions rate for NO_X of either 0.45 lbs/MMBtu for tangentially-fired boilers or 0.50 lbs/mmBtu for dry bottom wall-fired boilers

beginning on January 1, 1997 through December 31, 2007, after which they will be required to meet any applicable Phase II emissions limitation for NO_X. The following is a list of units included in the permits or permit modifications and the limits that they are required to meet:

Bridgeport Harbor unit BHB3 in Connecticut: 0.45 lbs/mmBtu. The designated representative is John A. Buffa.

Ames units 7 and 8 in Iowa: 0.45 lbs/mmBtu for unit 7, 0.50 lbs/mmBtu for unit 8. The designated representative is Merlin C. Hove.

Council Bluffs units 1 and 3 in Iowa: 0.45 lbs/mmBtu. The designated representative is William Leech.

George Neal North units 2 and 3 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

George Neal South unit 4 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

Lansing unit 4 in Iowa: 0.50 lbs/mmBtu. The designated representative is Dale R. Sharp.

Louisa unit 101 in Iowa: 0.50 lbs/mmBtu. The designated representative is William Leech.

Ottumwa unit 1 in Iowa: 0.45 lbs/mmBtu. The designated representative is William W. Douglass.

Nearman Creek unit 1 in Kansas: 0.50 lbs/mmBtu. The designated representative is Larry Adair.

Riverton units 39 and 40 in Kansas: 0.50 lbs/mmBtu for unit 39, 0.45 lbs/mmBtu for unit 40. The designated representative is Bruce Baker.

Sikeston unit 1 in Missouri: 0.50 lbs/mmBtu. The designated representative is Randall Pick.

Gerald Gentleman units 1 and 2 in Nebraska: 0.50 lbs/mmBtu. The designated representative is W. J. Fehrman.

Gerald Whelan Energy Center unit 1 in Nebraska: 0.45 lbs/mmBtu. The designated representative is Marvin Schultes.

Nebraska City unit 1 in Nebraska: 0.50 lbs/mmBtu. The designated representative is William C. Jones.

North Omaha unit 4 in Nebraska: 0.45 lbs/mmBtu. The designated representative is William C. Jones.

Boardman unit 1SG in Oregon: 0.50 lbs/mmBtu. The designated representative is Richard J. Hess.

Dated: February 14, 1997

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4497 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5693–2]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permits and permit modifications are also being issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's Federal Register.

DATES: Comments on the draft permits and permit modifications must be received no later than March 26, 1997 or 30 days after the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Connecticut, EPA Region 1, JFK Building, One Congress Street, Boston, MA, 02203; for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, 726 Minnesota Ave., Kansas City, KS, 66101; and for plants in Oregon, EPA Region 10, 1200 Sixth Avenue (AT–082), Seattle, Washington, 98101.

Comments. Send comments, requests for public hearings, and requests to receive notices of future actions to: for plants in Connecticut, EPA Region 1, Air, Pesticides and Toxics Management Division, Attn: Ian Cohen (address above); for plants in Iowa, Kansas, Missouri, and Nebraska, EPA Region 7, Air, RCRA, and Toxics Division, Attn: Jon Knodel (address above); and for plants in Oregon, EPA Region 10, Air and Toxics Division, Attn: Joan Cabreza (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Connecticut, call Ian Cohen, (617) 565–3568; for plants in Iowa, Kansas, Missouri, and Nebraska, call Jon Knodel, (913) 551–7622; and for plants in Oregon, call Joan Cabreza (206) 553–8505.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft permits and draft permit modifications and the permits and permit modifications issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's Federal Register will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any permit or permit modification, that permit or permit modification in the notice of permits and permit modifications will be withdrawn and public comment received on that permit or permit modification based on this notice of draft permits and permit modifications will be addressed in a subseqent notice of permit or permit modification. Because the Agency will not institute a second comment period on this notice of draft permits and permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permits and permit modifications, see the information provided in the notice of permits and permit modifications elsewhere in today's Federal Register.

Dated: February 14, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–4498 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5692–7]

Clean Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with

implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, April 10, 1997 from 8:30 a.m. to 3:30 p.m. at Fairview Park Marriott Hotel, 3111 Fairview Park Dr., Falls Church, Virginia. Seating will be available on a first come, first served basis. The Permits/NSR/Toxics Integration Subcommittee, the Economic Incentives and Regulatory Innovations Subcommittee, the Linking Transportation and Air Quality Concerns Subcommittee and the Climate Change Subcommittee will conduct meetings on Wednesday, April 9, 1997, from 7:00 p.m. to 9:00 p.m. Subcommittee meeting times may change at the discretion of the co-chairs.

INSPECTION OF COMMITTEE DOCUMENTS: The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes, will be available by contacting Committee DFO Paul Rasmussen at (202) 260–6877.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, fax (202) 260–4185, or by mail at US EPA, Office of Air and Radiation (Mail Code 6102), Washington, DC 20460. If you would like to receive an agenda for the CAAAC meeting, please leave your fax number on Mr. Rasmussen's voice mail and it will be forwarded to you.

Dated: February 14, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4496 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5693–9]

Peer-Review Workshop for Draft Dose-Response Modeling Chapter for the Reassessment of Dioxin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Peer-Review Workshop for Draft Dose-Response Modeling Chapter of EPA's Health Assessment Document for Dioxin.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a peer-review workshop to be held on March 5, 1997, from 9:00 a.m. to 3:00 p.m. to review a revised draft of Chapter 8. Dose-Response Modeling, which is part of the Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds. The health assessment document is one component of the Agency's reassessment of dioxin.

This revised chapter on dose-response was one of two chapters referred back to the EPA for substantial revision after the Science Advisory Board (SAB) review in May 1995. The public is invited to attend the workshop, but seating will be limited and advance reservations are suggested. Because time is limited for review of the draft chapter prior to the peer-review workshop, written comments must be provided to the Agency for 60 days subsequent to this notice. All comments submitted within that time will be considered when the chapter is revised for SAB review. At the workshop, a panel of scientific experts from outside the Agency will review the draft dose-response modeling chapter which, at this stage, is a work in progress and does not represent Agency policy. Since the chapter evaluates only part of the evidence supporting dioxin's overall toxic potential, no general conclusions regarding the potential health effects or classification of these compounds will be presented. This broader determination will be based on the full weight-of-evidence and will be part of the risk characterization component of the reassessment.

DATES: The peer-review workshop to review the draft dose-response modeling chapter will be held March 5, 1997. Comments on the draft chapter must be submitted in writing and be postmarked by April 25, 1997.

ADDRESSES: The meeting will be held at The Channel Inn Hotel, 650 Water Street, SW, Washington, D.C. 20024. Members of the public wishing to register to attend the meeting may phone Ms. Linda Tuxen at 202–260–5949 between 10:00 a.m. and 6:00 p.m. Eastern Standard Time. During the meeting some time will be designated for questions and comments from the floor to encourage interactions among authors, peer-panel members, and the other meeting attendees.

Members of the public may also submit written comments and other materials relevant to the topic to: Ms. Linda Tuxen, National Center for Environmental Assessment (8601), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, Attention: Dioxin Reassessment.

The draft chapter will be available on or about February 24, 1997. To obtain a copy of the draft dose-response modeling chapter, interested parties should contact the ORD Publications Center, 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, and the chapter title and EPA number as follows: Chapter 8. Dose-Response Modeling, EPA/600/P–92/001C8.

The draft chapter also will be provided for inspection at the ORD Public Information Shelf, EPA Headquarters Library, 401 M Street, S.W., Washington, DC 20460, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays, and at all of the EPA Regional and Laboratory libraries.

FOR FURTHER INFORMATION CONTACT: To register for the workshop: Ms. Linda Tuxen, National Center for Environmental Assessment (8601), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; phone: 202–260–5949; fax: 202–401–2492; e-mail: tuxen.linda@epamail.epa.gov.

For copies of the document: ORD Publications Center, CERI-FRN, Office of Research and Development, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566.

For questions on the overall reassessment of dioxin: Dr. William Farland, National Center for Environmental Assessment (8601), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7315; fax (202) 401–2492; e-mail: farland.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

History of the Scientific Reassessment of Dioxin

As part of the SAB's May 1995 review of the draft Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds, Chapter 8. Dose-Response Relationships, was identified as one that may need substantial revision and further review. The SAB commented that the chapter should be revised to better integrate human and laboratory animal data, consider alternatives to the linear non-threshold model, and clarify important

points. The purpose of this peer-review workshop is to review the comments provided independently by the reviewers and to receive further comment based on their discussion.

The EPA has undertaken this task in response to emerging scientific knowledge of the biological, human health, and environmental effects of dioxin. Significant advances have occurred in the scientific understanding of mechanisms of dioxin toxicity, of the carcinogenic and other adverse health effects of dioxin in people, of the pathways to human exposure, and of the toxic effects of dioxin to the environment.

In 1985 and 1988, the Agency prepared assessments of the human health risks from environmental exposures to dioxin. These assessments were reviewed by the Agency's SAB. At the time of the 1988 risk assessment, there was general agreement within the scientific community that there could be a substantial improvement over the existing response approach, but there was no consensus as to a more biologically defensible methodology. The Agency was asked to explore the development of such a method. The current reassessment activities are in part in response to this request.

The EPA is making each phase of the current reassessment of dioxin an open and participatory effort. It previously has convened two public meetings (on November 15, 1991, and April 28, 1992) to inform the public of the Agency's plans and activities, to hear and receive public comments and reviews of the proposed plans for the reassessment, and receive any current, scientifically relevant information.

The Agency convened two peer-review workshops to review draft documents related to EPA's scientific reassessment of the health effects of dioxin. The first workshop was held September 10 and 11, 1992, to review a draft exposure assessment titled, Estimating Exposures to Dioxin-Like Compounds. The second workshop was held September 22–25, 1992, to review eight chapters of a draft health assessment document. The epidemiology chapter was also reviewed in another workshop on September 8–9, 1993. It should be noted that outside scientists have been heavily involved in the writing and peer review of these draft documents. Drafts of the health and exposure documents were made available for public review and comment in the fall of 1994, both with a formal public comment period and at a number of public meetings that were held around the country. The SAB reviewed the documents in May 1995.

The purpose of the March 1997 peer-review workshop is to review the draft of a revised and expanded dose-response modeling chapter. The revised chapter evaluates the scientific quality and strength of the dose-response modeling in the evaluation of toxic health effects, both cancer and noncancer, from exposure to dioxin, with an emphasis on the specific congener, 2,3,7,8-TCDD. A critical analysis of all available data has been performed. It is hoped that the peer-review workshop will provide a thoughtful and critical review of the dose-response portion of the dioxin reassessment.

Dated: February 20, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–4618 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00470; FRL–5591–6]

Plant Pesticides Resistance Management; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: EPA will hold a public meeting on March 21, 1997, to solicit public comment on resistance management plans for plant pesticides, including the necessity for such plans, critical elements of resistance management plans and requirements for successful implementation.

DATES: The meeting will be held on March 21, 1997, from 8:30 am until 5 pm. Written comments from interested parties not able to attend the meeting must be received on or before March 21, 1997. Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request and abstract to EPA on or before March 14, 1997.

ADDRESSES: The meeting is open to the public and will be held in the EPA Auditorium at EPA Headquarters, 401 M St., SW., Washington, DC 20460. Interested parties who cannot attend the public meeting but who wish to comment may do so by submitting written comments. Comments should be identified by the docket control number OPP-00470, and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00470. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, Telephone No: 703–308–8682, e-mail:nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Resistance management has been a consideration for the registration of plant pesticides for some time. This is because plant pesticides tend to produce the pesticidal active ingredient throughout a growing season, increasing the selection pressure upon both the target pests and any other susceptible insects feeding on the transformed crop.

Resistance management has become an issue particularly in relation to plant-pesticides based on the insecticidal proteins from the bacterium *Bacillus thuringiensis* (Bt). EPA recognizes the value of Bt as a safer pesticide and has determined that it is necessary to conserve this resource as appropriate by requiring resistance management plans. The Agency has reviewed initial strategies from registrants for managing resistance to Bt delta endotoxins produced in potato, corn, and cotton. EPA has worked with stakeholders (industry, public sector research and extension, growers, user groups, and government agencies) to address resistance management for primarily Bt-based plant pesticides.

In March of 1995, EPA held a Scientific Advisory Panel (SAP) meeting as part of the review for the first registered plant pesticides. This meeting primarily addressed issues related to the *Bacillus thuringiensis* (Bt) *tenebrionis* CryIII delta endotoxin in potato, although some issues related to Bt corn and Bt cotton were also discussed. The

Panel stated in their review that the submitted resistance management plan (RMP) is a ''scientifically credible Colorado potato beetle (CPB) resistance management protocol.'' For the Bt potato, the SAP recommended that the applicant should have specific monitoring plans for resistance which should be sent to the Agency for review. The SAP also requested that the applicant make specific recommendations on what course of action should be taken if resistance should be discovered. It was the opinion of the panel that EPA should work with the applicant in developing a long-term RMP, but that such plans should not be a formal condition of registration. EPA agreed with this assessment for Bt potato as the pesticide was only for the control of the Colorado Potato Beetle, the CryIII delta endotoxin was at a high dose, and existing Bt *tenebrionis* sprayable products only worked for early instars of this pest. In addition, the Colorado potato beetle has a limited host range of economic crops.

The SAP further agreed with the seven elements, described by OPP, that need to be addressed to develop an adequate resistance management plan for plant-pesticides. These elements are: (1) Knowledge of pest biology and ecology, (2) Appropriate gene deployment strategy, (3) Appropriate refugia (primarily for insecticides, (4) Monitoring and reporting of incidents of pesticide resistance development, (5) Employment of Integrated pest management (IPM), (6) Communication and educational strategies for use of the product and (7) Development of alternative modes of action.

Bt CryIA(b) delta endotoxin in corn was the second plant pesticide registered. This product was intended primarily for the control of the European corn borer. EPA noted in its review of the application that other lepidopterous pests that also feed on corn might be affected by the endotoxin, and therefore have the potential for the development of resistance to Bt. This review also noted that both the primary pests claimed on the label and those secondary pests may be controlled by the use of existing sprayable Bt products. Bt is considered to be a reduced risk pesticide and corn is planted in large acreages in the United States. Therefore the Agency required the development of a resistance management plan as a condition of the corn Bt registrations, so that such plans could be implemented if pest resistance was detected.

Bt cotton containing CryIA(c) was the last plant pesticide crop to be registered. For Bt cotton, there was compelling evidence to require the implementation of a RMP as a condition of the registration. This was due to the fact that: (1) Bt was already used extensively on cotton, (2) corn earworm (a primary pest, known as the bollworm when feeding on cotton) moves from corn to cotton thus extending the period of exposure to the Bt toxin, and (3) that corn earworm feeds on many other crops that are treated with Bt in significant amounts. Cotton is also planted in large acreages in the United States. An RMP was therefore required as a condition of the registration for Bt Cotton.

The Pesticide Program Dialogue Committee (PPDC) is a group representing various interests and points of view including public interest, industry, users, public health, legal, Congress, and the general public. The PPDC meeting in July of 1996 addressed the issue of resistance management. OPP asked the committee for their views on the best approach for the Agency to take in addressing the problem of pest resistance; the need for a new active ingredient screening process; whether OPP should address the problem of pest resistance to already registered pesticides; and whether resistance management recommendations should be required on pesticide labeling.

Panelists agreed that EPA should have some role in resistance management, but disagreed as to what that role should be. Panelists indicated that EPA should not make resistance management mandatory in all cases.

It was the general opinion of the PPDC that the Agency should function as a liaison or clearing house for RMP information, but only require resistance management plans as part of the registration when the development of resistance would cause the potential loss of a pesticide that was in the ''public good'', like Bt. The committee found it difficult to define ''public good'' parameters. Other panelists commented that EPA needed to provide more alternative tools for minor crops, and one panelist suggested that EPA could promote better resistance management by classifying pesticides according to their mode of action similar to Canadian requirements.

During the 1996 season, there were numerous instances reported to EPA where Bt cotton failed to control a segment of the bollworm population. The registrant has submitted a report concerning these instances. The report is currently under review by the Agency to determine how pest populations, and crop performance is related to resistance management.

II. Information Sought by EPA

EPA is required by law to ensure that pesticides have a reasonable certainty of no harm to people (including infants and children) and do not cause unreasonable adverse effects to the environment. As part of the evaluation process, the Agency collects information on the risks and benefits of pesticides. The Agency is interested in soliciting public comment regarding resistance management plans for plant pesticides because resistance management plans are a new requirement related to a novel technology.

1. *The requirement for resistance management plans.* This will include information on the criteria for requiring a resistance management plan and whether such plans should be voluntary or mandatory (conditions of registration).

2. *Scientific needs for resistance management plans.* Certain data may be required in order to adequately evaluate resistance management plans. EPA needs information on what kinds of data should be required to assess the potential for resistance and/or adequately evaluate proposed plans.

3. *''Public good'' criteria.* The Agency wants comment on whether this criteria should be used, and if so, information on the definition or determination of when a pesticide would be in the ''public good.''

4. *Performance failures for Bt cotton.* Information concerning the control failures for Bt cotton, suggested evaluation tools concerning these failures, and implications on future resistance management efforts.

III. Registration For Purposes of Commenting

Persons who wish to speak at the public meeting are encouraged to register in advance by submitting a brief written request to EPA on or before March 14, 1997. Those who do not register by March 14 may register in person, on March 21, to make a presentation if time permits. Register by mail with the person listed under FOR FURTHER INFORMATION CONTACT.

IV. Public Record

The Agency encourages parties to submit data to substantiate comments whenever possible. A record has been established for this rulemaking under docket control number OPP–00470 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI,

is available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the Agency without prior notice. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meeting will be considered public information and cannot be declared CBI.

V. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered by March 14 to present their comments. Those who register the day of the meeting will be offered the opportunity to present their comments if time permits. EPA anticipates that each speaker will be permitted about 10 minutes to make comments. After each speaker, Agency representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending upon the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation. Written comments should include the name and address of the author as well as any sources used. Written documentation should be submitted to Willie H. Nelson at the address stated earlier in this notice.

Dated: February 19, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4621 Filed 2–20–97; 1:07 pm]

BILLING CODE 6560–50–F

[PF–710A; FRL–5591–4]

Appropriate Technology Limited; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing; Technical amendment.

SUMMARY: EPA is correcting the time for the submission of comments on the notice of filing of a pesticide petition proposing the establishment of a regulation exempting from the requirement of a tolerance residues of extracts from *Quercus falcata* (red oak) *Rhus aromatic* (sumac), *Rhizophora mangle* (mangrove), and *Opuntia lindheimeri* (prickly pear cactus). The petition was submitted by Appropriate Technology Limited.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin, Biopesticides and Pollution Prevention Division, (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, 703–308–1259, e-mail: chin.teung@epamail.epa.gov.

In FR Doc. 97-3517, appearing at page 6777 in the issue for Thursday, February 13, 1997, the comment period under ''DATES'' is corrected to read as March 17, 1997.

List of Subjects

Environmental protection.

Dated: February 19, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4622 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5693–4]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to A&D Plating, Inc. and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment and proposed Consent Agreement for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. Section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. Section 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of A&D Plating, Inc., 2265 Micro Place, Suite A, Escondido, California; EPA Docket No. CWA–IX–FY97–02; filed on February 11, 1997, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $35,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR 433). EPA and A&D Plating, Inc. have agreed to a proposed Consent

Agreement in which A&D Plating, Inc. shall pay a Civil penalty of $35,000.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: February 11, 1997.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 97–4494 Filed 2–21–97; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Notice of History of the Former Jackson Farm Credit District

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA) is publishing a notice outlining the history of the former Jackson Farm Credit District and explains that the Federal Land Bank of Jackson (FLBJ) and the Federal Land Bank Association of Jackson (FLBAJ) were placed into receivership and that they no longer exist, that their charters have been canceled, that the institutions can no longer assert any claims, that the Receiver subsequently was discharged and released, and that all claims against the receivership are barred.

FOR FURTHER INFORMATION CONTACT: Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Like other lenders, the FLBJ and the FLBAJ sometimes did not record that borrowers had paid their mortgages in full. Former borrowers (and their successors) have been unable to obtain title insurance or convey property when the land records have indicated, incorrectly, that there was an outstanding mortgage on the property. Similar problems have also arisen for others that were associated with the FLBJ and FLBAJ. The Receiver for the FLBJ and the FLBAJ was discharged and released effective January 30, 1995, and can no longer provide clarification in such situations. Neither the FCA nor the Farm Credit Bank of Texas, which purchased the majority of the assets of the FLBJ and the FLBAJ, has the authority to provide relief to borrowers whose property was once mortgaged to the FLBJ and FLBAJ or to others affected by recordation problems involving those institutions. Therefore, the FCA is providing the following information in an effort to assist affected borrowers and others in resolving title and other recordation problems.

The Farm Credit Administration (FCA), a Federal agency established under the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, regulates and examines a nationwide network of banks, associations, and related institutions chartered under the Act. The institutions of the Farm Credit System furnish credit and closely related services to farmers, ranchers, producers and harvesters of aquatic products, their cooperatives, and farm-related businesses.

Prior to July 1, 1988, the nation was geographically divided into 12 Farm Credit Districts. Traditionally, each District had one Federal Land Bank, which made long-term agricultural and rural housing loans through Federal land bank associations; one Federal Intermediate Credit Bank, which provided shorter term agricultural loans to eligible borrowers through production credit associations; and a Bank for Cooperatives.

The Federal Land Bank of New Orleans was the Federal Land Bank for one of the Farm Credit Districts prior to September 1, 1984. On September 1, 1984, the Federal Land Bank of New Orleans moved its headquarters from New Orleans, Louisiana, to Jackson, Mississippi, and changed its name to the Federal Land Bank of Jackson (FLBJ).

On May 20, 1988, the FCA determined that statutory grounds existed for the appointment of a receiver for the FLBJ and the Federal Land Bank Association of Jackson (FLBAJ), the Association through which the FLBJ extended long-term credit, under its authority in section 4.12 of the Act and 12 CFR 611.1156, and placed the FLBJ and FLBAJ into receivership. A receiver was appointed on the same date. See 53 FR 18812, May 20, 1988.

In 1989, the majority of the long-term loans held by the FLBJ were sold to the Farm Credit Bank of Texas. In June 1990, the Farm Credit System Banks, with the exception of the Farm Credit Bank of Spokane, purchased the remaining assets of the FLBJ.

On January 27, 1995, the FCA determined that all assets of the FLBJ and FLBAJ (including claims it could assert against others) and claims against the FLBJ and FLBAJ had been disposed of by the receiver in accordance with the provisions of FCA regulations and the written agreement by and between the receiver and the FCA. The FCA therefore ordered that, effective as of January 30, 1995, all claims of creditors, stockholders, holders of participation certificates and other equities, and any other persons and/or entities against the FLBJ and FLBAJ were forever and completely discharged and released. The FCA Board also provided that the commencement of any action, the employment of any process or any other act to collect, recover, or offset any such claims was barred. Finally, the charters of the FLBJ and FLBAJ were canceled. *See* 60 FR 7054, Feb. 6, 1995.

The authority to make long-term loans once exercised by the FLBJ is now exercised by the Farm Credit Bank of Texas. Short-term lending authority for the geographic area formerly served by the FLBJ is now exercised by AgFirst Farm Credit Bank. Neither of these institutions is the legal successor in interest to the FLBJ or FLBAJ. The corporate existences of the FLBJ and the FLBAJ were terminated effective January 30, 1995, with the termination of the receivership.

Dated: February 18, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–4474 Filed 2–21–97; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 92–266; FCC 96–499]

Statistical Report on Average Rates for Basic Service, Cable Programming and Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice; Report.

SUMMARY: Section 623(k) of the Communications Act of 1934, as amended, 47 U.S.C. 534(k), which was added by the Cable Television and Consumer Protection Act of 1992, requires the Commission to publish

annually a statistical report on average rates for the delivery of basic cable service, other cable programming services, and equipment. Pursuant to this requirement, the Commission conducted a survey and, on January 2, 1997, released its *Report on Cable Industry Prices* (''*Report*''). The *Report* contains data and information that summarize survey responses from 756 cable franchises concerning cable industry prices for the delivery of basic cable service, other cable programming services, and equipment on three dates: August 31, 1993, July 14, 1994, and January 1, 1995. The *Report* is intended to examine the effects of the Commission's regulation of the cable industry on cable prices.

FOR FURTHER INFORMATION CONTACT: Dan Hodes, Cable Services Bureau (202) 418–7041 or Kiran Duwadi, Cable Services Bureau (202) 418–7028.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report* in MM Docket No. 92–266, FCC 96–499, adopted December 31, 1996, and released January 2, 1997. The complete text of the *Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition, the complete text of the *Report* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html

Synopsis of the Report

1. Pursuant to the statutory requirement, the distributed survey gathered information on the prices charged in two groups of cable franchises: (1) those in which there was effective competition, referred to as the ''competitive group,'' and (2) those in which there was not, referred to as the ''noncompetitive group.'' A significant portion of the noncompetitive group, representing more than two-thirds of the total number of subscribers served by cable operators in franchises included in the sample, was subject to rate regulation. The remaining one-third subscribed to services from cable operators in franchises which were unregulated. Three of the more significant findings of the *Report* are summarized below.

2. First, the *Report* found that prices charged in the noncompetitive group were higher in all three time periods studied than those charged in the competitive group. In addition, the *Report* found that the price differential between the competitive and noncompetitive groups was significant prior to the implementation of rate regulation under the 1992 Cable Act, and that the differential narrowed substantially after rate regulation was instituted. This finding is consistent with expectations since the intent of rate regulation was to simulate the effects of a competitive marketplace.

3. Specifically, the *Report* found that prior to the implementation of rate regulation, on August 31, 1993, the average cable rate for services and equipment charged by the competitive group was $20.51 per month, and the average charged by the noncompetitive group was $22.23 per month, a differential of 8.4%. After the imposition of rate regulation, the differential narrowed to 2.7% ($21.04 charged by the competitive group compared with $21.61 charged by the noncompetitive group) in July 1994, and narrowed further to 2.3% ($21.25 charged by the competitive group compared with $21.74 charged by the noncompetitive group) by January 1, 1995. Similarly, a comparison of the regulated portion of the noncompetitive group with the competitive group indicates that the differential in prices charged for equipment, basic, and other programming services narrowed even further to 2.1% in July 1994 and to 1.6% in January 1995.

4. Second, the *Report* found a large drop in equipment prices between August 1993 and July 1994, the period during which rate regulation took effect. For example, the monthly rate for remotes for the noncompetitive group dropped from $1.32 per month in August 1993 to $0.26 in July 1994. Similarly, over the same period, the average monthly rate for nonaddressable converters dropped from $1.58 to $1.27 and for addressable converters, from $2.46 to $2.17.

5. Third, the *Report* found that the average monthly rate per channel charged by cable operators in franchises subject to rate regulation fell from $0.62 per channel to $0.53 per channel between August 1993 and July 1994, a drop of 14.5%. This decline reflects both an increase in the average number of channels received as well as a decline in the average monthly rate for programming services. Between July 1994 and January 1995, the per channel rate remained steady at $0.53 because the underlying average rate per month and the average number of channels offered remained roughly the same. The number of channels received and the average price per channel provide a comparable way of measuring the services received by cable subscribers.

Ordering Clause

6. It is *Ordered* that this *Report* is issued pursuant to authority contained in Section 623(k) of the Communications Act of 1934, as amended, 47 U.S.C. 534(k).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4425 Filed 2–21–97; 8:45 am]

BILLING CODE 6712–01–P

Sunshine Act Meeting

February 19, 1997.

Deletion of Agenda Items From February 20th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the February 20, 1997, Open Meeting and previously listed in the Commission's Notice of February 13, 1997.

Item No.	Bureau	Subject
3	Wireless telecommunications	Title: Amendment of the Commission's Rules Regarding Multiple Address Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93–253). Summary: The Commission will consider proposing new service, licensing, and competitive bidding rules for spectrum allocated to Multiple Address Systems in the Fixed Microwave Services.
4	Wireless telecommunications	Title: Revised of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96–18) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Item No.	Bureau	Subject
5	Wireless telecommunications	Summary: The Commission will consider action concerning geographic area licensing of common carrier paging and 929 MHz private carrier paging, and competitive bidding procedures for auctioning geographic area paging licenses. Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552, RM–8506); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 220–222 MHz (PP Docket No. 93–253). Summary: The Commission will consider action concerning the future operation and licensing of the 220–222 MHz band.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4574 Filed 2–20–97; 10:43 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1158–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1158–DR), dated January 16, 1997, and related determinations.

EFFECTIVE DATE: February 5, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 3, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4460 Filed 2–21–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1159–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1159–DR), dated January 17, 1997, and related determinations.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 1997:

The counties of Asotin, Jefferson, Pend Oreille and Whatcom for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–4461 Filed 2–21–97; 8:45 am]

BILLING CODE 6718–02–P

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 March 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. The Winton Jones Revocable Trust of 1997, Carl Jones, Christopher Jones, and Richard McMahon, as trustees, Wayzata, Minnesota; to acquire 100 percent of the voting shares of Anchor Bancorp, Inc., Wayzata, Minnesota, and thereby indirectly acquire Anchor Bank, N.A., Wayzata, Minnesota; Anchor Bank, West St. Paul, N.A., West St. Paul, Minnesota; The Bank of Saint Paul, St. Paul, Minnesota; Heritage National Bank, North St. Paul, Minnesota; and The First National Bank of Farmington, Farmington, Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert S. Appel, Englewood, Colorado, and William P. Johnson, Boulder, Colorado, Co-trustees of FirstBank Holding Company of Colorado Employee Stock Ownership Plan, Lakewood, Colorado, and its subsidiary, FirstBank Holding Company of Colorado, Lakewood, Colorado; to vote as trustee, 26.8 percent of the voting shares of FirstBank of Arvada, N.A., Arvada, Colorado, and thereby indirectly acquire FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; FirstBank of Breckenridge, N.A., Breckenridge, Colorado; FirstBank of Douglas County, N.A., Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Greeley, Greeley, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Lakewood, Colorado; FirstBank of South Jeffco,

Littleton, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank North, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; and FirstBank, N.A., Palm Desert, California.

2. Benedict Enslinger, Trustee, Benedict Enslinger Revocable Trust, both of La Crosse, Kansas; to acquire an additional 1.30 percent, for a total of 11.96 percent, of the voting shares of NSB Bancshares, Inc., La Crosse, Kansas, and thereby indirectly acquire Nekoma State Bank, La Crosse, Kansas.

3. Matthew T. Ley, as Trustee, Portland, Oregon; to acquire an additional 38.2 percent, for a total of 40.9 percent, of the voting shares of State National Bancshares, Inc., Wayne, Nebraska, and thereby indirectly acquire State National Bank and Trust Company, Wayne, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cecil R. Simmons, San Benito, Texas; to acquire an additional 2.1 percent, for a total of 14.8 percent, and Cecil R. Simmons, as Trustee for the First National Bank Employee Stock Ownership Plan, San Benito, Texas, to acquire an additional 11.4 percent, for a total of 17.3 percent, of the voting shares of First San Benito Bancshares, Inc., San Benito, Texas, and thereby indirectly acquire First National Bank of San Benito, San Benito, Texas.

Board of Governors of the Federal Reserve System, February 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4372 Filed 2-21-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Community First Bankshares, Inc., Fargo, North Dakota; to engage *de novo* through its subsidiary, Community First Financial, Inc., Fargo, North Dakota, in leasing personal property or acting as agent, broker, or adviser in leasing personal property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4373 Filed 2-21-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0513]

Guidance on Labeling of Foods That Need Refrigeration by Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing guidance on labeling of foods that need refrigeration by consumers to maintain safety or quality. This guidance, which represents FDA's policy on adequate safe handling instructions for food, should reduce the likelihood of temperature abuse of certain foods by consumers, and it is intended to reduce the potential for foodborne illness and death. The guidance also responds to the recommendations of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), the National Food Processors Association (NFPA), the Association of Food and Drug Officials (AFDO), and the Centers for Disease Control and Prevention (CDC) for labeling foods needing refrigeration. FDA is soliciting comments on this guidance.

DATES: Written comments may be submitted at any time.

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

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

Refrigeration has long been used to retard deterioration of the flavor, color, and texture of foods. More importantly, refrigeration helps maintain the microbiological safety of potentially hazardous foods. Temperature abuse, i.e., failure to maintain foods at appropriate temperatures, may result in the outgrowth of microorganisms that may have contaminated the foods before, or at the time of, harvest or during processing, handling, or storage. The rate of growth of these microorganisms is reduced as the storage temperature is lowered. Proper refrigeration, therefore, prevents or slows the growth of human pathogens and spoilage microorganisms and reduces the likelihood of foodborne illness.

Refrigeration is only one of many individual factors, called barriers, that can be used to control microbiological risks. It is, for many foods, the only practicable barrier to reduce or prevent pathogen growth. Examples of other types of barriers include acidification ($pH \leq 4.6$), use of preservatives, such as salt, and low water activity ($a_w \leq 0.85$). Barriers used individually, or in combination with each other, may reduce or retard pathogenic microbial growth.

In the past, consumers could generally tell if a product were perishable by its packaging or lack of packaging. Products in a can or a jar were generally considered to be shelf-stable (i.e., products that can be stored on the shelf without spoilage), at least until opened. However, today's new packaging technologies have changed this situation. Many liquids or semi-liquids in flexible packages have airtight

liners and are shelf-stable. Vacuum packed foods or foods packaged in modified (oxygen reduced) atmospheres, which are shelf-stable, may appear to the consumer to be safe to eat, even if they have been temperature abused. These foods may not have developed organoleptic signs (such as deterioration of color, flavor, texture, etc.) that consumers associate with spoiled or unsafe foods. However, foods in these packages may present a potential hazard if, once opened, they are stored unrefrigerated.

Recently, there have been reports of botulism food poisonings resulting from consumption of food that had been temperature abused by consumers, even though the products were labeled ''keep refrigerated.'' FDA is concerned that such foods are not labeled adequately or conspicuously enough to advise consumers that the product must be refrigerated to maintain its safety. The specific foods implicated in the botulism poisonings were clam chowder and black bean dip. Packaging for both of these products could have made the food appear shelf-stable to the consumer.

The potential for foodborne illness from temperature abused foods is widely recognized. Efforts to reduce this health risk in potentially hazardous foods that need refrigeration to ensure their safety and quality have included voluntary use of label statements such as ''keep refrigerated'' and ''refrigerate after opening.'' Use of such label statements no longer provides meaningful consumer information because the same label statements appear both on foods needing refrigeration to ensure safety and foods needing refrigeration to maintain quality. NACMCF has made specific recommendations for label statements on potentially hazardous foods (Ref. 1) to address this problem. NFPA has developed guidelines for the food industry for voluntary label statements using the language in the NACMCF recommendation (Ref. 2). AFDO has endorsed the guidelines developed by NFPA (Ref. 3) and has recommended them to State regulatory agencies to assist those agencies in requiring and enforcing improved labeling (Ref. 4). Finally, CDC sent FDA a memorandum expressing concern about the recent botulism outbreaks and recommending, among other things, better labeling for foods requiring refrigeration (Ref. 5).

II. Inadequacy of Current Labeling

Because of the recent reports of botulism food poisonings from consumption of foods that had been temperature abused by consumers, FDA has evaluated the labeling on foods that must be refrigerated to prevent outgrowth of pathogens and has found that most of this labeling does not adequately advise the consumer of the need to keep the food refrigerated or of the health risk if it is not. For example, the packaging for the clam chowder and black bean dip that were implicated in the recent botulism poisonings made the foods appear shelf-stable. The clam chowder was packaged in a plastic bag inside a cardboard carton. The bean dip was packaged in a resealable plastic tub. These items were displayed in refrigerated cases in the supermarket. While both items had a ''keep refrigerated'' statement on their labels, consumers failed to maintain these products under refrigeration.

Most consumers seem to understand that foods that are displayed only in the refrigerated section of a grocery store, such as dairy products, eggs, cold cuts, fresh meats, poultry, and seafood, must be refrigerated to maintain their quality. While it is unlikely that a majority of consumers are aware of the hazards and food safety issues that temperature abuse of these products can present, it is likely that most consumers will refrigerate these foods even in the absence of labeling instructions to do so for safety. Therefore, the fact that these foods are refrigerated does not really provide evidence of the effectiveness of the ''keep refrigerated'' instructions in their labeling.

Foods such as mustard, salad dressings, jams, jellies, salsa, and spaghetti sauce bear a statement advising refrigeration once the product is opened to retard deterioration in the quality of the food. Nonetheless, consumers often do not refrigerate these foods. Although consumers may notice a deterioration in flavor, color, or texture over time, they may not associate foodborne illness with consumption of these products. Therefore, consumers do not seem to associate safety concerns with the ''keep refrigerated'' or ''refrigerate after opening'' statements.

The agency is concerned that consumers may not be aware that some newer, less traditional, packaged foods need refrigeration to maintain their safety. Some examples are fresh cut fruits and vegetables, food packaged in cardboard containers resembling shelf-stable packages (such as the previously mentioned clam chowder and bean dip), and vacuum or modified (reduced oxygen) atmosphere packaged products in clear flexible packaging. Consumer understanding of the significance or reason for advising that a product be kept refrigerated is likely hampered by the rapidly expanding marketing of foods having convenient preparation and ''close to fresh'' product characteristics.

In addition, as previously mentioned, the food industry is developing new types of foods with extended shelf life (i.e., the length of time that a product may be stored without deterioration) that have to be refrigerated. Foods known as ''partially processed'' or ''minimally processed'' may have received a heat process or other preservation treatment during manufacturing that reduces the microbiological load in the food but that does not render the food ''commercially sterile.'' These partially processed foods share the hazard common to all potentially hazardous foods, i.e., ability to support the growth of pathogens, unless they are refrigerated. Thus, if only a ''keep refrigerated'' label appears on these types of foods, and consumers choose not to pay attention to it, the consumers would be taking a significant risk.

The agency is also concerned about the potential abuse of a category of products (e.g., low acid canned foods that are not otherwise preserved) that need refrigeration after being opened. The potential for temperature abuse of these products may be even greater than that for foods that need constant refrigeration. These products are generally displayed in a section of the store that is not refrigerated, and these products are provided in packaging similar to foods that do not need refrigeration even after opening. Even though these shelf-stable foods may bear storage instructions for the unused portion, the need for refrigeration is frequently not conveyed on the label, or not conveyed in a way that consumers can see and understand.

Current labeling of shelf-stable packaged foods is not adequate because the same label statements, e.g., ''keep refrigerated'' or ''refrigerate after opening,'' appear both on foods that are potentially hazardous and on foods that do not pose a hazard but that are refrigerated to retard deterioration in quality. The labeling of potentially hazardous foods that need refrigeration should distinguish these products from products for which refrigeration is only to protect quality. FDA is concerned that, without adequate labeling on these potentially hazardous products, efforts by the food industry to develop new types of foods with extended shelf life prior to being refrigerated and while under refrigeration will result in more illnesses.

Further, different formulations and processing methods for different

versions of the same food, such as pumpkin pie, may or may not need refrigeration for safety. In addition, different versions of these foods can be displayed in different sections of the retail store, with the ''keep refrigerated'' statement on the version of the food that needs refrigeration as the only indication that there is a difference in safety considerations among the versions of the product. Furthermore, the ''keep refrigerated'' statement often appears in small print and is placed on an obscure part of the label. Therefore, the consumer may not understand or interpret the ''keep refrigerated'' statement as an instruction about what must be done to maintain the safety of the product.

Moreover, ''keep refrigerated'' or ''refrigerate after opening'' statements generally do not include the reason the product is to be refrigerated. The agency regards it as unlikely that most consumers know and are able to distinguish the underlying reasons for a ''keep refrigerated'' label statement when comparing products that bear that statement to maintain microbiological safety with products that bear that statement for maintaining quality. Therefore, consumers would have no reason to consider one such statement any more important for product safety than another. Thus, the statements ''keep refrigerated'' or ''refrigerate after opening'' alone are not adequate to appropriately alert consumers to the importance of properly handling potentially hazardous foods.

III. Labeling Options Considered

The agency has considered the recommendations offered by CDC, NACMCF, AFDO, and NFPA. In a memorandum dated February 14, 1995 (Ref. 5), CDC recommended that food labels advising refrigeration should be reviewed. CDC maintained that labels advising ''keep refrigerated'' may not be sufficient to warn consumers about the health risks associated with noncompliance. Further, CDC advised that for foods for which refrigeration is the only barrier to prevent growth of *C. botulinum*, the label should identify the risks of botulism if mishandled.

FDA has also considered the labeling recommendations for foods requiring refrigeration by consumers that have been offered by NACMCF, NFPA, and AFDO (Refs. 1, 2, and 4). NACMCF maintained that consumers have difficulty distinguishing the differences among various label statements and their relationship to product safety. Therefore, it recommended that the following label statement be used on packaged food that poses a safety hazard if temperature abused: ''IMPORTANT MUST BE KEPT REFRIGERATED''.

Recommendations from NFPA and AFDO recognize two categories of foods. Group A foods are potentially hazardous, packaged, processed foods that must be refrigerated for safety reasons, and Group B foods are products that are intended to be refrigerated but that do not pose a safety hazard if temperature abused. The recommended label statement for Group A foods is: ''IMPORTANT: Must Be Kept Refrigerated''.

The recommended label statement for Group B foods is ''keep refrigerated,'' although such products would be allowed to utilize the Group A suggested label statement.

A. Analysis of Options

FDA agrees with CDC that the label statement ''keep refrigerated'' may not be sufficient to warn consumers about a health risk. However, the agency does not agree that the label should specifically identify the risk of botulism because it is not the only risk if foods that need refrigeration are temperature abused.

While FDA finds considerable merit in the labeling recommendations of NACMCF, NFPA, and AFDO, the agency is concerned that these recommendations do not inform consumers of the reasons for refrigeration of foods and do not fully differentiate the types of foods that should bear a ''keep refrigerated'' label. Moreover, the suggested label statements will not eliminate the confusion generated by the current voluntary label statements used on foods to be refrigerated, especially if foods that do not pose a safety hazard are permitted to bear the same labeling statements as those that do pose a safety hazard if not refrigerated.

Having considered these recommendations, the agency is recommending an approach that is somewhat different than those suggested in the recommendations that it has received. In the agency's view, labeling will be more effective if it is more specific to the types of hazards that are presented, and to the types of storage conditions that are necessary, after the product is opened. In FDA's view, this specificity is provided if foods that need refrigeration are divided into three groups. The first group, Group A, are the foods that were in NFPA's and AFDO's Group A foods that are potentially hazardous and that must be kept refrigerated for safety reasons. Group B includes foods that are shelf-stable but that need refrigeration after opening for safety. Group C (described as Group B foods in the NFPA and AFDO recommendations) include foods that are refrigerated only to retard deterioration in quality.

FDA has sought to craft label statements that will help consumers to differentiate among these types of foods. Phrases such as ''to maintain safety'' and ''for quality'' are essential in drawing a distinction between Groups A and B on the one hand and Group C on the other. Furthermore, the agency agrees with the recommendations of NACMCF, NFPA, and AFDO that the term ''Important'' would help to underscore this distinction and to indicate the significance of the statement. The phrase ''after opening,'' or some similar statement, is essential to distinguish Group B from Group A.

Thus, the agency considers that the statement ''Important must be kept refrigerated to maintain safety'' for Group A foods is appropriate because it can adequately convey to consumers that continued refrigeration is mandatory to reduce safety risks. Similarly, the agency considers ''Important must be refrigerated after opening to maintain safety'' an appropriate label statement for Group B foods because such foods are shelf-stable and may pose a health hazard only after opening. In contrast, ''refrigerate for quality'' or ''keep refrigerated for quality'' for Group C foods is sufficient, in the agency's opinion, to distinguish this category from Groups A and B and to inform consumers that refrigeration is only necessary to retard deterioration in product quality.

B. Labeling Placement and Prominence

In addition to label statements that are focused on the type of product and the risk it represents, placing the statements on the label in a way that gives them appropriate prominence is critical to ensuring that the label statements will be seen, read, and understood. The placement and prominence guidelines suggested by NFPA are particularly useful and helpful in this regard. NFPA recommended that the label statements be set off by the use of hairlines at the top and bottom of the statement area. The type should: (1) Be on a contrasting background; (2) utilize a single, easy-to-read style and size; (3) have at least one point leading (space between two lines of text); and (4) ensure that letters never touch. On Group A and B foods, the word ''IMPORTANT'' should be in all capital letters, while the remaining words should use uppercase and lowercase letters, with the first letter in each word capitalized. The hairlined area should appear on the label

prominently and conspicuously as compared to other words, statements, designs, or devices. FDA strongly agrees and urges all firms to follow these recommendations. In addition, the agency notes that its general approach to type size of label information is that it should be not less than one-sixteenth inch unless the package is too small to accommodate this type size. The agency encourages placement of this statement on the principal display panels, at least for group A and B foods. If the statement does not fit on the principal display, it should be placed on the information panel.

C. FDA Labeling Policy

To clarify this guidance, the agency has delineated each of the three groups and developed model statements for each:

1. *Group A Foods*

Group A foods are potentially hazardous foods, which, if subjected to temperature abuse, will support the growth of infectious or toxigenic microorganisms that may be present. Outgrowth of these microorganisms would render the food unsafe. Foods that must be refrigerated for food safety possess the following characteristics: (1) Product pH > 4.6; (2) water activity a_w > 0.85; (3) do not receive a thermal process or other treatment in the final package that is adequate to destroy foodborne pathogens that can grow under conditions of temperature abuse during storage and distribution; and (4) have no barriers (e.g., preservatives such as benzoates, salt, acidification), built into the product formulation that prevent the growth of foodborne pathogens that can grow under conditions of temperature abuse during storage and distribution.

The appropriate label statement for Group A foods is:

IMPORTANT Must Be Kept Refrigerated To Maintain Safety

2. *Group B Foods*

Group B includes those foods that are shelf-stable as a result of processing, but once opened, the unused portion is potentially hazardous unless refrigerated. These foods possess the following characteristics: (1) Product pH > 4.6; (2) water activity a_w > 0.85; (3) receive a thermal process or other treatment that is adequate to destroy or inactivate foodborne pathogens in the unopened package, but after opening, surviving or contaminating microorganisms can grow and render the product unsafe; and (4) have no barriers (for example, preservatives such as benzoates, salt, acidification) built into the product formulation to prevent the growth of foodborne pathogens after opening and subsequent storage under temperature abuse conditions.

The appropriate label statement for Group B foods is:

IMPORTANT Must Be Refrigerated After Opening To Maintain Safety

3. *Group C Foods*

Group C are those foods that do not pose a safety hazard even after opening if temperature abused, but that may experience a more rapid deterioration in quality over time if not refrigerated. The manufacturer determines whether to include on the label a statement that refrigeration is needed to maintain the quality characteristics of the product to maximize acceptance by the consumer. These foods do not pose a safety problem. Foods in this group possess one or more of the following characteristics to ensure that the food does not present a hazard if temperature abused: (1) Product pH ≤ 4.6 to inhibit the outgrowth and toxin production of *C. botulinum*; or (2) water activity a_w ≤ 0.85; or (3) have barriers built into the formulation (for example, preservative systems such as benzoates, salt, acidification) to prevent the growth of foodborne pathogens if the product is temperature abused.

The suggested optional label statement for Group C foods is:
''Refrigerate for Quality''
or some other statement that explains to the consumer that the storage conditions are recommended to protect the quality of the product. To avoid confusion between refrigeration for safety purposes and refrigeration for quality reasons, Group A and Group B statements should not be used on Group C foods.

The agency is publishing this document to provide this guidance by the quickest means to as many manufacturers as possible, so that they may begin using the label statements. If manufacturers follow this guidance, the consumer will have clear, concise, and prominent labeling information for maintaining the safety of potentially hazardous food products. Inclusion of these statements in the labeling of appropriate foods will help the consumer recognize when appropriate storage temperatures are needed to maintain the safety or quality of those foods. Such information will reduce the likelihood of temperature abuse of the food and, consequently, reduce the potential for foodborne illness and death.

While this guidance is primarily intended to address the need for safe handling of potentially hazardous foods by consumers, the agency recognizes that there also is a need for safe handling during the transportation and distribution of these foods. The Food Safety and Inspection Service of the U.S. Department of Agriculture and FDA have jointly published an advance notice of proposed rulemaking in the Federal Register of November 22, 1996 (61 FR 59372) to solicit comments on approaches that the two agencies may take to foster safety improvements in the storage and transportation of potentially hazardous foods. Therefore, this guidance does not address how foods that need refrigeration during transportation and storage should be labeled.

IV. Consumer Education

Most consumers are not aware of the hazards associated with temperature abuse of foods needing refrigeration, especially foods that use newer, less traditional means of packaging. If firms follow the guidance set out in this document, it will help consumers to recognize the difference between the messages, ''refrigerate for safety'' and ''refrigerate for quality.'' The agency recognizes, however, that a coordinated public education campaign is needed to ensure that consumers understand the

significance of the differences in these messages. Given the significance of the underlying problem, FDA intends to undertake an educational effort, including press releases and consumer pamphlets. The agency requests the cooperation and assistance of industry and other private groups in this effort. The agency also requests comments on additional ways to educate the consumer.

The guidance represented here reflects FDA's current thinking on safe handling labeling for foods that need refrigeration by the consumer. This document does not bind FDA and does not create or confer any rights, privileges, benefits, or immunities for or on any persons.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. 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. Recommendations of the National Advisory Committee on Microbiological Criteria for Foods for Refrigerated Foods Containing Cooked, Uncured Meat or Poultry Products that are Packaged for Extended Refrigerated Shelf Life and that are Ready-To-Eat or Prepared with Little or No Additional Heat Treatment, January 31, 1990.

2. Guidelines for the Development, Production, Distribution, and Handling of Refrigerated Foods, National Food Processors Association, 1989.

3. Letter from J. Corby, New York Department of Agriculture and Markets to A. Dell'Aria, Virginia Department of Agriculture, September 8, 1995.

4. Memorandum from A. Dell'Aria, AFDO, December 20, 1995.

5. Letter from P. Griffin and R. Tauxe, CDC to K. Wachsmuth, FDA, February 14, 1995.

Dated: February 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4364 Filed 2–21–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–38]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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 proposal for the collection of information. Interested persons are invited to send comments regarding the 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.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Conditions of Participation for Rural Health Clinics, 42 CFR 491.9 Subpart A; *Form No.:* HCF–AR–38; *Use:* This information is needed to determine if rural health clinics meet the requirements for approval for Medicare participation. *Frequency:* Other (Initial application for Medicare); *Affected Public:* Individuals or Households; Business or other for profit; Not for profit institutions; Farms; Federal Government; and State, Local or Tribal Government; *Number of Respondents:* 3,076; *Total Annual Hours:* 9,744.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, e-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed 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: February 13, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4374 Filed 2–21–97; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement (CDA) will be required to receive copies of the patent applications.

Chromosomal Markers and Diagnostic Tests For Manic-Depressive Illness

S Detera-Wadleigh (NIMH), E Gershon (NIMH), J Badner (NIMH), L Goldin (NIMH), W Berrettini (Thomas Jefferson University), T Yoshikawa (NIMH), A Sanders (NIMH), L Esterling (NIMH)

Serial No. 60/029,278 filed 28 Oct 96

Licensing Contact: Stephen Finley, 301/496–7735, ext. 215.

Bipolar disease, or manic-depressive illness, affects approximately 1% of the population and is generally controlled through medication. Not all patients respond similarly to a given medication. A medication that works well in one individual may be ineffective in another individual. It is unclear why this is, but it has been theorized that bipolar disease may involve multi-genes, possible on several chromosomes. It is not known if one genetic locus dominates over another, but if one does, then it may explain the variable

medication effectiveness. One genetic locus has been identified on chromosome 18 having allelic variations which may be used to determine if an individual has an increased susceptibility to bipolar disease. This method may be useful in determining if an individual has an increased susceptibility to bipolar disease, or ultimately, it may provide a means to predict which medication will provide the best treatment. (portfolio: Central Nervous System—Diagnostics, in vitro)

The Use of Functional N-Methyl-D-Aspartate Antagonists to Ameliorate or Prevent Aminoglycoside-induced Ototoxicity

A Basile and P Skolnick (NIDDK)
Serial No. 08/712,477 filed 11 Sep 96

Licensing Contact:: Stephen Finley, 301/496–7735, ext. 215.

Aminoglycoside (AGS) antibiotics are extremely effective at treating bacterial infections such as sepsis, endocarditis, and tuberculosis, but are currently used in only 3% of all clinical admissions in the United States because of their tendency to induce ototoxicity. Approximately 30–40% of all patients who receive an AGS antibiotic will develop measurable and usually permanent hearing loss. A guinea pig model was used to test whether N-Methyl-D-Aspartate (NMDA) antagonists could prevent or reduce the severity of the hearing loss when AGS antibiotics were administered. For example, the NMDA antagonists, dizocilpine and ifenprodil, were tested with the AGS antibiotics, neomycin and kanamycin, and were found to prevent or lessen the hearing loss in over 98% of the animals tested. Over 75% of the tested animals maintained normal hearing levels. It is believed that the use of this method will allow physicians to readily administer aminoglycoside antibiotics without the fear of causing permanent hearing loss in the patient. (portfolio: Internal Medicine—Therapeutics, other)

A Basal Cell Carcinoma Tumor Suppressor Gene

M Dean et al. (NCI)
Serial No. 60/017,906 filed 17 May 96

Licensing Contact: Ken Hemby, 301/496–7735 ext. 265.

Novel human nucleic acid sequences and polypeptides derived from the tumor suppressor, PTC or patched gene which have been mapped to human chromosome 9q22.3–q31, have been discovered for use in cancer diagnosis and therapy. Mutations of this gene are associated with Nevoid Basal Cell Carcinoma Syndrome (NBCCS) a disease associated with skin cancer and human developmental defects such as Gorlin Syndrome comprising skeletal defects, craniofacial and brain abnormalities. Methods of detection of PTC in a tissue sample have been found as well as recombinant cells, antibodies, and pharmacological compositions useful in treatment of the disease. Methods of diagnosis of and therapy for NBCCS have also been found.

The PTC gene is thought to encode a protein which selectively switches off growth factor production in certain cells by interaction with members of the family of proteins encoded by the ''hedgehog'' gene, which instructs cells during development and growth. NBCCS is the result of abnormal PTC gene products that encode non-functional or functionally reduced NBCCS polypeptides. This lack of function may be caused by insertions, deletions, point mutations, splicing errors, premature termination codons, missing initiators, etc. The tumors caused by NBCCS are slow growing tumors that rarely metastasize, but which can cause significant morbidity and occasional mortality from local invasion. (portfolios: Cancer—Diagnostics; Cancer—Therapeutics; Cancer—Research Materials)

Process for Detecting Alzheimer's Disease Using Cultured Cells

KK Sanford-Miffin, R Parshad, JH Robbins (NCI)
Serial No. 08/611,330 filed 08 Mar 96 (CIP of 08/225,825, CIP of 07/957,315)

Licensing Contact: Leopold J. Luberecki, Jr., 301/496–7735 ext. 223.

A novel process has been developed for distinguishing between clinically normal individuals and those who have Alzheimer's disease (AD), a form of senile dementia that affects millions of Americans. This invention should aid considerably in the diagnosis of sporadic AD before signs and symptoms become fully apparent and will make it possible in familiar AD to determine the presence or absence of AD gene(s) years before the patient becomes symptomatic. Previous studies of AD revealed that cells cultured from patients with familial or sporadic AD were hypersensitive to the lethal effects of ionizing radiation; however, none of these assays provided large enough differences between normal and AD cells to be useful in reliably distinguishing an AD patient from normal. The present invention provides an improved assay that demonstrates very large differences between AD cells and normal cells because it is based on the cytogenic response of an individual's cultured cells to fluorescent light in the presence and absence of a DNA repair inhibitor during the post-exposure period. This greater difference makes it possible to distinguish a single AD cell line (i.e., a cell line from one AD patient) from lines from most, if not all, normal people. The test is conducted on either skin fibroblasts or peripheral blood lymphocytes. (portfolio: Central Nervous System—Diagnostics, in vitro, other)

Methods and Compositions for Monitoring DNA Binding Molecules in Living Cells

H Htun and G Hager (NCI)
OTT Reference No. E-021-96/0 filed 08 Dec 95 and OTT Reference No. E-021-96/1 (CIP); foreign rights are available

Licensing Contact: Stephen Finley, 301/496–7735, ext. 215.

This technology is directed to methods of detecting the binding of fluorescently labeled compounds to DNA by a direct, real time, visual detection and to the characterization/screening of ligands to ligand-dependent DNA-binding proteins. Using cell lines harboring multiple copies of a defined transcriptional regulatory unit, visualization system and assay have been developed to determine the effect of ligand in promoting binding of ligand-dependent DNA binding proteins to nuclear targets, including to a define transcriptional regulatory DNA sequence. Quantitative and qualitative analyses show that when this technology is applied to study the effect of ligand, such as antagonist RU486 and agonist dexamethasone, on the glucocorticoid receptor, agonist ligand induces a nuclear accumulation of the receptor in a dose-dependent manner that is strickingly different from an antagonist ligand. Furthermore, by taking advantage of a unique cell line designated 3134, which contains 200 copies of a promotor region each containing 4 copies of a specific DNA-binding sequence for the receptor in a tandem array thereby producing 1600 copies of the DNA binding region, the agonist-induced binding of the receptor to this array can be observed in living cells. This cell line and the related methods may prove to be an important aid in monitoring steriod administration to patients through the direct measurement of steroid activity from a blood sample. This method is also applicable for high throughput visual (quantitative and qualitative) screening of ligands to orphan receptors either agonist or antagonist, determining the effective dosage levels of agonist/antagonists on a real time basis, and to identify modifying chemical or biological agents that alter DNA-binding specificity in living cells. (portfolios:

Internal Medicine—Diagnostics, anti-inflammatory; Internal Medicine—Diagnostics, imaging agents; Internal Medicine—Therapeutics)

Dated: February 12, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–4369 Filed 2–21–97; 8:45am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Program Project Review Meeting.

Date: March 17–19, 1997.

Time: 7:30 pm—March 17, 5:00 pm—March 18, 8:00 am—March 19.

Place: Best Western, 4630 Lindell Boulevard, St. Louis, Missouri 63108.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611A, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7405, Telephone: 301/496–7978.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4478 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Review Committee meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee.

Date: March 27–28, 1997.

Time of Meeting: 8:30 a.m.–5:00 p.m.

Open Session: 8:30 a.m.–9:30 a.m.—March 27.

Agenda: Special reports related to committee activities.

Closed Session: 9:30 a.m.–5:00 p.m.—March 27, 8:30 a.m.–5:00 p.m.—March 28.

Place: National Institutes of Health, Building 31—Conference Room 8, Bethesda, MD 20892.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, 301–594–2048.

Purpose: To review institutional research training grant applications.

The meeting will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sing language interpretation or other reasonable accommodations, should inform the Contact Person listed above in advance of the meeting.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375. Minority Biomedical Research Support [MBRS])

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4479 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: E–CC Couplind: Signaling Between Calcium Channels.

Date: March 18, 1997.

Time: 8:00 a.m.–adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Melvin H. Gottlieb, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a research grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4480 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Ad Hoc Smell, Taste and Touch and Chemosensory Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Council.

Date: April 2, 1997.

Time: 1–4 pm.

Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892, (telephone conference call).

Contact Person: Mr. Baldwin Wong, Program Analyst, NIDCD/PPHRB, 31 Center Drive, MSC 2320, Room 3C–31, Bethesda, MD 20892–2320, (301) 496–7243.

Purpose: To discuss changes in the scientific field of smell, taste and touch and chemosensory disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and identify gaps and suggest new initiatives in preparation for the updating of the smell, taste and touch and chemosensory disorders section of the Research Plan.

Attendance by the public will be limited to the space available. A summary of the Subcommittee's meeting and a roster of members may be obtained from Mr. Wong, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wong in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research

Related to Deafness and Communication Disorders.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4481 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 20–21, 1997.

Time: 8:00 a.m.–5:00 p.m., March 20, 8:00 a.m.—adjourment, March 21.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda MD 20814.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate Program Project applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4482 Filed 2–22–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Initial Review Group (IRG) meetings.

Name of IRG: Maternal and Child Health Research Subcommittee.

Date: March 4–5, 1997.

Time: March 4—8:00 a.m.—5:00 p.m.; March 5—8:00 a.m.—adjournment.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Dr. Gopal Bhatnagar, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1696.

Name of IRG: Mental Retardation Research Subcommittee.

Date: March 7, 1997.

Time: 8:00 a.m.—adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Dr. Norman Chang, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20892, Telephone: 301–496–1484.

Name of IRG: Medical Rehabilitation Research Subcommittee.

Date: March 10, 1997.

Time: 8:00 a.m.—adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hills Road, Bethesda, Maryland 20814.

Contact Person: Anne Krey, 6100 Executive Boulevard, 6100 Building—Rm. 5E03, Rockville, Maryland 20852, Telephone: 301–496–1696.

Name of IRG: Population Research Subcommittee.

Date: March 27–28, 1997.

Place: Ramada Ind—Bethesda, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Time: March 27—8:00 a.m.—5:00 p.m.; March 28—8:00 a.m.—adjournment.

Contact Person: Dr. A.T. Gregoire, 6100 Executive Boulevard, 6100 Building—Rm. 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda To evaluate and review grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4484 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Services; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Mechanisms of Anesthetic Action on Signal Transduction.

Date: March 26, 1997.

Time: 8:00 a.m.–until conclusion.

Place: Omni Hotel, 235 W. Main Street, Charlottesville, Virginia 22902.

Contact Person: Irene B. Glowinski, Ph.D., Office of Scientific Review, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200, 301–594–2772 or 301–594–3663.

Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4485 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Health Service Research Subcommittee.

Date: March 4–5, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Treatment Research Subcommittee.

Date: March 4–6, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Treatment).

Date: March 5, 1997.
Time: 1:00 p.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS Behavioral Research Subcommittee.
Date: March 10–11, 1997.
Time: 8:30 a.m.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Aids Biomedical and Clinical Research Subcommittee.
Date: March 18–19, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Centers).
Date: March 18–19, 1997.
Time: 8:00 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (SBIRs).
Date: March 20–21, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (RFA DA–97–002—Neurobiological Effects of Drug Abuse Therapies).
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C.. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards: 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4486 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: March 10, 1997.
Time: 8:30 a.m.
Place: Ramada Hotel, Bethesda, Maryland.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Name of SEP: Clinical Sciences.
Date: March 10, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 11, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 11, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Biological and Physiological Sciences.
Date: March 11, 1997.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 6166, Telephone Conference.
Contact Person: Dr. Abubakar Shaik, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

Name of SEP: Behavioral and Neurosciences.
Date: March 11, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 5170, Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 12, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 12, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 13, 1997.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Chemistry and Related Sciences.
Date: March 16–18, 1997.
Time: 8:00 p.m.
Place: Medford Inn, Long Island, New York.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Multidisciplinary Sciences.
Date: March 17, 1997.
Time: 1:00 p.m.
Place: Radisson Barcelo Hotel, Washington, DC.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Behavioral and Neurosciences.
Date: March 17, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 5170 Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 18, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4190 Telephone Conference.
Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Biological and Physiological Sciences.
Date: March 19, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4144, Telephone Conference.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Biological and Physiological Sciences.
Date: March 19, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892, (301) 435–1017.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Rita Anand, Scientific Review Administrator, 6701 Rockledge Drive, Room 4188, Bethesda, Maryland 20892, (301) 435–1151.

Name of SEP: Biological and Physiological Sciences.
Date: April 1, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Chemistry and Related Sciences.
Date: April 3, 1997.
Time: 10:00 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

Name of SEP: Behavioral and Neurosciences.
Date: April 5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892, (301) 435–1243.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: March 18, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5112, Telephone Conference.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Clinical Sciences.
Date: April 1–2, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: February 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4483 Filed 2–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–06]

Notice of Native American Housing Assistance and Self-Determination Act of 1996 Implementation Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of implementation meetings for the Native American Housing Assistance and Self-Determination Act of 1996.

SUMMARY: This notice announces (1) preliminary meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996); and (2) on February 27, 1997, the commencement of the negotiated rulemaking process authorized by NAHASDA. This notice supersedes the notice of meetings published on February 19, 1997 and provides the new location for the meetings.

DATES: The meetings will be held on February 25, 26, 27, and 28, 1997. The meetings will begin at approximately 9:00 am and end at approximately 5:00 on each day.

ADDRESS: The meetings will be held at the Warwick International Hotel, 1776 Grant Street, Denver, CO 80203; telephone (303) 861–2000 or 1–800–525–2888; fax (303) 832–0320 (With the exception of the ''800'' telephone number, these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals) (with the exception of the ''800'' number, these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary of HUD has established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. HUD will hold a series of meetings on February 25, 26, 27, and 28, 1997 in Denver, Colorado to discuss the regulatory implementation of NAHASDA. The meetings to be held on these dates will be (1) preliminary meetings to develop the regulations necessary to carry out NAHASDA, and (2) on February 27, 1997, the commencement of the negotiated rulemaking process authorized by NAHASDA.

The agenda planned for the week includes: (1) The formation of workgroups charged with the drafting of regulatory language; (2) the development of a schedule for future Committee meetings; (3) the distribution of background materials; and (4) other agenda items which may be agreed upon by the Committee.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the same address.

The location and dates of future meetings will be published in the Federal Register. HUD will make every effort to publish such notice at least 15 calendar days prior to each meeting. In

this case, HUD has found it necessary to provide less than 15 days advance notice due to the difficulty of identifying appropriate meeting facilities on the dates that the negotiated rulemaking process could commence. Additionally, given the statutory deadline for the final rule that will result from this negotiated rulemaking process, there is a need to begin the negotiated rulemaking process as quickly as possible.

HUD anticipates that it will be able to provide 15 days notice for future Committee meetings.

Dated: February 19, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–4539 Filed 2–20–97; 10:31 am]

BILLING CODE 4210–33–P

[Docket No. FR–4170–N–05]

Native American Housing Block Grant Program—Notice of Transition Requirements; Extension of Deadline for Submission of Indian Housing Plans

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of transition requirements; Extension of deadline for the submission of Indian Housing Plans.

SUMMARY: On January 27, 1997 (62 FR 3972), HUD published a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996) that requires HUD to publish a notice establishing 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 (the 1937 Act) and other related provisions of law to the provision of assistance in accordance with NAHASDA.

In that notice, HUD provided that Indian Housing Plans must be submitted no later than June 1, 1997. This notice extends the Indian Housing Plan submission date to no later than November 3, 1997.

Other changes that may be made to the transition requirements set forth in the January 27, 1997 notice, as a result of public comment received on the notice by the February 26, 1997 public comment deadline, will be made by separate notice published in the Federal Register. This notice only extends the submission date for Indian Housing Plans.

DATES: *IHP submission date:* Indian Housing Plans must be submitted no later than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals). These are not toll-free numbers. Indian tribes or tribally designated housing entities with specific questions relating to the preparation of Indian Housing Plans as required by the January 27, 1997 notice may call their local Office of Native American Programs for assistance in resolving their questions. The telephone numbers and addresses for these offices appear in a table published in the January 27, 1997 notice (62 FR 3975).

SUPPLEMENTARY INFORMATION: On January 27, 1997 (62 FR 3972), HUD published a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996) that requires HUD to publish a notice establishing 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 (the 1937 Act) and other related provisions of law to the provision of assistance in accordance with NAHASDA. The January 27, 1997 publication also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement the program, and solicited comments on the transition requirements.

In the January 27, 1997 notice, HUD provided that Indian Housing Plans must be submitted no later than June 1, 1997. This notice extends the Indian Housing Plan (IHP) submission date to no later than November 3, 1997.

HUD is extending the plan submission date to November 3, 1997, to ensure that there is sufficient time for tribes to prepare their IHPs.

Other changes that may be made to the transition requirements set forth in the January 27, 1997 notice, as a result of public comment received on the notice by the public comment deadline of February 26, 1997, will be made by separate notice published in the Federal Register. This notice only extends the submission date for Indian Housing Plans.

Dated: February 18, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–4412 Filed 2–21–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591); Section 4(c)—5-Year Review and Modification to the Coastal Barrier Resources System as a Result of Natural Forces

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of modifications to 28 units of the Coastal Barrier Resources System.

SUMMARY: The Coastal Barrier Improvement Act requires the Secretary of the Interior to review the maps of the Coastal Barrier Resources System (System) at least once every 5 years and make any minor and technical modifications to the boundaries of System units that the Secretary determines are necessary to reflect changes occurring as a result of natural forces. This notice announces the findings of the review of the System.

DATES: Changes to the System become final on February 24, 1997.

ADDRESSES: Revised maps of System units affected by this review are available for purchase from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. Official maps can be viewed at Fish and Wildlife Service offices listed in the appendix.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Henne, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4 of the Coastal Barrier Resources Act of 1982, as amended by the Coastal Barrier Improvement Act, established the Coastal Barrier Resources System as referred to and adopted by Congress. Section 4(c) states the Secretary of the Interior shall conduct a review of the System at not less than 5-year intervals and make, in consultation with appropriate Federal, State, and local officials, any necessary minor and technical modifications to unit boundaries to reflect changes caused by natural forces. Secretarial Order 3093

delegated responsibility for Section 4 to the Fish and Wildlife Service on April 28, 1983.

The Service contracted with the National Aeronautics and Space Administration to photograph all units of the System in 1992 and 1993 using infra-red photography at a scale of 1:65,000. Photographs of units were enlarged to 1:12,000 and 1:24,000 and overlayed with mylar sheets depicting unit boundaries. The photographs were compared with the topographic maps depicting the units of the System, as approved by Congress in 1990, to determine if changes had occurred due to natural forces.

Upon completion of this review and consultation, as appropriate, 28 units of the System were found to have changed due to natural forces. These units were as follows:

Maine
ME–17—Small Point Beach
ME–18—Stover Point
Massachusetts
MA–03—Castle Neck
C01B–Brace Cove
MA–20P—Nauset Beach/Monomoy
MA–24—Naushon Island Complex
C28—South Beach
C31—Elizabeth Islands
Rhode Island
D02B—Prudence Island Complex
New York
NY–04P—Prospect Point
NY–50—Fresh Pond
F10—Napeague
New Jersey
NJ–09—Stone Harbor
Maryland
MD–03—Sound Shore
MD–37P—Flag Ponds
MD–38—Cove Point Marsh
Virginia
VA–09—Elliotts Creek
VA–23—Simpson Bend
VA–36—Presley Creek
North Carolina
L07—Lea Island Complex
L09—Masonboro Island
Florida
P16—Keewaydin Island
P17—Lovers Key Complex
FL–89—Peninsula Point
FL–99—Tom King
FL–101—Garcon Point
Alabama
Q01A—Pelican Island
U.S. Virgin Islands
VI–07—Great Pond

Copies of the official System maps reflecting the boundary modifications have been filed with the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, and the Senate Committee on Environment and Public Works. Copies of these maps have been distributed to the Chief Executive Officer (or representative) of each appropriate Federal, State, or local agency having jurisdiction over an area in which a modified unit is located. Copies of the maps are also available for inspection through the Service's Regional and Field Offices. The aerial photography of the units is available in certain Field Offices (see addresses in appendix).

Coastal Barrier Resources System Revised Maps

The Service has made the following revisions to System units, as required by Section 4(c) of Public Law 101–591:

Maine

ME–17—Small Point Beach. The unit has been expanded to include the mouth of Sprague River, which has migrated outside of the original unit boundary.

ME–18—Stover Point. The south boundary has been modified to include both sides of the entrance to the embayment, plus the associated aquatic habitat.

Massachusetts

MA–03—Castle Neck. The south boundary at the entrance to Essex Bay has been moved to incorporate the expanded barrier.

C01B—Brace Cove. The boundary has been expanded to include all of Brace Cove and the associated aquatic habitat.

MA–20P—Nauset Beach/Monomoy. The south end of Nauset Beach has eroded away, with part of the barrier retreating onto Morris Island. The boundary has been moved onto Morris Island to incorporate this change.

MA–24—Naushon Island Complex. A narrow barrier now connects the West Beach and Crescent Beach segments of this unit. Wetlands have developed between the barrier and Westend Pond. The unit has been expanded to include the connecting barrier, associated aquatic habitat, and Westend Pond.

C28—South Beach. The dune line has moved inland and out of the unit on most of the peninsulas connecting the bays in the unit. The unit has been expanded to include all of the dune formations.

C31—Elizabeth Islands. Narrow barriers have developed outside of two segments of the unit on Pasque Island. The boundaries have been moved to include these barriers and associated aquatic habitat.

Rhode Island

D02B—Prudence Island Complex. A narrow barrier now connects the two segments on Coggeshall Cove, Prudence Island. The boundary has been expanded to connect the two segments and include the associated aquatic habitat.

New York

NY–04P—Prospect Point. The barrier has expanded north to Prospect Point. This expansion plus the associated aquatic habitat have been added to the unit.

NY–50—Fresh Pond. The mouth of the south pond has migrated outside of the unit. The unit has been expanded to include this area.

F10—Napeague. The head of the spit at the mouth of Napeague Harbor is outside of the unit. The unit has been expanded to include the entire spit.

New Jersey

NJ–09—Stone Harbor. A substantial shoal has developed at the mouth of Hereford Inlet, much of which is outside the unit. The unit has been expanded to include all of this sand-sharing system.

Maryland

MD–03—Sound Shore. The barrier has expanded across a creek to the south of the unit. The unit has been expanded to include all of the barrier plus the associated aquatic habitat.

MD–37P—Flag Ponds. The barrier has expanded to the south, outside of the unit. The unit has been expanded to include all of the barrier plus the associated aquatic habitat.

MD–38—Cove Point Marsh. The barrier at the north end of the unit has receded behind the boundary and no longer has associated aquatic habitat. The unit boundary has been adjusted to exclude this open-water area.

Virginia

VA–09—Elliotts Creek. The barrier has expanded to the south. The unit has been modified to include all of the barrier and the associated aquatic habitat.

VA–23—Simpson Bend. France and Little Back Creeks are now connected by a barrier. The unit has been expanded to include all of the barrier and the associated aquatic habitat.

VA–36—Presley Creek. The mouth of the creek has migrated outside of the unit. The boundary has been modified to include the mouth of the creek.

North Carolina

L07—Lea Island Complex. The spit on the south side of Rich Inlet is prograding and is no longer completely within the unit. The unit has been expanded to include the entire spit and associated aquatic habitat.

L09—Masonboro Island. The spit on the north side of Masonboro Inlet has prograded outside of the unit. The unit boundary has been adjusted to include all of the undeveloped portion of the spit and associated aquatic habitat.

Florida

P16—Keewaydin Island. A substantial shoal has developed outside of the unit at the mouth of Big Marco Pass. The boundary has been adjusted to include this sand-sharing area.

P17—Lovers Key Complex. A barrier is developing outside of the unit on the north side of Big Carlos Pass. The unit boundary has been adjusted to include this area.

FL–89—Peninsula Point. The peninsula is prograding to the north across the mouth of Alligator Harbor. The unit has been expanded to include all of the peninsula and the associated aquatic habitat.

FL–99—Tom King. The spit has accreted to the north of the unit. The unit boundary has been adjusted to include all of the spit and associated aquatic habitat.

Fl–101—Garcon Point. The secondary barrier has expanded northward on the East Bay side of the unit. The unit has been expanded to include the barrier and the associated aquatic habitat.

Alabama

Q01A—Pelican Island. The island is prograding across Pelican Passage toward Dauphin Island. The boundary has been adjusted to include all of Pelican Island, the secondary barrier developing on Dauphin Island behind Pelican Island, and all associated aquatic habitat.

U.S. Virgin Islands

VI–07—Great Pond. The barrier has expanded to the south of Great Pond. The unit has been expanded to include the barrier and associated aquatic habitat.

APPENDIX—LOCATION OF MAPS AVAILABLE FOR REVIEW

U.S. Fish and Wildlife Service	States of jurisdiction
Regional Offices	
Regional Director, Region 4, U.S. Fish and Wildlife Service, 75 Spring St. SW, Atlanta, Georgia 30303, (404) 331–3580.	North Carolina, Florida, Alabama, Virgin Islands.
Regional Director, Region 5, U.S Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8200.	Maine, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, NH 03301–4986, (603) 225–1411	Maine, Massachusetts, Rhode Island.
Field Supervisor, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045, (607) 753–9334	New York.
Field Supervisor, U.S. Fish and Wildlife Service, 927 N. Main St., Bldg. D–1, Pleasantville, NJ, 08232, (609) 646–0620.	New Jersey.
Field Supervisor, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Dr., Annapolis, MD, 21401, (410) 573–4500.	Maryland.
Field Supervisor, U.S. Fish and Wildlife Service, Mid County Center, U.S. Route 17, White Marsh, VA 23183, (804) 693–6694.	Virginia.
Field Supervisor, U.S. Fish and Wildlife Service, 551–F Pylon Dr., Raleigh, NC 27636–3726, (919) 856–4520	North Carolina.
Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, Vero Beach, FL 32961, (407) 562–3909	Florida: Lee & Collier Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Ave., Panama City, FL 32405–3721, (904) 769–0552 ..	Florida: Franklin & Santa Rosa Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 2001 Highway 98, Daphne, AL 36526, (334) 441–5181	Alabama.
Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, PR 00622, (809) 851–7297	U.S. Virgin Islands.

Dated: January 28, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–4462 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain recovery-related activities with endangered species. This notice is provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 821962

Applicant: Mark E. Angelos, Torrance, California

The applicant requests a permit to take (harass by survey, capture and release, collect voucher specimens) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) in Los Angeles, Riverside, and San Diego Counties, California in conjunction with presence or absence surveys and aquatic insect research for the purpose of enhancing its survival.

Permit No. 821401

Applicant: Brian Daniels, Long Beach, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout its range in California, Nevada, Utah, Arizona, New Mexico, and Colorado in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 821404

Applicant: Douglas R. Willick, Anaheim, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus) throughout its range in California, Nevada, Utah, Arizona, New Mexico, and Colorado in conjunction with presence or absence surveys for the purpose of enhancing its survival.*

Permit No. 795934

Applicant: Jones and Stokes, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey;

capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 795938

Applicant: EIP Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 782274

Applicant: Michael Brandman Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 787037

Applicant: Branchiopod Research Group, San Diego, California.

The applicant requests an amendment to her permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797665

Applicant: Regional Environmental Consultants, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 812792

Applicant: Julie Vanderwier, Encinitas, California.

The applicant requests an amendment to her permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 796288

Applicant: California Department of Transportation, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797999

Applicant: Merkel & Associates, Inc., San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797930

Applicant: Brent Paul Helm, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 785148

Applicant: Ogden Environmental and Energy Services, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 778195

Applicant: Sweetwater Environmental Biologists, Inc., San Diego, California.

The applicant requests a permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 797234

Applicant: LSA Associates, Inc., Point Richmond, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The applicant requests amendment of his permit to allow take of the following species: Mount Hermon June beetle (*Polyphylla barbata*), quino checkerspot butterfly (*Euphydryas editha quino*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and Laguna Mountains skipper (*Pyrgus ruralis lagunae*). Authorization to remove and reduce to possession specimens of the following plant species is also requested: *Astragalus brauntonii* (Braunton's milk-vetch), *Pentachaeta lyonii* (Lyon's pentachaeta), and *Pseudobahia bahiifolia* (Hartweg's golden sunburst). Take and collection activities will be conducted throughout the range of species in conjunction with recovery efforts in order to enhance their propagation and survival.

DATES: Written comments on these permit applications must be received on or before March 26, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: 503–231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: 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 within 30 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 13, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–4453 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the ''Content Standards for Digital Orthoimagery'', and the ''Content Standards for Digital Elevation Data''

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft ''Content Standards for Digital Orthiomagery'', and the draft ''Content Standards for Digital Elevation Data'' to be considered for adoption as FGDC standards. If adopted, the standards must be followed by all Federal agencies for digital orthoimage and elevation 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, applicability, 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 July 25, 1997.

CONTACT AND ADDRESSES: Requests for written copies of the ''Content Standards for Digital Orthoimagery'' and and the ''Content Standards for Digital Elevation Data'' should be addressed to ''Content Standards for Digital Orthoimagery Review'', and/or ''Content Standards for Digital Elevation Data Review'', the FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 22092; telephone 703–648–5514; facsimile 703–648–5755; or Internet ''gdc@usgs.gov.'' The standards may be downloaded from the following Internet address:

ftp://www.fgdc.gov/pub/standards/DigOrtho/.

ftp://www.fgdc.gov/pub/standards/DigElev/.

Reviewer comments may be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format. Comments may also be sent via Internet mail. Send comments on the ''Content Standards for Digital Orthoimagery'' to: gdc-doi@www.fgdc.gov. Send comments on the ''Content Standards for Digital Elevation Data Review'' to: gdc-ded@www.fgdc.gov

SUPPLEMENTARY INFORMATION: The objective of these standards is to define the digital orthoimage and elevation themes of the digital geospatial data framework as envisioned by the FGDC. It is the intent of these standards to set a common baseline that will ensure the widest utility of digital orthoimagery and elevation data for the user and producer communities through enhanced data sharing and the reduction of redundant data production. The framework will provide a base on which to collect, register, and integrate digital geospatial information accurately. Digital orthoimagery and elevation data are both parts of this basic set of data described as framework. These standards are intended to facilitate the interchange and use of digital orthoimage and elevation data under the framework concept. These standards describe quality control, testing, processing, accuracy, reporting, and applications considerations for digital orthoimagery and elevation data.

Dated: February 12, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–4378 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM–060–07–1110–(00) (0002)]

Intent of Seasonal Road Closure; Caprock Wildlife Habitat Area, Mescalero Sands, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent of Seasonal Road Closure within the Caprock Wildlife Habitat Area at Mescalero Sands.

SUMMARY: Pursuant to 43 CFR Part 8364, the Bureau of Land Management (BLM) will annually close a BLM-maintained road designated as Mathers TT329 to public access at State Highway 380 from March 1 through June 1. This period may be extended earlier or later, or with additional closure periods imposed during the year, for Lesser prairie chicken research needs.

DATE: This action is effective March 1, 1997, and will remain in effect until the cessation of Lesser prairie chicken studies projected through the year 2001.

ADDRESSES: Maps showing the location of the access point from State Highway 380 that will be closed will be available at the BLM District Office, 2909 West 2nd Street, Roswell, New Mexico.

FOR FURTHER INFORMATION CONTACT: T.R. Kreager, Area Manager, Roswell Resource Area, 2909 West 2nd Street, Roswell, New Mexico 88201–2019, Telephone (505) 627–0272.

SUPPLEMENTARY INFORMATION: Approximately six miles of caliche-surfaced road maintained by the BLM will be seasonally closed to the general public by the physical restriction of access from State Highway 380 at the following location:

New Mexico Principal Meridian

Caprock Wildlife Habitat Area, Mescalero Sands

T. 10 S., R. 31 E., Section 30: SWNE

The access point is at State Highway 380, across from the Waldrop Rest Area (Mile Marker 196), approximately forty-two miles east of Roswell, New Mexico. The area restricted to public access is north of the highway.

This temporary road and are closure will be in effect annually from March 1, 1997, until the cessation of Lesser prairie chicken studies in the year 2001. The purpose of the closure is to restrict currently open public access into important Lesser prairie chicken habitat targeted for long-term ecological studies. Specifically, to prevent disturbance to prairie chicken booming grounds (leks) and trapping efforts at the grounds for

radio-telemetry work conducted to determine movement and habitat use. Unrestricted access to the area may compromise or jeopardize prairie chicken research efforts in this portion of the Caprock Wildlife Habitat Area.

Vehicle access for administrative purposes, and those activities authorized by the BLM, will continue to be allowed. Only the road and general area serviced by the road is affected by this action.

Dated: February 12, 1997.

Edwin L. Roberson,

Acting District Manager.

[FR Doc. 97–4392 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–VA–M

[CA–060–07–1990–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Thursday, March 20 from 8:00 a.m. to 4:30 p.m. and Friday, March 21, 1996, from 7:30 a.m. to 4:30 p.m. The Thursday session will be held in the Needles City hall Council Chambers located at 111 Baily Avenue, Needles, California.

Council members will participate in a field tour on Friday. The tour will assemble at the Travelers Inn parking lot at 7:15 a.m., and depart at 7:30 a.m. The hotel is located at 1195 3rd Street. The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM at (909) 697–5215 for more information.

The Thursday meeting will begin at 8 a.m. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714; (909) 697–5215.

Dated: February 14, 1997.

Jo Simpson,

Assistant District Manager, External Affairs.

[FR Doc. 97–4454 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–40–M

(CO–935–1430–01; COC–28582, COC–0123470)

Public Land Order No. 7244; Partial Revocation of Secretarial Order Dated March 25, 1910, Which Established Power Site Reserve No. 133; Opening of Land Under Section 24 of the Federal Power Act in the Secretarial Order Dated July 12, 1957, Which Established Power Project No. 2204; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 600 acres of public lands withdrawn for Powersite Reserve No. 133. The waterpower potential in these lands has been fully developed. These lands have been open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining. These provisions are no longer required. This order also opens 359.57 acres of lands withdrawn for Power Project No. 2204, subject to Section 24 of the Federal Power Act, to disposal to the Project licensee. The revocation and opening actions will allow for consummation of a pending land exchange with the Denver Water Board. All of the lands continue to be segregated by an exchange application.

EFFECTIVE DATE: March 26, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

1. 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:

The Secretarial Order dated March 25, 1910, which established Power Site Reserve No. 133, is hereby revoked insofar as it affects the following described public lands:

Sixth Principal Meridian

T. 1 N., R. 79 W.,
Sec. 14, SE¼SE¼;
Sec. 23, NE¼NE¼, E½W½NE¼, SW¼, NE¼SE¼, and W½SE¼;
Sec. 25, NW¼NE¼;
Sec. 26, NE¼.

The areas described aggregate 600 acres in Grand County.

At 9:00 a.m. on March 26, 1997, the lands described above are relieved of the segregative effects of Power Site Reserve No. 133. The lands remain segregated by an exchange application.

2. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–546, it is ordered as follows:

At 9:00 a.m. on March 26, 1997, the following described public lands withdrawn by Secretarial Order dated July 12, 1957, which established Power Project No. 2204, will be opened to disposal by land exchange to the Denver Water Board only, subject to the provisions of Section 24 of the Federal Power Act, valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 1 N., R. 78 W.,
Sec. 19, lot 2 lying West of County Road 3.
T. 1 N., R. 79 W.,
Sec. 27, E½NE¼, NW¼SE¼, and SE¼SW¼ lying East of County Road 33;
Sec. 34, NW¼NE¼ and NE¼NW¼ lying East of County Road 33;
Sec. 35, W½NW¼ and NE¼NW¼.

The areas described aggregate approximately 359.57 acres in Grand County.

3. The State of Colorado, with respect to the lands described in paragraphs 1 and 2, has waived its preference right to file for the public highway rights-of-way or material sites, as provided by the Act of June 10, 1920, Section 24 as amended, 16 U.S.C. 818 (1988).

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–4391 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–JB–P

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T.50 N., R. 71 W., accepted December 13, 1996
T.47 N., R. 73 W., accepted December 13, 1996
T.48 N., R. 73 W., accepted December 13, 1996
T.28 N., R. 71 W., accepted February 12, 1997
T.35 N., R. 113 W., accepted February 12, 1997

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: February 14, 1997.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 97–4464 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Meeting of Delta Region Preservation Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at the following place and time.

DATES: Wednesday, March 12, 1997, at 7 p.m.

ADDRESSES: The meeting will be held at the German-American Cultural Center located at 519 Huey P. Long Avenue, Gretna, Louisiana 70053.

FOR FURTHER INFORMATION CONTACT: Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130–1142, telephone (504) 589–3882, extension 108.

SUPPLEMENTARY INFORMATION: The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the region.

The matters to be discussed at this meeting include:

—Old Business
—New Business
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: February 7, 1997.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 97–4473 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–M

Keweenaw National Historical Park Advisory Commission; Notice of Meeting

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES: Tuesday, February 25, 1997; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

This meeting is open to the public. We will begin with the Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913–0471, or telephone 906–337–3168.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

Dated: February 12, 1997.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 97–4471 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–P

Denali National Park and Preserve, AK; Notice of Availability

SUMMARY: Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, U.S.C. 1901 et seg., and according to the provisions of Section 9.17(a) of Title 36 of the Code of Federal Regulations Part 9, Subpart A, Steve Hicks has filed, on behalf of claim owners Arnold Howard and the estates of Arley Taylor, a plan of operations in support of proposed appraisal sampling operations on lands embracing the Caribou Howtay Association Claim #1 in Denali National Park and Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following location: Denali National Park and Preserve, Park Headquarters, P.O. Box 9, Denali Park, Alaska 99755.

FOR FURTHER INFORMATION CONTACT: Phil Brease, Geologist, Denali National Park and Preserve (907) 683–2294, at the address above.

Dated: February 3, 1997.

Ken Kehrer,

Chief Ranger, Denali National Park and Preserve.

[FR Doc. 97–4472 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–M

Notice of Intent to Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Heard Museum, Phoenix, AZ, which meet the definition of ''sacred objects'' under Section 2 of the Act.

The cultural items are two painted rawhide rattles with wood and rawhide handles. Prior to 1954, these rattles were purchased by the Heard Museum and are identified as Oglala from South Dakota.

Consultation evidence presented by representatives of the Cheyenne River Sioux Tribe, Devil's Lake Sioux Tribe, Standing Rock Sioux Tribe, and Three Affiliated Tribes indicate these rattles are part of a *Yuwipi* ceremony, and are specific ceremonial objects needed by traditional religious leaders for the practice of Native American religion by present day adherents.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these items and the Oglala Sioux Tribe.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Devil's Lake Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe of Nebraska, and Standing Rock Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista Rd., Phoenix, AZ 85004–1480, telephone (602) 252–8840 before March 26, 1997. Repatriation of these objects to the Cheyenne River Sioux Tribe on behalf of the Oglala Sioux Tribe may begin after that date if no additional claimants come forward.

Dated: February 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 97–4468 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Coos County, OR, in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Coos County, OR, in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum professional staff in consultation with representatives of the Coquille Indian Tribe.

In 1969, human remains representing one individual were recovered from site 35CS3 one the north bank near the mouth of the Coquille River, Coos County, OR, by Mrs. Lee Hall. Mrs. Hall donated the human remains to the Los Angeles County Museum in 1970. No known individuals were identified. No associated funerary objects are present.

Site 35CS3 has been identified as a Lower Coquille (Miluk) village site occupied into the historic period based on manner of internment, oral history, linguistic distribution, and geographic location.. Accession information with this individual states the remains were found eroding from the riverbank near the site of an earlier University of Oregon excavation of the village. Consultation evidence presented by representatives of the Coquille Indian Tribe indicates this is a known village site and traditional cemetery area.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Coquille Indian Tribe.

This notice has been sent to officials of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Siletz Reservation, and the Coquille Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Margaret Ann Hardin, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 744–3382 before March 26, 1997. Repatriation of the human remains to the Coquille Indian Tribe may begin after that date if no additional claimants come forward.

Dated: February 13, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 97–4470 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Unassociated Funerary Objects from Emmet County, MI, in the Possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and unassociated funerary objects in the possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI.

A detailed assessment of the human remains was made by Museum of Anthropology professional staff in consultation with representatives of the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians.

In 1924, human remains representing one individual were sold to the Museum of Anthropology, University of Michigan by Rev. L.P. Rowlands of Detroit, MI. Accession and other collection information indicates this individual was recovered during the late nineteenth century from the Lake Michigan shore area in Emmet County, MI between the localities of Cross Village and Seven Mile Point. No known individual was identified. No associated funerary objects are present.

The 510 unassociated funerary objects include silver ornaments, glass beads, brass and copper kettles, an iron hoe, trap fragments, a tomahawk pipe, and textile fragments. In 1924, these items were sold to the Museum of Anthropology, University of Michigan by Rev. L.P. Rowlands of Detroit, MI. Accession and other collection information indicates these items came from graves in the areas of Middle

Village, Goodhart, and Cross Village, all located in Emmet County, MI.

Morphological evidence indicates this individual is Native American, based on the brachialcephalic formation of the occipital region of the skull. The areas of Cross Village, Gathered, and Middle Village are historic Odawa settlements, and the types of unassociated funerary objects are consistent with Odawa burials of the late seventeenth and eighteenth centuries. Consultation evidence presented by the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians supports the Odawa affiliation for these sites.

Based on the above mentioned information, officials of the Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), these 510 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Little Traverse Bay Band of Odawa Indians.

This notice has been sent to officials of the Grand Traverse Bay Band of Chippewa and Ottawa Indians and the Little Traverse Bay Band of Odawa Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Kennedy, Collections Manager, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48901; telephone: (313) 764–0485 before March 26, 1997. Repatriation of the human remains and associated funerary objects to the Little Traverse Bay Band of Odawa Indians may begin after that date if no additional claimants come forward.

Dated: February 18, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–4469 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: a review of the Phase II schedule; an overview of the storage and conveyance component; an overview of the ecosystem restoration component; an update on restoration coordination activities; an update on activities resulting from the recent flooding; and an update of progress on the water use efficiency component. The BDAC meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 am to 5:00 pm on Wednesday, March 12, 1997.

ADDRESSES: The Bay-Delta Advisory Council meeting will meet at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR FURTHER INFORMATION: For the BDAC meeting, contact Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED the Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 18, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–4451 Filed 2–21–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: March 12, 1997 (9:00 a.m. to 5:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purpose of the meeting is to discuss an ACVFA Study on the State of the USAID/PVO Partnership.

The meeting is free and open to the public. However, notification by noon, March 11, 1997, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: January 29, 1997.

Adele Liskov,

Acting Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 97–4380 Filed 2–21–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

State of Oregon, et al. v. Jeff Mulkey, et al., No. 97–234MA District of Oregon, Filed February 11, 1997

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Oregon in the above-captioned case.

On February 11, 1997 the United States jointly filed with the states of Oregon, California and Washington a complaint to prevent and restrain the defendants from violating Section 1 of the Sherman Act. The Complaint alleges that in late 1995 and early 1996 the defendant commercial crab fishermen were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the price at which they would sell their catch to purchasers at a minimum of $1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. As a result of the conspiracy, the vast majority of west coast commercial crab fishermen did not fish for crab during December 1995.

The proposed Final Judgment enjoins the defendants from participating in any discussion, communication or agreement, except as members of a fishermen's marketing association formed pursuant to the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or similar state statutes, with other fishermen, regarding the price or sales terms to be negotiated with purchasers, or refraining from fishing while commercial fishermen are negotiating price with purchasers. The defendants are also enjoined from any interference with any other commercial fisherman's business through threats or other means of intimidation.

Public comment is invited within the statutory 60-day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, Box 36046, 460 Golden Gate Avenue, San Francisco, California 94102 (telephone: (415) 436–6660).

Rebecca P. Dick,

Deputy Director of Operations.

Hardy Myers,
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB #: 83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.,* Attorney General Hardy Myers, State of Washington, *ex rel.,* Attorney General Christine O. Gregoire, State of California, *ex rel.,* Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Stipulation—Judge Malcom Marsh.

Stipulation

It is stipulated by and between the undersigned parties, and by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached as Exhibit A may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provided by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The parties further consent that, pending entry of the Consent Decree, defendants shall be subject to and abide by the terms of the injunction set forth in the Consent Decree.

(3) The plaintiffs or any of them may withdraw their consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(4) In the event one or more plaintiffs withdraw their consent hereto, this stipulation shall be of no effect and shall not be binding upon the withdrawing plaintiff(s) in this or any other proceeding, and the making of this stipulation shall not in any manner prejudice any consenting party to any subsequent proceedings.

Respectfully submitted,

Dated this 6th day of February, 1997.

Hardy Myers,

Attorney General of Oregon.

Andrew E. Aubertine #83013,

Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732.

Dated this _____ day of January, 1997.

Christine O. Gregoire,

Attorney General of Washington.

Marta Lowy #14430,

Assistant Attorney General.

Brian Dew #18877,

Assistant Attorney General, Office of the Washington Attorney General, 900 4th Avenue, Suite 2000, Seattle, WA 98164, (206) 464–6433.

Dated this 14th day of January, 1997.

Daniel Lungren,

Attorney General of California.

Lindsay Bower #69577,

Assistant Attorney General, California Department of Justice, 50 Fremont Street, Suite 300, San Francisco, CA 94105–2239, (415) 356–6377.

Dated this _____ day of December, 1996.

United States of America Department of Justice, Antitrust Division

Richard Cohen WA#3671/CA79601,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 436–6695.

Dated this _____ day of December, 1996.

Thomas Triplett #65125,

Schwabe, Williamson, et al. 1600–1800 Pacwest Center, 1211 SW 5th Avenue, Portland, OR 97204, (503) 796–2901.

Counsel for Defendants Jeff Mulkey and Allen Gann

Dated this 30th day of December, 1996.

Michael Treman #063039 Cal.,

Attorney at Law, 1428 Chapala Street, Santa Barbara, CA 93101, (805) 962–6544.

Counsel for Defendant Thomas Timmer

Dated this _____ day of December, 1996.

Frank H. Hilton #66064,

Dunn, Carney, Allen, Higgins and Tongue 851 SW 6th Avenue, #1500, Pacific First Center, Portland, OR 97204, (503) 224–6440

Counsel for Defendants Brad Pettinger, Todd Whaley, and Joseph Speir

Dated this _____ day of December, 1996.

Kathleen P. Eymann #79220,

Attorney at Law, 14303 SE Amillia Court, Portland, OR 97267, (503) 654–6797.

Counsel for Defendants Jerry Hampel and Richard Sheldon

Dated this _____ day of December, 1996.

Harold A. Snow #68156,

McCallister & Snow, 801 Commercial, P.O. Box 508, Astoria, OR 97103, (503) 325–2511.

Counsel for Defendant Dennis Sturgell

Dated this _____ day of December, 1996.

Russell Smotherman,

Pro Se, 310 SW Cedar, Warrenton, OR 97146.

Hardy Myers,
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB # 83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General, Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, and United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Consent Decree—Judge Malcom Marsh.

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 and that this Consent Decree shall be a consent judgment as the term is used in 15 U.S.C. § 16(a).

Whereas: Plaintiffs, State of Oregon, State of Washington, State of California, and the United States Department of Justice through their respective attorneys, filed their complaint on February 11, 1997, alleging a violation of the Sherman Act, 15 U.S.C. § 1 and counterpart state statutes, Oregon Revised Statutes 646.725; Revised Code of Washington § 19.86.030, and California Professional & Business Code §§ 16720–16770;

Whereas: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman deny any liability with respect to all matters which are the subject of the complaint;

Whereas: There has been no determination by the Court that a violation of law occurred;

Whereas: The plaintiffs and defendants desire to resolve their dispute without adjudication of any issue of law or fact; and

Whereas: The Consent Decree shall not be evidence against nor an admission by any party with respect to any issue of law or fact;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon the consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complaint pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720–16770.

II. Definitions

As used in this Consent Decree:

A. ''Association'' means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the State of California, Cal. Corp. Code § 130.26, the State of Washington, RCW § 24.36, and/or the State or Oregon.

B. ''Commercial Seafood Fishermen'' means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. ''Ex-vessel price'' means the price paid by purchasers to fishermen for seafood products.

D. ''Person'' means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

E. ''Purchasers'' mean commercial seafood processors, commercial seafood canneries, retail stores and/or restaurants.

F. ''Seafood'' and ''Seafood Products'' mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

III. Applicability

The provisions of this Consent Decree shall apply to plaintiffs and defendants and to all of defendants' managers, agents, employees, affiliates, and to those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise.

IV. Injunction

A. Defendants are enjoined from forming or participating in, or continuing to participate in any agreement, plan, scheme, arrangement or undertaking, with any other commercial seafood fisherman, the purpose or effect of which is:

1. To set, fix, or stabilize the ex-vessel price of seafood or any price terms or conditions for the sale of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law;

2. To reduce, limit or eliminate the supply of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law; and

3. To impede, obstruct, or prevent any person from processing, purchasing or selling or offering to purchase or sell seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law.

B. Defendants are also enjoined from compelling any fisherman or other person to become a member of, or to participate in the activities of, any association through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of physical force or reprisal against persons or property.

C. This Consent Decree shall not be interpreted to limit or constrict any rights to form or participate as a member in activities of a fishermen's marketing association granted to defendants by the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or other similar state statutes. Oregon law shall be interpreted to permit defendants to engage in

fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption than what is provided under 15 U.S.C. § 521.

V. Payment to States

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars ($90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares shall be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions:

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect any copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for violation of this Consent Decree, based upon affidavits stating factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars ($15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigative authority and, if applicable, their grand jury authority.

IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respect is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this _____ day of _____, 1997.

_____

United States District Court Judge

Presented by:

Andrew E. Aubertine,

Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732, OSB# 83013.

Liaison Counsel for Plaintiffs

Hardy Myers
Attorney General
Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon 97310, (503) 378–4732, OSB #83013.

Liaison counsel for all plaintiffs identified on attached signature pages.

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.*, Attorney General Hardy Myers, State of Washington, *ex rel.*, Attorney General Christine O. Gregoire, State of California, *ex rel.*, Attorney General Daniel Lungren, and United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman, Defendants. Civil Action, No. 97–234MA, Consent Decree—Judge Malcom Marsh.

Plaintiffs, through their respective attorneys, and defendants, through their respective attorneys or appearing pro se, have stipulated to entry of this Consent Decree in accordance with the terms of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 and that this Consent decree shall be a consent judgment as the term is used in 15 U.S.C. § 16(a).

Whereas: Plaintiffs, State of Oregon, State of Washington, State of California, and the United States Department of Justice through their respective attorneys, filed their complaint on February 11, 1997, alleging a violation of the Sherman Act, 15 U.S.C. § 1 and counterpart state statutes, Oregon Revised Statues 646.725; Revised Code of Washington § 19.86.030, and California Professional & Business Code §§ 16720–16770;

Whereas: Defendants Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann and Russell Smotherman deny any liability with respect to all matters which are the subject of the complaint;

Whereas: There has been no determination by the Court that a violation of law occurred;

Whereas: The plaintiffs and defendants desire to resolve their dispute without adjudication of any issue of law or fact; and

Whereas: The Consent Decree shall not be evidence against nor an admission by any party with respect to any issue of law or fact;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon the consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter herein and each of the parties consenting hereto. This Court has jurisdiction over Counts I through VIII of the Complain pursuant to 15 U.S.C. § 4, 15 U.S.C. § 26, and 28 U.S.C. § 1367(a). The Complaint states claims upon which relief may be granted against defendants under 15 U.S.C. § 1 and related pendent state antitrust claims under ORS 646.725, 646.760 and 646.770; RCW § 19.86.030; and Cal Prof & Bus. Code §§ 16720–16770.

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B. ''Commercial Seafood Fishermen'' means fishermen who fish for and catch seafood products and sell the seafood products to purchasers.

C. ''Ex-vessel price'' means the price paid by purchasers to fishermen for seafood products.

D. ''Person'' means any individual, sole proprietorship, partnership, firm, corporation or any other legal or business entity.

E. ''Purchasers'' mean commercial seafood processors, commercial seafood canneries, retail stores and/or restaurants.

F. ''Seafood'' and ''Seafood Products'' mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

III. Applicability

The provisions of this Consent Decree shall apply to plaintiffs and defendants and to all of defendants' managers, agents, employees, affiliates, and to those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise.

IV. Injunction

A. Defendants are enjoined from forming or participating in, or continuing to participating in any agreement, plan, scheme, arrangement or undertaking, with any other commercial seafood fisherman, the purpose or effect of which is:

1. To set, fix or stabilize the ex-vessel price of seafood or any price terms or conditions for the sale of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law;

2. To reduce, limit or eliminate the supply of seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use or threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law; and

3. To impede, obstruct, or prevent any person from processing, purchasing or selling or offering to purchase or sell seafood, directly or indirectly, either (i) through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of use of physical force or reprisal against persons or property or (ii) where antitrust immunity is not provided under federal or state law.

B. Defendants are also enjoined from compelling any fisherman or other person to become a member of, or to participate in the activities of, any association through coercion or intimidation, or threats of coercion or intimidation, including, but not limited to, the use of threat of physical force or reprisal against persons or property.

C. This Consent Decree shall not be interpreted to limit or constrict any rights to form or participate as a member in activities of a fishermen's marketing association granted to defendants by the Fishermen's Collective Marketing Act (15 U.S.C. § 521) or other similar state statutes. Oregon law shall be interpreted to permit defendants to engage in fishermen marketing association activities which are immune or exempt from antitrust liability under 15 U.S.C. § 521, unless and until the Oregon legislature amends any existing law or passes any new law that provides a different standard of immunity or exemption that what is provided under 15 U.S.C. § 521.

V. Payment to States

A. In settlement of all of plaintiffs' claims set forth in the complaint, and pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal Prof. & Bus. Code 16750, defendants agree to pay to the Oregon Department of Justice the total sum of Ninety Thousand Eight Hundred Seventy Four dollars ($90,874.00) in this matter for reimbursement of attorneys fees and investigative costs incurred herein.

B. The plaintiffs' apportioned shares of defendants' payments and the use of such shares be determined exclusively by the plaintiffs. Oregon's share of said payments shall be deposited into the Oregon Department of Justice Consumer Protection and Education Revolving Account and shall be used as provided by Oregon law.

C. Payments shall be made by certified check and made payable to the Oregon Department of Justice in accordance with the schedules set forth in the Settlement Agreement between the parties to this Consent Decree.

VI. Securing Compliance With Consent Decree

For the purpose of securing compliance with this Consent Decree defendants shall fully and completely cooperate in any future investigation for violations of this Consent Decree or any matters related to this Decree in accordance with the following conditions.

A. Any information provided to plaintiffs under this Consent Decree shall be kept confidential by plaintiffs and shall not be disclosed to third parties except as necessary to enforce the Consent Decree, as otherwise previously agreed, and/or as permitted or required under applicable state or federal law.

B. The defendants shall have the right to be represented by counsel in any process permitted by this Consent Decree section, including those described in Paragraph C.

C. Subject to any legally recognized privilege, the defendants agree that duly authorized representatives of plaintiffs shall, on written request and on reasonable notice to Defendant, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or control of such defendant relating to any matters contained in this Consent Decree; and

2. To interview defendant or any employee or agent of defendants regarding any matters contained in this Consent Decree, under oath if requested, subject to reasonable convenience of the defendant and without restraint or interference from defendant.

D. Subject to any legally recognized privilege, the defendants further agree that upon written request from duly authorized representatives of the plaintiffs to a defendant, defendant shall submit written reports, under oath if requested, with respect to any of the matters contained in the Consent Decree.

VII. Violations of Consent Decree

A. In the event that one or more of the plaintiffs believe that one or more of the Defendants have violated any provisions of this Consent Decree, plaintiffs, either jointly or individually, may move the Court for an Order for Show Cause for violation of this Consent Decree, based upon affidavits starting factual grounds, after notice by regular mail to the last known address of the defendants allegedly involved and to their attorneys of record.

B. After a hearing at which defendants involved shall have a reasonable opportunity to present evidence and legal argument, the Court may enter an order which, among other remedies, may require each defendant involved to pay a penalty to the moving plaintiffs of up to fifteen thousand dollars ($15,000) per violation and any other sanction the Court deems appropriate.

C. Upon a defendant's failure to pay the penalty provided in this section, or for any other violation of this Consent Decree, the moving plaintiffs, either jointly or individually, may exercise all remedies available at law or in equity, including plaintiff United States seeking an order of criminal contempt.

VIII. Enforcement of Consent Decree

A. Plaintiffs shall have concurrent authority to enforce any provision of this Consent Decree against any party to this Consent Decree.

B. The authority to enforce this Consent Decree shall be in addition to any other enforcement action authority plaintiffs may have in prosecuting new violations of state or federal antitrust laws.

C. Nothing contained in this Consent Decree shall limit the rights of the United States from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. § 1311 and § 1314, or a federal grand jury. Nothing contained in this Consent Decree shall limit the rights of the States of Oregon, California and Washington from utilizing other investigative alternatives, such as their civil investigation authority and, if applicable, their grand jury authority.

IX. Retention of Jurisdiction

Jurisdiction shall be retained by the United States District Court for the District of Oregon to enable any party to apply for further orders and directions as are necessary and appropriate for enforcement, compliance, construction, or modification of this Consent Decree.

X. Scope of Consent Decree

This Consent Decree and the Settlement Agreement represent the complete agreement of the parties. Nothing in this Consent Decree or the Settlement Agreement shall give standing to any person not a party to this Consent Decree to seek any relief related to it.

XI. Length of Consent Decree

This Consent Decree shall be in full force and effect for a period of five (5) years following entry of this decree.

XII. Public Interest

Entry of this Consent Decree is in the public interest. Except as provided in this Consent Decree for future action taken pursuant to Section IX, this proceeding in all other respects is hereby dismissed with prejudice with respect to defendants.

Approved and Ordered this _____ day of _____, 1997.

_____

United States District Court Judge

Presented by:

Andrew E. Aubertine,
Assistant Attorney General, Oregon Department of Justice, 1162 Court Street, NE, Salem, Oregon 97310, (503) 378–4732, OSB# 83013.
Liaison Counsel for Plaintiffs

Richard B. Cohn,
Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, California 94102, Telephone: (415) 436–6660, Cal. Bar #: 79601.
Attorney for the United States

In the United States District Court for the District of Oregon

State of Oregon, *ex rel.,* Attorney General Hardy Myers, State of Washington, *ex rel.,* Attorney General Christine O. Gregorie, State of California, *ex rel.,* Attorney General Daniel Lungren, United States of America, Plaintiffs, v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allan Gann and Russell Smotherman, Defendants. Civil Action No. 97–234MA, Competitive Impact Statement—Antitrust.

Filed: February 11, 1997, Judge Malcom Marsh

Competitive Impact Statement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Consent Decree submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States and the states of Oregon, California, and Washington have filed a civil antitrust suit alleging that ten (10) commercial crab fisherman and various unnamed co-conspirators conspired to restrain competition among commercial fishermen in violation of § 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint asks the Court to find that the defendant fishermen have violated § 1 of the Sherman Act, requests that the defendants pay civil penalties and the

costs of the investigation to the plaintiff states and further requests the Court to enjoin the continuance of the alleged unlawful acts.

Entry of the proposed Consent Decree will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Consent Decree or to punish violations of any of its provisions.

II

Practices Giving Rise to the Alleged Violation

The defendants are commercial crab fishermen who fish in waters off the coasts of California, Oregon, and Washington.

The Oregon defendant fisherman are not members of a fishermen's marketing association. They are thus not entitled to the exemption given to fishermen's marketing associations by the Fishermen's Collective Marketing Act of 1934 (''FCMA''), 15 U.S.C. §§ 521–522. The exemptions provided by the FCMA do not apply to fishermen who do not belong to fish marketing associations formed pursuant to the FCMA or to FCMA association members who enter into marketing agreements with non-FCMA association fishermen. Price fixing and horizontal boycott agreements which are not protected by the FCMA are *per se* violations of § 1 of the Sherman Act (15 U.S.C. § 1) and are subject to criminal prosecution by the United States Department of Justice. The United States chose not to proceed criminally in this matter because most of the defendants mistakenly believed their conduct was protected by the FCMA from prosecution under the Sherman Act.

The United States and the states of Oregon, California, and Washington contend and were prepared to show at trial, that beginning in or about December 1995 and continuing up until at least January 1996, the defendants were leaders in a conspiracy with unnamed co-conspirators to restrain competition among commercial crab fishermen in violation of § 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between the defendants and co-conspirators to fix the ''ex vessel'' price (price at which fishermen sell their catch to purchasers such as processors) at a minimum of $1.25 per pound and to eliminate competition among commercial fishermen in the sale of crab. In furtherance of this conspiracy the defendants and co-conspirators: (1) Agreed to sell crab at a minimum ''ex vessel'' price of $1.25 per pound; (2) agreed not to fish for crab until all purchasers operating in the major West Coast crab fishing ports had agreed to pay a minimum ''ex vessel'' price of $1.25 per pound; and (3) compelled, through threats of physical and economic harm, harassment and other forms of intimidation, other fishermen not to fish for crabs until all the purchasers agreed to pay a minimum $1.25 ''ex-vessel'' price.

This conspiracy fixed the ''ex vessel'' price of crab sold by commercial fishermen, eliminated price and other forms of competition among commercial fishermen in the sale of crab and deprived purchasers of commercial crab of the benefits of free and open competition in the sale of crab.

III

Explanation of the Proposed Consent Decree

The United States and the defendants have stipulated that the Court may enter the proposed Consent Decree after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h). The proposed Consent Decree provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Consent Decree may not be entered unless the Court finds that entry is in the public interest. Section XII of the proposed Consent Decree sets forth such a finding.

The proposed Consent Decree is intended to ensure that the defendants discontinue all practices which restrain competition among commercial fishermen.

A. Prohibitions and Obligations

Under Section IV of the proposed Consent Decree, the defendants are enjoined from participating in any discussion, communication or agreement, except as members of FCMA fishermen's marketing associations interacting with other members of such associations, regarding: (1) The ''ex vessel'' prices to be negotiated between purchasers and the defendants; (2) any terms or conditions to be offered for the sale of seafood; or (3) refraining from fishing while commercial fishermen are negotiating with purchasers on an ''ex vessel'' price. Section IV also enjoins the defendants from requesting or coercing other fishermen to refrain from fishing or to sell fish to processors at specified prices or under specified terms or conditions. The defendants are also enjoined from any interference with any other commercial fishermen's business through threats or other means of intimidation. The Consent Decree further enjoins the defendants from impeding, obstructing, or preventing any person from processing, purchasing, or selling or offering to purchase or sell crab or any other seafood. Finally, the Consent Decree restrains the defendants from compelling any fishermen or other person to become a member, or to participate in the activities, of any association.

Section V. of the Consent Decree requires the defendants to pay the states of Oregon, California and Washington pursuant to ORS 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal. Prof. & Bus. Code 16760 $90,874.00 for civil penalties and reimbursement of attorney fees and investigative costs.

B. Scope of the Proposed Consent Decree

Section XI. of the proposed Consent Decree provides that the Consent Decree shall remain in effect for five years.

Section III. of the proposed Consent Decree provides that the Consent Decree shall apply to the defendants and all of their managers, agents, employees, affiliates, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of the Consent Decree.

C. Effect of the Proposed Consent Decree on Competition

The relief set out in the proposed Consent Decree is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Consent Decree's provisions are intended to ensure that commercial crab fishermen act independently, except as members of a FCMA fish marketing association interacting with other association members, in any marketing or pricing decisions and that they not interfere with the marketing and price decisions of other commercial crab fishermen.

IV

Alternatives to the Proposed Consent Decree

The alternative to the proposed Consent Decree would be a full trial of the case. In the view of the Department of Justice and the states of Oregon, California and Washington, such a trial would involve substantial cost to the plaintiffs and is not warranted since the proposed Consent Decree provides almost all the relief sought in the Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) (15 U.S.C. § 16(a)), this Consent Decree has no *prima facie* effect in the lawsuits which may be brought against the defendants.

VI

Procedures Available for Modification of the Proposed Consent Decree

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Consent Decree should be modified may submit written comments to Christopher S. Crook, Acting Chief, San Francisco Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, Room 10–0101, San Francisco, California 94012, within the 60-day period provided by the Act. The comments and the Government's responses to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Consent Decree at any time period to its entry if it should determine that some modification of the Consent Decree is necessary to the public interest. The proposed Consent Decree itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Consent Decree.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)) were considered in formulating this proposed Consent Decree. Consequently, none are filed herewith.

Dated: February 6, 1997.

Christopher S. Crook,

Richard B. Cohen,

Attorneys, Antitrust Division, U.S. Department of Justice.

[FR Doc. 97–4389 Filed 2–21–97; 8:45 am]

BILLING CODE 4410–11–M

Antitrust Division

U.S. v. US WEST, Inc. and Continental Cablevision, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c)–(h), the United States publishes below the comments received on the proposed final judgment in U.S. v. US WEST, Inc. and Continental Cablevision, Inc., Civil Action No. 96–2529 TPS, filed in the United States District Court for the District of Columbia, together with the United States' response to that comment.

Copies of the comments and response to the comments are available for inspection and copying in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In The United States District Court for The District of Columbia

United States of America, Plaintiff, v. *US West, Inc. and Continental Cablevision, Inc.,* Defendants.

[No. 96–2529 TPS (Antitrust)]

Comments Relating to Proposed Final Judgment and Response of The United States to Comments

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h) (''APPA''), the United States of America hereby files the public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comments. The United States has carefully reviewed the public comments on the proposed Final Judgment and remains convinced that entry of the proposed Final Judgment is in the public interest.

I.—Background

This action was commenced on November 5, 1996, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of Continental Cablevision, Inc. (''Continental'') by US WEST, Inc. (''US WEST''), would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. US WEST is the dominant provider of local telecommunications services, including dedicated services, within its telephone service area in the States of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. At the time the acquisition was announced, Continental owned 20% of Teleport Communications Group, Inc. (''TCG''), a competitive access provider (''CAP'') providing dedicated services in various cities across the nation, including Denver, Omaha, Phoenix and Seattle. The complaint alleges that US WEST's acquisition of Continental's interest in TCG would substantially lessen competition in the sale of dedicated services in the areas within Denver, Omaha, Phoenix and Seattle in which TCG provides such services.

Contemporaneously with filing its Complaint, the United States submitted a proposed Final Judgment, a Competitive Impact Statement and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment. The proposed Final Judgment orders US WEST to divest the TCG Common Stock by certain specified dates and contains other provisions designed to bar US WEST's access to highly sensitive TCG business information, and to treat TCG as a passive business investment. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. In the Stipulation, the defendants and the United States consented to entry of the proposed Final Judgment by the Court after completion of the procedures required by the APPA.

II.—Compliance With the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on November 18, 1996, and terminated on January 16, 1997. During this period, the United States received only one comment relating to the proposed Final Judgment.[1] The United States herein responds to this comment. Upon publication of this comment and the following response of the United States to this comment in the Federal Register pursuant to 15 U.S.C. 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court may enter the proposed Final

[1] This comment is attached hereto as Exhibit A.

Judgment. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response of the United States have been published in the Federal Register.

III.—Response to Public Comments

The only comment received by the United States was filed by TCG. TCG does not object to the substantive provisions of the proposed Final Judgment. In particular, TCG does not object to the requirement that US WEST divest its interest in TCG nor to the timing or manner in which such divestiture must be carried out. Indeed, TCG's comments do not relate to either the anticompetitive consequences of the acquisition or the adequacy of relief provided by the proposed Final Judgment to remedy the antitrust violations alleged in the Complaint. The only objection that TCG raises with respect to the proposed Final Judgment relates to the provision requiring US WEST to deliver to the United States periodic affidavits setting forth the fact and manner of US WEST's efforts to comply with the divestiture provisions of the proposed Final Judgment. Because these affidavits are likely to contain sensitive business information relating to the sale or attempted sale of TCG Common Stock, TCG requests that the proposed Final Judgment be modified so as to require that such affidavits ''be submitted confidentially to the plaintiff and not filed in the public docket of the Court.'' Letter from W. Terrell Wingfield to Donald J. Russell, dated December 18, 1996, Exhibit A at 2.

The United States shares TCG's concerns about the potential disclosure of highly confidential and sensitive business information. For the following reasons, however, the United States does not believe that a modification of the proposed Final Judgment is necessary to protect affidavits containing such information. First, it is not the standard practice of the United States to voluntarily disclose affidavits submitted pursuant to a consent decree. Second, there are only two situations in which disclosure could occur: (1) If the United States is ordered or otherwise finds it necessary to file such affidavits on the public docket in any legal proceeding; and/or (2) If a request is made under the Freedom of Information Act, 5 U.S.C. 552 *et seq.* (''FOIA''), and the United States determines that any such affidavit does not fall into one of the FOIA exemptions to disclosure.

In the event that the United States receives an order, a subpoena and/or otherwise intends to use such information in any legal proceeding, Section IX.D of the proposed Final Judgment requires the United States to give the defendants ten (10) calendar days notice prior to divulging any material to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure and which the defendants have marked as being, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure.''

In the event that the United States determines that any such affidavit is not exempt from FOIA, then the United States would follow the procedures set forth in 28 CFR 16.7. Section 16.7 provides, in relevant part, that the United States:

> shall, to the extent permitted by law, provide a submitter [of confidential and sensitive business information] with prompt written notice of a Freedom of Information Act request or administrative appeal encompassing its business information. * * * in order to afford the submitter an opportunity to object to disclosure * * * Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

16 CFR 16.7(c). Section 16.7(b) defines a submitter as ''any person or entity who provides business information, directly or indirectly to the Department.'' Absent exigent circumstances, the United States generally gives the submitter ten (10) calendar days notice of a request or intention to disclose the business information so as to allow the submitter sufficient time to file an objection to disclosure or otherwise move to protect the information. TCG has been informed of the foregoing protections and has authorized the United States to inform the Court that these protections are adequate to address TCG's concerns. Given these facts, the United States does not believe that a modification of the proposed Final Judgment is warranted in the public interest.

IV.—Standard of Review

Pursuant to 15 U.S.C. § 16(e), the proposed Modified Final Judgment cannot be entered unless the Court determines that it is in the public interest. The focus of this determination is whether the relief provided by the proposed Modified Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. *United States* v. *Bechtel Corp.*, 648 F.2d 660, 665–66 (9th Cir.), *cert. denied*. 454 U.S. 1083 (1981), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1457–58, *see also* 56 F.3d at 1459–60 (D.C. Cir. 1995). In the recent *Microsoft* decision by the United States Court of Appeals for the District of Columbia Circuit, which reversed the district court's refusal to enter an antitrust consent decree proposed by the United States, the court of appeals held that the provision in Section 16(e)(1) of the Tunney Act allowing the district court to consider ''any other considerations bearing upon the adequacy of such judgment,'' does not authorize extensive inquiry into the conduct of the case. 56 F.3d at 1458–60. The court of appeals concluded that ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case.'' *Id.* To the contrary, ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' and so the district court ''is only authorized to review the decree itself,'' not other matters that the government might have but did not pursue. *Id.*

Under the public interest standard, the Court's role is limited to determining whether the proposed decree is within the ''zone of settlements'' consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.* 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1460. Moreover, the Court should give a request for entry of a proposed decree even more deference that a request by a party to an existing decree for approval of a modification, for in dealing with an initial settlement the Court is unlikely to have substantial familiarity with the market involved. *United States* v. *Microsoft Corp.*, 56 F.3d at 1460–61.

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has ''exceptional confidence that adverse antitrust consequence will result.* * *'' *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in*

United States v. *Microsoft Corp.*, 56 F.3d at 1460.

V.—Conclusion

After careful consideration of the comments and for the reasons stated herein and in the Competitive Impact Statement, the United States continues to believe that the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no allegation or showing that the proposed settlement constitutes an abuse of the United States' discretion nor that it is inconsistent with the public interest. Accordingly, entry of the proposed Final Judgment should be deemed to be in the public interest.

Dated: February 7, 1997.

Respectfully submitted,

Yvette Benguerel,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5808.

[December 18, 1996—*Via Federal Express*]

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, Room 8104, 555 4th Street, N.W., Washington, D.C. 20001.

Re: *United States of America* v. *U S West Inc. and Continental Cablevision, Inc., United States District Court for the District of Columbia*

On behalf of Teleport Communications Group Inc. (TCG), and in accordance with the provisions of 15 U.S.C. Sec. 16(d), we hereby submit the following comments in connection with the matter of *United States of America* v. *U S West Inc. and Continental Cablevision Inc.* TCG seeks an amendment to the Final Judgment providing that the Affidavits submitted pursuant to Section VII will be submitted confidentially and not be filed in the public docket of the Court. The undersigned has been in communication with Robert J. Sachs, counsel for Continental, and has been advised that they do not oppose this request.

The proposed Final Judgment provides, inter alia, that U S West use its best efforts to divest the approximately 11% interest of TCG held by Continental as expeditiously as possible. The proposed Final Judgment further provides that U S West divest a portion of its interest in TCG sufficient to cause it to own less than 10% by June 30, 1997, and divest any remaining portion of the TCG interest by December 31, 1998. The divestiture must be made to a purchaser or purchasers in a manner that ''shall not injure TCG.''

The proposed Final Judgment orders U S West to deliver periodic Affidavits to the plaintiff setting forth its efforts in connection with the ordered divestiture. Said Affidavits are to include such information as the names of potential purchasers contacted or expressing interest, and describe ''in detail each contact.'' These Affidavits could be subject to public disclosure unless they are submitted confidentially pursuant to an Order of this Court.

TCG is a publicly traded company with approximately 30 million shares traded on the NASDAQ National Market. TCG is concerned that information concerning efforts to sell a major block of the company's stock could have a significant adverse impact on the market for TCG stock. Traders may engage in speculative activity based on information contained in these Affidavits causing significant volatility in TCG's stock price. As a result, premature disclosure of U S West's activities could significantly disrupt the market for TCG's securities. Further, the information contained in these Affidavits is subject to being available selectively to certain investors and not others, thereby possibly requiring TCG to fully disseminate such information so as to be in full compliance with securities laws.

Additionally, there may be a chilling effect on some of the prospective purchasers of U S West's interest in TCG if the possibility exists that an inquiry or expression of interest is subject to being publicly disclosed. Such prospective purchasers may not even want their interests made public, much less risk a ''public negotiation'' for TCG. This may have the effect of reducing the universe of prospective purchasers, some of whom may be best suited to insure the continued viability of TCG. Furthermore, public disclosure of the negotiations may jeopardize or render unavailable any exemption under federal and state securities law upon which the parties intend to rely. This would cause additional expense and may complicate or even terminate negotiations.

TCG proposes that the required Affidavits be submitted confidentially to the plaintiff and not filed in the public docket of the Court. In the event the divestiture is not accomplished in the time frame set out in the Final Judgment, a Trustee is appointed to effect the divestiture. Although the Trustee is similarly required to submit monthly status reports, such reports are specifically to be submitted confidentially. It appears the failure of the proposed Final Judgment to contain similar confidentiality protection was an oversight by the parties, and a similar restriction should be imposed upon the pre-Trustee status reports as well.

TCG believes the overriding principle in the Final Judgment is to force a divestiture of U S West's interest in TCG in a fashion that is not injurious to TCG and that could not lessen competition. However, information contained in the status Affidavits could impact TCG's financial well-being pending the disposition. If there is any possibility that such an outcome may occur, it is in the best interest of the public to support TCG's request and maintain the confidentiality of such information.

TCG further submits that existing federal securities laws provide an appropriate framework for the public disclosure of the disposition of U S West's holdings in TCG. Because U S West will be subject to the public reporting obligations under both Section 13 and 16 of the Securities Exchange Act of 1934 with respect to its TCG stock, U S West is already required to make public filings as to changes in its TCG stock holdings when it enters into binding agreements to dispose of such stock. TCG believes that the public disclosure mandated by these securities laws provides the best and most orderly mechanism for the public disclosure of changes in U S West's holdings.

In conclusion, TCG asserts that its request is consistent with the underlying premise of the proposed Order—to cause a divestiture of U S West's holdings in TCG in a manner that is not injurious to TCG. In light of the fact that the request is not contested by Continental, we request the United States concur and submit such request to the Court.

Sincerely,

W. Terrell Wingfield, Jr.,

Vice President and General Counsel.

Service List

C. Loring Jetton, Jr., Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037.

John McGrew, Wilkie Farr & Gallagher, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20036–3384.

W. Terrell Wingfield, Jr., Vice President and General Counsel, Teleport Communications Group, 429 Ridge Road, Dayton, NJ 08810.

Sean C. Lindsay, U.S. West, Inc., 7800 East Orchard Road, Suite 490, P.O. Box 6508, Englewood, CO 80155–6508.

Robert J. Sachs, Senior Vice President, Corporate and Legal Affairs, Continental Cablevision, Inc., The Pilot House, Lewis Wharf, Boston, MA 02110.

Certificate of Service

I, Tracy Varghese, hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I have on this day caused the Comments Relating to Proposed Final Judgment and Response of the United States to Comments to be served on defendants, intervenors, and other interested persons by mailing a copy, postage prepaid, to each of the individuals and organizations on the attached service list.

February 7, 1997.

Tracy Varghese.

[FR Doc. 97–4377 Filed 2–21–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercial Turf Products, Ltd. Joint Research, Development and Production Joint Venture

Notice is hereby given that, on January 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Commercial Turf Products, Ltd. filed written

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are LESCO., Inc., Cleveland, OH and MTD Products, Inc., Valley City, OH.

The nature and objectives of this venture are research, development and manufacturing production of commercial turf care equipment. The venture will include engineering, product development, and manufacturing. The manufacturing will be conducted in the United States. The products that are manufactured will be sold in the United States and potentially abroad.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4375 Filed 2–21–97; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Infotest International

Notice is hereby given that, on July 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), InfoTEST International (''InfoTEST'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Medical Outcomes Repository; Government Services, Information Systems Branch; and The Lewis Group are no longer members of InfoTEST.

No other changes have been made in the membership, nature or objectives of the consortium. Membership in InfoTEST remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, InfoTEST filed its original notification (as the National Information Infrastructure Testbed) pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on May 18, 1994 (60 FR 25960).

The last notification was filed with the Department of Justice on October 9, 1996. A notice was published in the Federal Register on December 19, 1996 (61 FR 67067).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–4376 Filed 2–21–97; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before April 10, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Congressional Budget Office (N1–520–96–1). Tax analysis data, documentation and supplementary data files (final reports will be preserved).

2. Department of the Air Force (N1-AFU–96–9). Bioenvironmental engineering surveys/case files proposed for long-term retention.

3. Department of Health and Human Services, Health Care Financing Administration (N1–440–96–1). Medicare waivers for hospital payments, instructions and background files, chrono-logical files of state reviews, CLIA data and HCFA forms 114 and 116.

4. Department of Health and Human Services, Health Care Financing Administration (N1–440–97–1). Appointee clearance and vetting files.

5. Department of Housing and Urban Development (N1–207–95–8). Records relating to Cultural Design Awards (program files and winning nomination case files are designated for preservation).

6. Department of Housing and Urban Development (N1–207–96–7).

Community Development Block Grant (CDBG) Indian Program System.

7. Department of Justice (N1–60–97–2). Reduction in retention period for disposable case files relating to habeas corpus proceedings.

8. Department of the Treasury, Office of Thrift Supervision (N1–483–96–1). Branch Office Survey System comment sheets.

9. Department of Veterans Affairs, Veterans Health Administration (N1–15–97–1). Electroencephalographic reports and tracings.

10. Department of Veterans Affairs, Office of Human Resources Management (N1–15–97–2). Political appointee application files.

11. Department of Veterans Affairs, Veterans Health Administration (N1–15–97–4). Quality management files.

12. Central Intelligence Agency (N1–263–97–1). Thrift savings plan records.

13. Consumer Product Safety Commission (N1–424–97–1). Routine correspondence from citizens regarding issues within the agency's jurisdiction.

14. Defense Intelligence Agency (N1–373–96–1). Routine and facilitative reports files.

15. Defense Logistics Agency (N1–361–97–3). Automated information systems related to warehouse distribution and other routine administrative functions.

16. Defense Logistics Agency (N1–361–97–2). Chaplain records relating to routine administrative functions and to programs and projects.

17. Tennessee Valley Authority (N1–142–96–5). Occupancy emergency plans for TVA office buildings.

18. Tennessee Valley Authority (N1–142–97–3). Engineering Services cross section and profiles field books and related data base.

19. U.S. Arms Control and Disarmament Agency (N1–383–97–1). Comprehensive schedule update. Overall program records are permanent. Records that are duplicative or facilitative are proposed for disposal.

Dated: February 14, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–4393 Filed 2–21–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (#1754)

Date and Time: March 6–7, 1997; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred Stollnitz, Program Officer for Cross-Directorate Activities in the Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1413.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers (RPG/CAA) proposals as part of the selection process for awards.

Reason for Late Notice: Final list of panelists could not be confirmed until February 14, 1997.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 19, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4437 Filed 2–21–97; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Extension:

Rule 6e–2, SEC File No. 270–177, OMB Control No. 3235–0177.

Rule 22d–1, SEC File No. 270–275, OMB Control No. 3235–0310.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

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 6e–2 (17 CFR 270.6e–2) under the Investment Company Act of 1940 (''Act'') is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that it comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements and reports to contract holders about actions taken under those exemptions.

In regard to the foregoing, Rule 6e–2 provides an exemption from section 17(f) of the Act. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) of Rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Paragraph (b)(9) applies only to management accounts that offer life insurance contract subject to Rule 6e–2.

Since 1988, there have been no filings under paragraph (b)(9) of Rule 6e–2 by management accounts. Further, all post-effective amendments filed by variable life separate accounts under Rule 6e–2 have been structured as unit investment trusts and are thus not subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1988, there has been no burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e–2.

Rule 22d–1 (17 CFR 270.22d–1) provides registered investment companies that issue redeemable securities (''funds'') an exemption from section 22(d) of the Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total annual burden for the approximately 1,865 funds that might rely on the rule is estimated to be 466 hours.

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: February 14, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4388 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22514; File No. 812–10412]

Ameritas Variable Life Insurance Company, et al.

February 14, 1997.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an Order Pursuant to the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Ameritas Variable Life Insurance Company Separate Account V (''Separate Account V''), Ameritas Variable Life Insurance Company Separate Account VA–2 (''Separate Account VA–2,'' together with Separate Account V, the ''Applicant Accounts''), the Ameritas Variable Life Insurance Company (''AVLIC'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b).

SUMMARY OF THE APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Index 500 Portfolio of the Variable Insurance Products Fund II (''Index 500 Portfolio'') for shares of The Dreyfus Stock Index Fund (''Dreyfus Fund'') held by Applicant Accounts.

FILING DATES: The application was filed on October 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC., 20549. Applicants, c/o Norman M. Krivosha, Esq., Ameritas Variable Life Insurance Company, 5900 ''O'' Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. AVLIC, a stock life insurance company organized pursuant to Nebraska law, is a wholly-owned subsidiary of AMAL Corporation. Ameritas Life Insurance Corporation, also a Nebraska corporation, owns a majority interest in AMAL Corporation.

2. The Applicant Accounts were established by AVLIC and registered with the Commission as unit investment trusts pursuant to the 1940 Act. Separate Account VA–2 was established on May 28, 1987, to fund group variable annuity policies (''VA Policies''). Separate Account V was established on August 28, 1985, to fund variable universal life insurance policies (''VUL Policies''). The VA and VUL Policies (collectively, the ''Subject Contracts'') are issued and administered by AVLIC and are offered exclusively by means of separate prospectuses that describe the applicable terms and conditions of the respective contracts.

3. Each of the Applicant Accounts is divided into separate subaccounts that invest exclusively in shares of one of the investment portfolios of certain open-end investment companies (collectively, ''Underlying Funds''). The Underlying Funds in which the subaccounts of the Applicant Accounts may invest are: The Alger American Fund, which currently offers to Applicant Accounts six investment portfolios, and MFS Variable Insurance Trust, which currently offers three investment portfolios. In addition, Variable Insurance Products Fund I and Variable Insurance Products Fund II currently offer to Applicant Accounts ten investment portfolios, one of which is the Index 500 Portfolio. Applicant Accounts offer subaccounts that invest exclusively in the Index 500 Portfolio (''Index 500 Subaccounts'').

4. Applicant Accounts also offered subaccounts that invested exclusively in shares of the Dreyfus Fund (''Dreyfus Subaccounts''). New investments in the Dreyfus Subaccounts have not been accepted since May 1, 1996, and all prospectuses relating to the Subject Contracts have been amended to eliminate reference to them. Subject Contract owners who invested in the Dreyfus Subaccounts (''Affected Contractholders'') were permitted to remain in the Dreyfus Subaccounts after May 1, 1996, and to continue to reinvest dividends paid by the Dreyfus Fund in the Dreyfus Subaccounts. All Affected Contractholders continue to have the option of transferring investments without charge from the Dreyfus Subaccounts to the Index 500 Subaccounts or to other subaccounts, but it is not anticipated that all Affected Contractholders will take advantage of this option. As of July 31, 1996, the Dreyfus Subaccount of Separate Account VA–2 had total assets of $8,561,723, representing the interests of 916 owners, and the Dreyfus Subaccount of Separate Account V had total assets of $2,067,298, representing the interests of 735 owners.

5. Applicants represent that the investment objectives of the Index 500 Portfolio and the Dreyfus Fund are identical. Both are ''index funds'' that attempt to allocate assets to correspond to the Standard & Poor's Index (''S&P 500''). Each fund: (a) must invest at least 80% of its assets in securities represented in the S&P 500; (b) seeks to achieve a total return that reflects at least a 95% correlation with the S&P 500; and (c) may use financial futures for hedging purposes only.

6. Fidelity Management & Research Company (''FRM''), which manages the Index 500 Portfolio, is entitled to receive an investment advisory fee at the annual rate of .28% of the Portfolio's net assets. For each of the fiscal years ended December 31, 1995, 1994, and 1993, the expense ratio of the Index 500 Portfolio, taking into account expense reimbursements and fee waivers, was .28% of the Portfolio's average net assets. During each such period FMR voluntarily reimbursed the Index 500 Portfolio to the extent that its ratio of expenses to average net assets exceeded

.28%. Had this reimbursement policy not been in place, the expense ratios for the Index 500 Portfolio for the fiscal years ended December 31, 1995, 1994, and 1993, would have been .47%, .81%, and .95%, respectively.

7. The Dreyfus Corporation (''Dreyfus''), which manages the Dreyfus Fund, receives a fee at the annual rate of .245% of the Fund's average daily net assets. The expense ratios for the Dreyfus Fund for the fiscal years ended December 31, 1995, 1994, and 1993, were .39%, .40%, and .40% of the Fund's average daily net assets. These expense levels take into account Dreyfus's policy to voluntarily reimburse the Fund in any year in which the Fund's expenses exceeded .40% of the Fund's average net assets. Dreyfus has undertaken to maintain this expense reimbursement policy absent 180 days notice to the Fund's shareholders of any change in the policy.

8. The proposed substitution will be effected by redeeming the shares of the Dreyfus Fund held by the Dreyfus Subaccounts, transferring the cash values of Affected Contractholders from the Dreyfus Subaccounts to the Index 500 Subaccounts, and then purchasing shares of the Index 500 Portfolio. The Dreyfus Subaccounts would then be eliminated. All redemptions of shares of the Dreyfus Fund and purchases of shares of the Index 500 Portfolio will be effected in compliance with Rule 22c-1 under the 1940 Act. The substitution will be at net asset value of the respective shares, without the imposition of any transfer, sales, or similar charge. There will be no change in the amount of any Affected Contractholder's investment after the substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that ''it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force the contractholders, dissatisfied with the substituted security, to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act to permit the Applicant Accounts to substitute securities of the Index 500 Portfolio for securities of the Dreyfus Fund.

3. Applicants submit that the proposed substitution meets the standard enunciated in Section 26(b), and further that, if implemented, the substitution would not raise any of the concerns that Congress sought to address when the 1940 Act was amended to include the provision. Applicants further submit that the substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

4. Applicants submit that the investment objective, policies, and operating expenses of the Index 500 Portfolio and the Dreyfus Fund are substantially the same or comparable. Applicants state that the Index 500 Portfolio is large enough to provide the portfolio diversification necessary to decrease investment risk and to provide the economies of scale that may benefit the Affected Contractholders, as well as other Subject Contractholders.

5. Applicants represent that AVLIC will bear the costs of the proposed substitution, including legal, accounting, and brokerage fees, and Affected Contractholders will not incur any fees or charges as a result of the substitution. Applicants also represent that the substitution will not impose any tax liability on Affected Contractholders or raise the level of fees and charges currently paid by Affected Contractholders. Applicants further represent that the rights of affected Contractholders and AVLIC's obligations under any of the Subject Contracts will also not change.

6. Applicants represent that as soon as reasonably practicable after the requested order is issued, AVLIC will send to the Affected Contractholders a written notice (''Notice'') describing the proposed substitution, including the date on which the substitution will take effect. The Notice will advise Affected Contractholders that either before or within thirty days from the date on which the substitution occurs, they may transfer all substituted assets to other subaccounts. Applicants also represent that any transfer of cash values in the Dreyfus Subaccounts that occurs either prior to, or within the thirty days, after the substitution will not be treated as a transfer that may be restricted because of earlier transfers between subaccounts. Applicants further represent that no transfer charge is currently in effect, and none will be imposed before the end of the thirty-day period.

Conclusion

For the reasons summarized above, Applicants assert that the requested order approving the proposed substitution is consistent with the protection of investors and 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. 97–4386 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22515; International Series Release No. 1053; File No. 812–10150]

Enron Corp., et al.; Notice of Application

February 14, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Enron Corp. (''Enron''), Enron Oregon Corp. (''Enron Oregon''), Enron Oil & Gas Company (''EOG''), Enron Global Power & Pipelines L.L.C. (''EPP''), and Enron International Inc. (''EII'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit applicants and certain of their controlled companies to engage, directly or through subsidiaries, in certain foreign infrastructure projects without being subject to the provisions of the Act.

FILING DATE: The application was filed on May 15, 1996, and amended on October 22, 1996 and February 12, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 12, 1997 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1400 Smith, Suite 5011, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Enron, a Delaware corporation organized in 1930, is an integrated natural gas company with headquarters in Houston, Texas. Essentially all of Enron's operations are conducted through its subsidiaries and affiliates, which are principally engaged in the transportation and wholesale marketing of natural gas to markets throughout the United States and internationally through approximately 44,000 miles of natural gas pipelines; the exploration for and production of natural gas and crude oil in the United States and internationally; the production, purchase, transportation, and worldwide marketing of natural gas liquids and refined petroleum products; the independent (i.e., non-utility) development, promotion, construction, and operation of natural gas-fired and non-gas-fired power plants in the United States and internationally; and the non-price regulated purchasing and marketing of long-term energy related commitments.

2. Enron Oregon is an Oregon corporation that was organized recently for the purpose of effecting the merger (the ''PGC Merger'') of Enron with Portland General Corporation (''PGC''), an electric utility company organized as an Oregon corporation. Pursuant to the merger agreement among Enron, PGC, and Enron Oregon, subject to satisfaction or waiver of the conditions to the obligations of the parties to effect the PGC Merger, (a) both Enron and PGC will merge with and into Enron Oregon, (b) Enron Oregon will succeed to all of the assets and liabilities of both Enron and PGC, and (c) Enron Oregon will change its name to Enron Corp.[1]

3. EOG, a Delaware corporation, is engaged in the exploration for, and the development, production, and marketing of, natural gas and crude oil primarily in major producing basins in the United States, as well as in Canada, Trinidad, and India, and, to a lesser extent, selected other international areas. Enron currently owns approximately 54% of the outstanding common stock of EOG.

4. EPP is a Delaware limited liability company formed by Enron to acquire, own, and manage operating power plants and natural gas pipelines around the world. EPP's assets consist of interests in two power plants in the Philippines, power plants in both Guatemala and the Dominican Republic, and natural gas pipeline systems in Argentina and Colombia. EPP's strategy is to generate long-term growth in dividends, cash flow, and earnings per share through the selective acquisition and efficient management of operating power plants and natural gas pipelines around the world. Enron owns approximately 54% of the outstanding common shares of EPP.

5. EII is a Delaware corporation that is a wholly-owned subsidiary of Enron. In December 1996, Enron announced that it was reorganizing its business units and that as part of the reorganization Enron International would be Enron's business unit that would develop and own integrated energy projects, commercial power generation, and pipeline activities outside of North America and Europe. This newly organized business unit will pursue all or substantially all of Enron's foreign infrastructure projects outside of North America and Europe, will offer merchant, finance, and risk management products to third parties in emerging markets, and will be responsible for Enron's interest in EPP. As the reorganization was announced only recently, Enron must make a number of decisions and take a number of actions regarding transfers of subsidiaries or properties to this new business unit and other matters in order to complete the organization of the Enron International business unit. Based on preliminary planning, when the organization is completed, EII will be the parent company of the corporate family of companies that comprises Enron International. It is possible, however, that EII will be a wholly-owned subsidiary of the parent company within the Enron International business unit. This could occur if, for example, Enron decides that another form of entity (such as a limited liability company) or an entity incorporated in another jurisdiction (such as a foreign jurisdiction) should be the parent company within the Enron International business unit.

6. Enron, Enron Oregon, EOG, EPP, and EII request relief to permit each applicant and each entity now or in the future controlled by, or under common control with, any of them (Enron, Enron Oregon, EOG, EPP, EII, and each controlled entity, the ''Covered Entities'') to engage, directly or through subsidiaries, in certain foreign infrastructure projects without being subject to the provisions of the Act.

7. Enron is the largest interstate natural gas pipeline company in the United States, and its subsidiaries have participated in the development or ownership and management of gas transmission pipelines, crude oil and refined petroleum products pipelines, natural gas liquids pipelines, oil and gas gathering facilities, gas processing facilities, and chemical manufacturing facilities. Enron and its affiliates also have developed and own and operate a number of domestic facilities for the generation of electricity and steam.

8. As a result of relatively recent changes in the international political and business climate, applicants and their subsidiaries have begun to develop and acquire and operate infrastructure projects throughout the world. Foreign infrastructure projects that applicants have or may become involved in are roads, bridges, communication facilities, mass transit systems or facilities, rail transportation facilities, airports, ports, waterways, water supply facilities, desalinization facilities, recycling or waste water treatment facilities, solid waste disposal facilities, oil, gas, or other mineral exploration, development, or production facilities, housing, schools, hospitals, prisons, electricity generation facilities, electricity transmission or distribution facilities, stream generation facilities, natural gas transmission or distribution pipelines of facilities, petroleum storage facilities, petroleum liquids pipelines, natural gas liquids separating, processing, or distribution facilities, facilities for the liquefication of natural gas or the transportation, distribution, or regasification of liquefied natural gas, refineries, chemical or other

[1] After the PGC Merger, Enron Corp. will be the seventh largest seller of electricity in the United States. Benjamin A. Holden, *Enron Corp. has Accord to Buy Portland General,* Wall St. J., July 23, 1996, at A3.

manufacturing or processing facilities, or any similar facilities or operations. Applicants and their subsidiaries currently are working on approximately 25 foreign infrastructure projects in various stages of development, involving estimated total capital expenditures of approximately $20 billion. These include projects in Guam, India, Indonesia, Israel, Italy, Jordan, Mozambique, Puerto Rico, Qatar, and Turkey. Although it is unlikely that all of the projects ultimately will be completed, the dollar amounts involved are quite significant relative to the size of Enron, EOG, and EPP, whose total assets at year end 1995 were $13.2 billion, $2.1 billion and $188 million, respectively.

9. There are numerous steps that must be pursued by a developer/owner of a foreign infrastructure project. Project development involves, among other things, engineering or architectural design services, site selection, governmental relations, construction services, and the arrangement of financing. The management of operating projects involves responsibilities such as employee and customer relations, contract administration, continuing compliance with environmental and other legal requirements, community and governmental relations, financial and accounting issues, etc.

10. The physical assets comprising a foreign infrastructure project are or will be owned by an entity (a ''Foreign Infrastructure Project Company'') in which a Covered Entity has or will have a direct or indirect beneficial interest. In most cases, the Foreign Infrastructure Project Company is or will be a special purpose entity set up for the sole purpose of owning and operating the assets attributable to a single foreign infrastructure project, although in some cases, Foreign Infrastructure Project Companies own or will own interests in assets comprising multiple foreign infrastructure projects.

11. In some cases, entities are organized for the purpose of providing development, construction, operational, or maintenance services to one or more Foreign Infrastructure Project Companies (''Foreign Infrastructure Service Companies''). Such entities are distinguishable from Foreign Infrastructure Project Companies in that the former do not own assets directly, but rather engage in the business of providing services.

12. For purposes of the application, applicants represent that Foreign Infrastructure Project Companies and Foreign Infrastructure Service Companies are included within the term ''Foreign Infrastructure Company,'' which is any company (a) substantially all of whose operations are conducted outside of the United States; and (b) whose business primarily relates to or whose operations consist primarily of the development, construction, ownership, or operation of, or the provision of management, operational, or maintenance services relating to, foreign infrastructure projects. Applicants and other Covered Entities own and will own their interests in a Foreign Infrastructure Company through direct or indirect interests in companies known as ''Foreign Infrastructure Finance Companies.''

13. For purposes of the application, applicants represent that a ''Foreign Infrastructure Finance Company'' is any company (a) that is a majority-owned subsidiary of a Covered Entity; (b) that has not made, is not making, and does not presently propose to make a public offering of its securities; and (c) that is primarily engaged in the business of owning or holding 10% or more of the economic or voting interests in Foreign Infrastructure companies with respect to which the Covered Entity, the Foreign Infrastructure Finance Company, or a majority-owned subsidiary of either of them, provides ''active developmental assistance.''

14. For purposes of the application, applicants represent that ''active developmental assistance'' means the provision of material assistance in the development, construction, or operation of, or the provision of management, operational or maintenance services relating to, a foreign infrastructure project. An entity will be deemed to furnish such assistance if it is or has been materially involved in providing such assistance. Thus, if an entity was materially involved in the development of a Foreign Infrastructure Company, such entity will be deemed to be providing active developmental assistance to such Foreign Infrastructure Company even after the Foreign Infrastructure Company has moved past the development stage. In addition, the expiration of a long-term contract relating to the operation of a foreign infrastructure project will not cause a company to cease to qualify as a Foreign Infrastructure Finance Company. The requirement of material involvement will not be satisfied, however, by arrangements that are immaterial to the overall development of an infrastructure project or overall success of the Foreign Infrastructure Company's operations, such as a short-term contract or a non-substantive contract (*e.g.*, a consulting arrangement that is sometimes entered into as part of an executive employee's severance arrangement, pursuant to which the ex-employee is paid but does little in the way of actual consulting). A contract that is renewable automatically on a periodic basis unless canceled at the option of one or more contracting parties would not, by virtue of the cancellation provisions, be deemed to be a short-term or non-substantive contract.

15. Because regulations in many countries limit the percentage interest in host country companies that can be owned by foreign companies, the Covered Entities have been and will continue to be permitted to own only minority interests in many Foreign Infrastructure Companies. As a result, it has become increasingly difficult for the Covered Entities to structure their interests so that they may operate without technically falling within the definition of ''investment company'' under the Act. The Covered Entities believe they are not the type of entities that should be regulated under the Act and thus seek relief from all provisions of the Act.

Applicants' Legal Analysis

1. Section 3(a)(3) of the Act defines an ''investment company'' as including any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Section 3(a) defines ''investment securities'' to include all securities except, in pertinent part, securities issued by majority-owned subsidiaries of the owner which are not investment companies. Section 2(a)(24) defines a ''majority-owned subsidiary'' of a person as a company 50% or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of section 2(a)(24), is a majority-owned subsidiary of such person.

2. Applicants represent that the proposed ownership structure for foreign infrastructure projects is the result of legitimate and compelling tax, limited liability, governance, and other reasons. The proposed ownership structure protects applicants against liability to creditors of the Foreign Infrastructure Companies. In addition, some foreign governments remain committed to retaining control over infrastructure projects. Moreover, under the laws of many host countries, there are limitations on the percentage equity interest in host country entities that can be owned by companies such as the Covered Entities that are organized in jurisdictions other than the host

country. As a result, a company desiring to participate in a foreign infrastructure project will often have to choose between becoming a minority project participant with other companies or not participating at all. Because sections 3(a) and 2(a)(24), taken together, impose limits on the percentage of assets of the Covered Entities that may be attributable to securities representing minority interests in other companies, the Act may, in the absence of the requested relief, prevent these entities from participating in foreign infrastructure projects on desirable terms.

3. In certain cases, a Covered Entity may rely on section 3(c)(1) or section 3(c)(9) of the Act or rule 3a–1 thereunder. These provisions, however, are inadequate to permit these entities to participate in foreign infrastructure projects on desirable terms.

4. Section 3(c)(1) of the Act excepts from the definition of investment company private investment companies (''3(c)(1) Entities'') that have 100 or fewer shareholders. Under section 3(c)(1)(A), a company is counted as one shareholder of a 3(c)(1) Entity unless that company owns 10% or more of the shares of the 3(c)(1) Entity and more than 10% of that company's assets are shares of 3(c)(1) Entities. If a company meets these tests, the beneficial ownership of the 3(c)(1) Entity is deemed to be that of the holders of such company's outstanding securities. As a result of this provision, applicants are forced by the Act to limit their investments in 3(c)(1) Entities even where compelling business reasons favor making those investments and where, applicants believe that, none of the Act's purposes would be served by preventing them from making the investments.

5. The National Securities Markets Improvement Act of 1996 (the ''1996 Act'') amended section 3(c)(1)(A) of the Act. When the relevant provisions of the 1996 Act become effective (on the earlier of April 9, 1997 or the date on which the related rulemaking is completed), the amended section 3(c)(1)(A) will no longer apply to a shareholder of a 3(c)(1) Entity that is an operating company (i.e., a company that is not an investment company or a 3(c)(1) Entity). Accordingly, the exception provided by amended section 3(c)(1) may be available to Foreign Infrastructure Finance Companies. However, the 1996 Act also amends the definition of ''investment securities'' under section 3(a) of the Act to provide that securities of majority-owned 3(c)(1) Entities are investment securities. The amended section 3(a) will limit the amount that the Covered Entities can invest in majority-owned 3(c)(1) Entities, such as Foreign Infrastructure Finance Companies. As a result, applicants cannot rely on the current or amended version of section 3(c)(1) to participate in foreign infrastructure projects on desirable terms.

6. Section 3(c)(9) of the Act excepts from the definition of investment company any company substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases. Although the section 3(c)(9) exception may be available to EOG in a number of cases, it does not cover Enron or EPP because of the nature of their businesses. Many foreign infrastructure projects do not involve oil and gas exploration or production properties. Moreover, some projects that do involve such properties involve additional assets not qualifying under section 3(c)(9). As a result, the section 3(c)(9) exception is inadequate to permit the Covered Entities from participating in foreign infrastructure projects on desirable terms.

7. Rule 3a–1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(3) of the Act not to be investment companies, provided such issuers meet certain criteria. An issuer can qualify for this exemption only if no more than 45% of its assets consist of, and no more than 45% of its net income is derived from, securities other than, among others, securities of certain companies controlled primarily by the issuer. Although the exemption may be relied upon by the Covered Entities from time to time, a company relying on the exemption as a result of a control relationship must have a degree of control greater than that of any other person.[2] Because a foreign government often will primarily control a Foreign Infrastructure Company, rule 3a–1 is inadequate to permit the Covered Entities to participate in foreign infrastructure projects on desirable terms.

8. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such 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 Act. Applicants request an order under section 6(c) to permit the Covered Entities to engage, directly or through subsidiaries, in foreign infrastructure projects without being subject to the provisions of the Act.

9. Applicants believe that the requested relief is necessary and appropriate in the public interest. Applicants state that in many foreign infrastructure projects, foreign regulations force applicants to structure their interests in the project such that they may technically fall within the definition of investment company under the Act. In addition, applicants state that the fact that they conduct their foreign infrastructure activities through subsidiaries is not by any means an attempt to circumvent the limitations imposed in connection with the exception in section 3(c)(1) of the Act. Applicants assert that those limitations were not aimed at situations, such as those described herein, where an active business is conducted through subsidiaries that are set up for legitimate and compelling tax, limited liability, governance, and other reasons that prevent companies actively conducting such business from acquiring direct ownership interests. Applicants argue that section 3(c)(1) reflects a congressional determination that no significant public interest exists in regulating 3(c)(1) Entities under the Act. The beneficial ownership attribution rules in section 3(c)(1)(A) are, in effect, intended to prevent companies from circumventing the requirements of the Act by setting up one or more majority-owned subsidiaries that would be regulated as investment companies but for the fact that no single one of them had more than 100 security holders. Further, the amendments to the beneficial ownership rules in section 3(c)(1)(A) reflect an intent by Congress to simplify the application and limit the scope of the rules rather than a change in the underlying purpose of the section. As a result, applicants assert that the foreign infrastructure activities described herein, which require active developmental assistance, clearly are not the type intended to be covered by the current or amended section 3(c)(1).

10. Applicants believe that the relief requested is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the Act was not intended to regulate the kind of industrial activity in which the Covered Entities engage. Applicants historically have developed as operating industrial companies rather than investment pools, engaging principally in the natural gas and other energy-related business. In addition, their proposed participation in foreign infrastructure projects through the

[2] Health Communications Services, Inc. (pub. avail. Apr. 26, 1985).

provision of active developmental assistance to a Foreign Infrastructure Company is consistent with the type of activities typically associated with an operating industrial company. Finally, the Covered Entities do not hold themselves out as being engaged in the business of investing, reinvesting, or trading in securities or otherwise as investment pools of the type intended to be regulated by the Act.

Applicants' Conditions

Applicants agree that the order granting the required relief shall be subject to the following conditions:

1. No Covered Entity that proposes to rely on the requested relief will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. The Covered Entities will rely on the order granting the requested relief only to the extent that the manner in which they are involved in foreign infrastructure projects does not differ materially from that described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4442 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26669]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 14, 1997.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation (70–8945)

Ameren Corporation (''Ameren''), 1901 Chouteau Avenue, St. Louis, Missouri 63103, a Missouri corporation not currently subject to the Act, has filed an application-declaration under sections 4, 5, 6(a), 7, 8, 9(a), 10, 11, 12(b), (d) and (e), and 13(b) and Rules 42, 43, 45, 62, 65, 82, 83, 87, 88, 90 and 91 thereunder.

Ameren proposes to acquire by merger Union Electric Company (''UE'') and Central Illinois Public Service Company (''CIPS''), a wholly-owned utility subsidiary of CIPSCO Inc. (''CIPSCO''), and acquire indirectly 60% of the outstanding common stock of Electric Energy, Inc., (''EEI''). UE and CIPS will become wholly-owned subsidiaries of Ameren (''Transaction''), and Ameren will register with the Commission under section 4 of the Act.

Ameren also proposes to engage in other Transaction-related activities, including the retention of combination gas and electric public utilities, the retention of all of CIPSCO's and UE's nonutility activities, formation of a service Company and the transfer of certain utility assets from UE to CIPS.

UE is a combination gas and electric public-utility company and an exempt public-utility holding company, pursuant to an order of the Commission under section 3(a)(2) of the Act, authorized to do business in Missouri and Illinois. The principal business of UE is to provide electric energy to customers in a 24,500 square mile area of Missouri and Illinois.

UE's Missouri electric service area includes the City of St. Louis and St. Louis County, and all or portions of 65 other counties. Its Illinois service area includes the cities of East St. Louis and Alton. In addition to the retail electric business, UE serves 18 wholesale electric customers, all of which are located in Missouri. Union Electric also provides natural gas service to customers in 23 Missouri counties and two Illinois counties. UE also provides steam service in Jefferson City, Missouri.

UE provides retail electric service to approximately 1.069 million customers in Missouri and 63,000 in Illinois. UE provides natural gas service to approximately 102,000 customers in Missouri and 18,000 customers in Illinois. As of June 30, 1996, UE has 6,167 employees in its two-state operations. UE owns 100 percent of Union Electric Development Corporation (''UEDC'') (formerly known as Union Colliery), a nonutility subsidiary, and 40 percent of EEI. UE funds UEDC's investments through intercompany loans or advances. These intercompany loans bear interest at a market rate and are short-term in nature or due on demand.

UEDC's nonutility activities include the owning of and/or investing in energy-related and civic and community development-related investments in UE's service territory. EEI, which owns a coal-fired generating plant and transmission lines, was formed in the early 1950s to provide electric energy to a uranium enrichment plant located near Paducah, Kentucky, which is now operated by the United States Enrichment Corporation. The uranium enrichment facility is its only end-user customer. EEI's common stock is held by four utility companies: UE, 40%; CIPS, 20%; and two unaffiliated, utilities, Kentucky Utilities Company, 20%; and Illinois Power Company, 20%. EEI also sells electricity to its sponsoring utilities for resale.

CIPSCO, incorporated under the laws of the State of Illinois in 1986, is an exempt public utility holding company under section 3(a)(1) of the Act, and owns all of the issued and outstanding common stock of CIPS. CIPS, an Illinois corporation organized in 1902, supplies electricity and natural gas services in a 20,000 square mile region of central and southern Illinois, rendering service to approximately 319,000 retail electricity customers in 557 communities and distributing natural gas to approximately 167,000 customers in 267 communities. CIPS' utility service territory has an estimated population of 820,000 (about seven percent of Illinois' population) and contains about 35% of the surface area of Illinois. In addition, CIPS sells electricity in the wholesale and interchange markets to such entities as Soyland Electric Cooperative, Illinois Municipal Electric Agency, Wabash Valley Power Association, Inc., Mt. Carmel Public Utility Company, individual municipal electric systems and other public- and investor-owned electric systems. As noted above, CIPS owns 20 percent of the capital stock of EEI and is an exempt holding company pursuant to section 3(a)(2) of the Act. As of June 30, 1996, CIPS had approximately 2,360 employees.

CIPSCO owns 100 percent of CIPSCO Investment, the holding company for

CIPSCO's nonutility activities. CIPSCO's nonutility investments include leveraged leases, marketable securities and investments in energy projects. CIPSCO Investment has four first-tier subsidiaries: CIPSCO Securities Company, which manages a portfolio of equities and other marketable securities; CIPSCO Leasing Company, which manages long-term leveraged leases for various equipment and real estate; CIPSCO Energy Company, which manages electric generation projects under leveraged leases and a limited partnership; and CIPSCO Venture Company, which makes investments in the CIPS service territory. CIPSCO Investment will be wholly owned by Ameren, and Ameren expects that, following consummation of the Transaction, CIPSCO Investment will continue to operate much as it does today.

In the ordinary course of business, there have been and the applicant proposes to continue to make intercompany loans and advances among CIPSCO and its direct and indirect nonutility subsidiaries including CIPSCO Investment. Generally, if any of CIPSCO Investment's subsidiaries has excess cash, such excess is loaned to CIPSCO Investment or CIPSCO Securities. These borrowed funds, as well as any funds borrowed under a $30 million line of credit available to CIPSCO Investment or other bank lines, are used by CIPSCO Investment to finance its own activities or are loaned to its subsidiaries. Such subsidiaries will borrow funds from CIPSCO Investment, to the extent available, to finance their own activities or to finance the activities of entities in which they have an equity investment. These intercompany loans also bear interest at a market rate and are generally short-term in nature or due on demand.

In 1992, CIPSCO entered into a support agreement and has agreed to maintain the financial condition of CIPSCO Investment. In addition, CIPSCO has entered into certain support letters and CIPSCO Investment has entered into certain guarantees in connection with leveraged lease investments. The applicant requests that the Commission approve the continuance of all outstanding and committed intercompany loans and advances, support arrangements and guarantees.

Ameren was incorporated under the laws of the State of Missouri to become a holding company for UE and CIPS following the Transaction and for the purpose of facilitating the Transaction. Ameren has, and prior to the consummation of the Transaction will have, no operations other than those contemplated by the merger agreement to accomplish the Transaction (''Merger Agreement''). The authorized capital stock of Ameren consists of 400 million shares of common stock and 100 million shares of preferred stock par value $.01 per share. Upon consummation of the Transaction, Ameren will be a public-utility holding company and will directly own all of the issued and outstanding common stock of UE, CIPS and CIPSCO Investment. At present, the common stock of Ameren is owned 50% by UE and 50% by CIPSCO. No shares of Ameren preferred stock have been issued.

Soley for the purpose of facilitating the Transaction, Arch Merger, Inc. (''Arch Merger'') was incorporated under the laws of the State of Missouri on August 5, 1995. Arch Merger has, and prior to the closing of the Transaction will have, no operations other than the activities contemplated by the Merger Agreement necessary to accomplish the transaction.

Under the Merger Agreement executed by CIPSCO and UE on August 11, 1995, upon receipt of all necessary approvals, the Transaction will be consummated by merging CIPSCO into Ameren, with Ameren as the surviving corporation, and by merging UE with Arch Merger, with UE as the surviving corporation. The shareholders of UE and CIPSCO have approved the Transaction. Pursuant to the Merger Agreement, each outstanding share of CIPSCO common stock will be converted into 1.03 shares of Ameren Common Stock, par value $.01 per share (''Ameren Common Stock''), and each outstanding share of UE common stock will be converted into one share of Ameren Common Stock. The outstanding UE and CIPS preferred stock will not be affected in the Transaction. Ameren is expected to have a total of 137,215,462 shares of Ameren Common Stock outstanding.

The Merger Agreement also provides that UE expects to transfer its retail electric and gas distribution utility assets located in Illinois to CIPS. As a result, after consummation of the Transaction, CIPS is expected to begin providing service to the approximately 65,000 electric customers and 18,000 as customers currently served by UE in Illinois.

Ameren proposes to issue and/or acquire in open market transactions, from time to time during the first five years after the date of the order issued by the Commission herein, up to 19 million shares of Ameren Common Stock under Ameren's proposed dividend reinvestment plan and certain employee benefit plans that will use Ameren Common Stock.

Ameren Services will be incorporated in Missouri, prior to the consummation of the Transaction, to serve as the service company for the Ameren system. Ameren Services will provide UE and CIPS, and the other companies of the Ameren system, with a variety of administrative, management and support services. The authorized capital stock of Ameren Services will consist of 1,000 shares of common stock, par value $.01 per share, and all issued and outstanding shares will be held by Ameren upon consummation of the Transaction. Ameren Services will enter into a General Services Agreement with Ameren, UE, CIPS and CIPSCO Investment.

Ameren Services will provide UE, CIPS, UEDC and CIPSCO Investment, pursuant to a General Services Agreement, with one or more of the following: building services, accounting, corporate communications, corporate planning, customer services and division support, economic development, energy supply, engineering and construction, environmental services and safety, fossil fuel procurement, gas supply, general counsel, human resources, industrial relations, information services, internal audit, marketing, merger coordination, motor transportation, purchasing, real estate, stores, tax, treasury operations, investor services and other services. In accordance with the General Services Agreement, services provided by Ameren Services will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. Employees of Ameren Services will record transactions utilizing existing data capture and accounting systems. Costs of Ameren Services will be accumulated in accounts and directly assigned, distributed and allocated to the appropriate company in accordance with the guidelines set forth in the General Services Agreement.

It is anticipated that Ameren Services will be staffed primarily by transferring personnel from the current employee rosters of UE and CIPS. Ameren Services' accounting and cost allocation methods and procedures will be structured so as to comply with the Commission's standards for service companies in registered holding company systems. Ameren will structure a General Services Agreement so as to comply with section 13 of the Act and the Commission's rules and regulations thereunder. Thus, charges for all services provided by Ameren Services to affiliated utility companies

and nonutility companies will be on an ''at cost'' basis as determined under rules 90 and 91 of the Act.

In addition to the services to be provided by Ameren Services, UE and CIPS may from time to time or in emergency situations provide one another with certain services incidental to their utility businesses, such as meter reading, materials management, transportation, and services of linemen and gas trouble crews. These services will be provided at cost in accordance with the standards of the Act and the Commission's rules and regulations thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4444 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22516; 811–5255]

The Rodney Square International Securities Fund, Inc.; Notice of Application

February 14, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Rodney Square International Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 26, 1996 and amended on February 11, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 11, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19809–0001.

FOR FURTHER INFORMATION CONTACT: Shirley A. Bodden, Paralegal Specialist, at (202) 942–0575, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a Maryland corporation. On July 24, 1987, applicant registered under the Act by filing a notification of registration on Form N–8A. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933 to register an indefinite number of shares of its only series, The Rodney Square International Equity Fund (the ''Fund''). The registration statement became effective on October 27, 1987, and applicant commenced a public offering of the shares on November 2, 1987.

2. In order to stop further losses on the part of the shareholders, and because net asset value was declining, on May 20, 1996, applicant's board of directors adopted the following resolutions: (1) that liquidation and dissolution of the applicant was advisable and (2) that a special meeting of the applicant's shareholders be called to approve the liquidation and dissolution of the applicant. Proxy materials were filed with the SEC on July 5, 1996 and were mailed to applicant's shareholders on or about that date. At a meeting held on July 25, 1996, shareholders approved the liquidation and dissolution of the applicant.

3. At the close of business on July 30, 1996, the Fund had approximately 102,312 outstanding shares with an aggregate net asset value of $1,334,984 and a per share net asset value of $13.05. Immediately following the close of business on July 31, 1996, applicant redeemed all of its outstanding shares at their net asset value of $13.06 per share, except for 25,000 shares held by Rodney Square Mangement Corporation, applicant's administrator and transfer agent. The shares held by Rodney Square Management Corporation were not redeemed on July 31, 1996, as certain of applicant's portfolio securities were ''when-issued'' and not readily saleable. These securities were subsequently sold in open market transactions at their then-current market prices. The shares held by Rodney Square Management Corporation were redeemed on October 30, 1996, for $323,811, or $12.95 per share. Applicant has made distributions in complete liquidation to all its securityholders.

4. All expenses, including legal, accounting, and other general and administrative expenses, relating to applicant's liquidation and the winding up of its affairs, except for brokerage commissions incurred in connection with the sale of applicant's portfolio securities, have been borne by Wilmington Trust Company, applicant's investment adviser. These expenses totaled approximately $22,771. Brokerage commissions incurred from May 20, 1996 to October 30, 1996 in connection with the sale of applicant's portfolio securities were approximately $62,584.

5. At the time of this application, applicant has no outstanding assets, securityholders, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. Applicant intends to file Articles of Resolution with the State of Maryland to effect its dissolution as a Maryland corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4443 Filed 2–21–97; 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 open meeting during the week of February 24, 1997.

An open meeting will be held on Thursday, February 27, 1997, at 9:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, February 27, 1997, at 9:00 a.m., will be:

The Commission will consider whether to propose for public comment: (i) amendments to Form N–1A under the Investment Company Act of 1940 and the Securities Act of 1933, which would revise the disclosure requirements for mutual fund prospectuses to focus prospectus disclosure on essential information about a particular fund that

would assist an investor in deciding whether to invest in that fund; (ii) rule 498 under the Securities Act and the Investment Company Act, which would permit investors to buy mutual fund shares based on a summary document, or profile, that would provide key information about a mutual fund; and (iii) rule 35d–1 under the Investment Company Act, which would require mutual funds and other registered investment companies with names suggesting that the company focuses on a particular type of investment (e.g., a fund that calls itself the ABC Stock Fund, the XYZ Bond Fund, or the 123 Government Fund) to invest at least 80% of its assets in the type of investment suggested by its name. For further information please contact: Elizabeth R. Krentzman or Kathleen K. Clarke, (202) 942–0721.

At times, changes in Commission priorities require 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: February 20, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–4666 Filed 2–20–97; 3:45 pm]

BILLING CODE 8010–01–M

[Release No. 34–38293; File No. SR–PSE–96–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to an Amendment to the Minor Rule Plan and the Adoption of a Forum Fee for Minor Rule Plan Appeals

February 14, 1997.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 25, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 26, 1996, PSE submitted an amendment that clarifies certain aspects of the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to adopt a forum fee that may be imposed when a Member or Member Organization appeals a finding of a Minor Rule Plan (''MRP'') violation, and the review panel affirms the initial finding of a violation. The Exchange also is proposing to amend its MRP to include PSE Rule 6.87(c), which prohibits the dividing up of an option order to make its parts eligible for entry into Auto-Ex. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a new subsection (5) to PSE Rule 10.11(d) to provide as follows: If, after a hearing or review on the papers pursuant to subsection (d) of PSE Rule 10.11,[3] a panel appointed by the pertinent committee determines that a Member or Member Organization has violated one or more Exchange rules, as alleged, and the sole disciplinary sanction imposed by the pertinent committee for such rule violation(s) is a fine that is less than the total fine initially imposed by the Exchange for the subject violation(s), the Committee has the discretion to waive the imposition of a forum fee.[4] The Exchange believes this fee is necessary to, among other things, help offset the costs associated with certain appeals involving MRP violations.

The Exchange also is proposing to amend its MRP,[5] which provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsection (h)–(j), sets forth the specific Exchange rules deemed to be minor in nature.

Specifically, the Exchange is proposing to add the following violation to the section of the MRP relating to Options Floor Decorum and Minor Trading Rule Violations: ''Dividing up an order to make its parts eligible for entry into Auto-Ex (Rule 6.87(c))'' (with recommended fines of $2,500, $3,750 and $5,000 for first, second, and third violations). The Exchange believes that violations of Rule 6.87(c) are objective in nature and easily verifiable and, therefore, appropriate to include this rule in the MRP.[6] The Exchange also

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[1] 15 U.S.C. 78s(b) (1).

[2] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Ivette López, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1'').

[3] PSE Rule 10.11, entitled ''Appeal of Floor Citations and Minor Rule Plan Sanctions,'' sets forth the procedures that apply when a member or member organization appeals a sanction imposed in connection with a floor citation or the MRP. *See* PSE Rules 10.11 and 10.13.

[4] The provisions of proposed Rule 10.11(d) (5) are essentially the same as Rule 17.50(d) (2) of the Chicago Board Options Exchange (''CBOE''), except that the proposed PSE forum fees are higher than those of the CBOE.

[5] Rule 19d–1(c) (2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (approving amendments to paragraph (c) (2) of Rule 19d–1 under the Act). The PSE's MRP was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (approving File No. SR–PSE–85–24). In 1993, the Exchange amended its MRP and adopted detailed procedures relating to the adjudication of minor rule violations. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491. Thereafter, the Exchange has modified its MRP several times. *See* Securities Exchange Act Release Nos. 34322 (July 6, 1994), 59 FR 35958; 35144 (Dec. 23, 1994), 59 FR 67743 (Dec. 30, 1994); 36622 (Dec. 21, 1995), 60 FR 67384 (Dec. 29, 1995); 37886 (Oct. 29, 1996), 61 FR 37886 (approving File No. SR–PSE–96–26). *See also* Securities Exchange Act Release No. 37799 (Oct. 9, 1996), 61 FR 54479 (publishing File No. SR–PSE–96–30, proposed additions to the MRP, for comment).

[6] For example, an investigation will reveal that a customer's original order, as represented on an ''upstairs'' trading ticket, was for a number of option contracts that was greater than ten, but

notes that the recommended fine levels being proposed are comparable to the fines that the Exchange has imposed previously for violations of Rule 6.87(c).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] and Section 6(b)(7)[9] in particular in that it is designed to promote just and equitable principles of trade, to assure that members, member organizations, and persons associated with members and member organizations are appropriately disciplined for violations of Exchange rules and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–42 and should be submitted by March 17, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4446 Filed 2–21–97; 8:45 am]

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handwritten notes will indicate that the original order has been divided up. In addition, the Exchange's time and sales report will establish that a number of sub-orders occurred sequentially on the Auto-Ex system during a relatively short period of time.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(7).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–38286; File No. SR–CBOE–96–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change Relating to the Reporting Requirements for Securities Accounts and Orders of Market-Makers and Joint Account Provisions

February 13, 1997.

I. Introduction

On November 20, 1996, the Chicago Board Options Exchange, Inc., (''CBOE'' or ''Exchange'') 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 relating to the reporting requirements for securities accounts and orders of market-makers and joint account provisions. The proposed rule change was published for comment in Securities Exchange Act Release No. 38085 (December 24, 1996), 62 FR 434 (January 3, 1997). The Commission received no comments on the proposal.

II. Description of the Proposal

CBOE proposes amending Rule 8.9, regarding Securities Accounts and Orders of Market-Makers. Specifically, CBOE is amending Rule 8.9(a), regarding the identification of accounts, to eliminate the routine submission of information by market-makers respecting non-market-maker trading accounts, or ''outside accounts.'' Currently, Exchange market-makers are required to identify and report to the Exchange all accounts in which the market-maker may engage in stock, option and securities trading, directly or indirectly, or over which it has investment discretion. The rule in its current form is broad enough to require market-makers to report professional trading accounts held at clearing firms, as well as outside personal accounts such as brokerage accounts. The Exchange is amending the reporting requirements of Rule 8.9(a) to eliminate the routine submission of information respecting non-market-maker trading accounts, or ''outside accounts.'' The rule change will require market-makers to report outside account information only when requested by the Exchange.

CBOE also proposes amending Rule 8.9(b), regarding the reporting of market-maker orders. Currently, each market-maker is required to report to the Exchange every order entered into by that market-maker within the specifications of the Rule. CBOE proposes amending Rule 8.9(b) to require the clearing firm that maintains the market-maker's trading account, rather than the market-maker personally, to report executed order information to the Exchange. The Exchange believes it is appropriate to limit the required order information to ''executed'' orders only, based upon its position that only marginal surveillance benefits are derived from gathering unexecuted order information on a routine basis.

Under the proposal, the market-maker will be held responsible for the reporting requirements only if the clearing firm is not reporting executed order information to the Exchange and/or if the Exchange has requested that the market-maker provide the information. Furthermore, the proposed rule change will clarify that this reporting requirement applies to ''professional trading accounts'' (*i.e.*, transactions cleared into all accounts carried for market-makers who are the subject of a clearing firm letter of guarantee issued to the Exchange pursuant to CBOE Rule 8.5).

The clearing firm thus will be the primary source for the reporting of market-maker executed order information to the Exchange. However, all firms which represent and execute market-maker orders, including order services firms as defined in Exchange Rule 6.77, will continue to be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.18b-4.

responsible for maintaining and retaining executed and unexecuted order information as required by Rules 17a-3 and 17a-4 under the Act and by Exchange Rule 15.1. The continuing recordkeeping obligations of such firms pursuant to Exchange rules and other applicable securities laws and regulations will be noted in an Exchange regulatory circular upon approval of the proposed rule change.

In an effort to improve reporting and move toward electronic reporting in the future, CBOE proposes to eliminate the existing description of specific order information required to be reported as set forth in Rule 8.9(b).[3] Upon approval of this filing, the Exchange will issue a regulatory circular to clearing firms which will list the order reporting requirements that were previously embodied in Rule 8.9(b). CBOE will issue additional circulars as reporting requirements are added.

Finally, CBOE proposes to amend Interpretation and Policy .06 to Rule 8.9 to clarify that the existing prohibition against a joint account participant effecting a transaction with another member acting on behalf of the same joint account applies whether the transaction is effected in person or via order. CBOE will also revise Interpretation and Policy .06 to Rule 8.9 to prohibit transactions between two joint accounts if the member who causes a transaction to be executed for one of the joint accounts knows or has reason to know that the two joint accounts have one or more common participants.

The addition to Interpretation .06 to Rule 8.9 codifies in the rule's current provisions in regulatory circulars which seek to ensure that joint account transactions result in a bona fide change in beneficial ownership. Existing regulatory circulars RG96–28 (item 7(b)) and RG95–64 (item 8(b)) provide that a member has the responsibility to ensure that in-person transactions or the entry of orders with floor brokers do not result in trades occurring ''between two joint accounts that have common participants.'' The rule change expressly imposes a knowledge requirement as an element of the offense of effecting a transaction between joint accounts with common participants. This recognizes that members are not always able to know whether there are common participants in two joint accounts because of the frequency with which joint account composition may change.

III. Discussion

The Commission believes CBOE's proposed rule change is consistent with Section 6(b)(5) of the Act.[4] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, to further investor protection and the public interest.

The Commission believes that CBOE's proposal to allow market-makers to provide outside account information upon request by the Exchange rather than providing such information on a routine basis is a reasonable revision to CBOE's market-maker account reporting procedures. This conclusion is based on CBOE's representation that outside account information provides little benefit to the Exchange's surveillance programs unless special circumstances exist. The Commission believes that the ability of the Exchange to request outside account information upon request should help preserve the Exchange's ability to conduct adequate surveillance.

The Commission believes that CBOE's proposal to make a market maker's clearing firm the primary responsible source for reporting market-maker executed order information to the Exchange is a reasonable means of streamlining the order reporting process. The Commission also recognizes the Exchange's position that clearing firms with back-office systems capabilities can most accurately gather and report market-maker order information to the Exchange. Accordingly, the proposed change should result in more effective and efficient reporting of market-maker accounts and executed order information to the Exchange, thus promoting just and equitable principles of trade, perfecting the mechanism of a free and open national market system, and furthering investor protection and the public interest.

The Commission believes it is appropriate to limit the required submitted order information to ''executed'' orders only, based on CBOE's representation that only minimal surveillance benefits are gained by gathering unexecuted order information on a routine basis. Where the clearing firm is not reporting the information to the Exchange and if the Exchange requests that the market-maker provide the information, the market-maker will be responsible for reporting executed order information. Moreover, while the clearing firm is the primary source for the reporting of market-maker executed order information, the firms representing and executing market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information pursuant to Rules 17a–3[5] and 17a–4,[6] of the Act and CBOE Rule 15.1. These provisions offer further assurance that executed order information will be reported and records of executed and unexecuted orders will be maintained.

The Commission believes that CBOE's proposal to eliminate the existing description of specific order information required to be reported pursuant to Rule 8.9(b), and its proposal to issue a regulatory circular to clearing firms listing the order reporting requirements, will provide the CBOE with greater flexibility in adding reporting requirements as needed. The Commission notes that the Exchange has agreed to issue a regulatory circular to its members reflecting that all of the specific order information currently contained in Rule 8.9(b)[7] will continue to be required to be reported pursuant to the rule. If the CBOE in the future seeks to eliminate the required reporting of any of this specific information, such a change would require the submission of a rule filing pursuant to Section 19(b)[8] of the Act.[9]

The Commission believes that CBOE's proposed clarifications to Interpretation .06 will aid members in understanding their responsibilities with regard to joint account transactions, thus assuring that such transactions result in a bona fide change in beneficial ownership. Finally, the Commission believes that CBOE's proposed change to require knowledge as an element of the offense of effecting a transaction between joint accounts with common participants constitutes a reasonable clarification of CBOE's existing joint account provisions, thereby serving to protect investors and the public interest.

[3] CBOE Rule 8.9(b) states that the report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

[4] 15 U.S.C. § 78f(b)(5).

[5] 17 CFR 240.17a–3.

[6] 17 CFR 240.17a–4.

[7] *See supra* note 3.

[8] 15 U.S.C. 78s(b).

[9] Although the submitted filing indicated that circulars would be issued to clearing members, the CBOE has clarified that all members will receive a circular informing them of changes in the reporting requirements. Although the circulars sent to clearing firms may differ from those sent to other CBOE members, the information contained therein will be the same. Phone conversation between Jeff Schroer, Market Surveillance, CBOE, and Peggy Blake, Division of Market Regulation, Commission (February 13, 1997).

IV. 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 CBOE, and in particular Section 6(b)(5).

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–CBOE–96–70) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 97–4387 Filed 2–21–97; 8:45 am]

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[Release No. 34–38294; File No. SR–NASD–97–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards Through October 1, 1997

February 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 31, 1997, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, Nasdaq, a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), is herewith filing a proposed rule change to temporarily suspend the use of the Primary Nasdaq Market Maker qualification criteria found in Rule 4612 (a) and (b) of the Nasdaq Market Maker Requirements of the NASD Rules for all Nasdaq National Market securities for the remainder of the current pilot period of the Nasdaq Short Sale Rule or until such earlier time when new primary market maker qualification criteria can be devised and adopted.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

After the first week of trading under the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.,* Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks (''ECNs'')),[2] Nasdaq has re-evaluated its existing qualification criteria in the primary market maker standards rule, Rule 4612 (a) and (b), in those stocks that are not subject to the primary market maker standard suspension approved in SR–NASD–96–55.[3] In that rule filing, Nasdaq noted that because of the potential changes in quotation and trading activity in Nasdaq securities when the new SEC Rules became effective, the existing numerical criteria used to qualify a registered market maker as a primary market maker would be significantly affected. Because the precise effects on market maker quotes and trades were not possible to predict until Nasdaq could develop practical experience with new patterns of activity under the new rules, Nasdaq believed that it should attempt to minimize the possible harmful unintended consequences that could occur by leaving the current standards in place. Accordingly, Nasdaq proposed, and the SEC approved, that the existing standards would be temporarily suspended on the same schedule for the phase in of the SEC Rules requirements.

However, based upon trading experience in the first week of trading under the new SEC and NASD Rules, Nasdaq believes that the primary market maker standards should be suspended immediately for *all* National Market securities and all registered market makers in those securities should be designated as primary market makers. Nasdaq bases this proposed rule change on three factors that were not readily apparent at the time it filed SR–NASD–96–55: (1) many market makers have voluntarily chosen to display customer limit orders in their quotes even though the SEC's Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks has significantly affected market maker ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B).

Under existing Rule 4612, a registered Nasdaq Market Maker may be deemed to be a Primary Market Maker in National Market securities 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 primary market maker 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. Nasdaq notifies a market maker at the beginning of the new calendar month if it does not meet the tests, and one business day following the notification, Nasdaq withdraws the ''p'' designator.

The changes to market maker quotation and trading activities have been dramatic in the first week of trading in the new environment. To provide their customers with the greater transparency, many market makers have begun to display customer limit orders in *all* Nasdaq securities, not only those subject to the phase-in of the Limit Order Display Rule, Rule 11Ac1–4. With the voluntary display of customer limit orders in stocks not yet subject to Rule 11Ac1–4, Nasdaq market makers are changing their quotes when they are in

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[3] See Securities Exchange Act Release No. 38175 (January 23, 1997); 62 FR 3548.

receipt of customer limit orders that improve upon their current quotations. Because more dealer quotes are now being driven not merely by the market maker's proprietary interests, but also the interests of customers that place limit orders with the market maker, Nasdaq believes that a market maker's ability to meet the 102% of average dealer spread test may be more difficult to meet. For example, because a quote of a market maker driven by a customer limit order is indistinguishable from that of a quote driven by a customer order, it is impossible to tell when market maker quote changes are being driven by customer interests that are entered and then subsequently canceled without any execution. In addition, the test regarding the percentage of time in which the market maker's quote is at the inside will also be driven to some extent by customer limit order interest.

Moreover, the SOES decrementation feature is having a significant impact on individual market maker quotations. Under the new SOES rules, which apply to all securities, when SOES executes against a quotation, whether it is on behalf of a customer or not, Nasdaq's system decreases the quotation size. If the quote is decreased to zero, and the market maker has the Nasdaq auto-refresh feature turned on, the market maker's quote is changed pursuant to that execution, However, because the auto-refresh moves only one side of the market maker's quote, the market maker's quote is spread wider than many market makers want. Therefore, market makers then change the quote to a narrower spread. While Nasdaq believes that narrower spreads are beneficial for investors overall, in this instance, the quote movement without a corresponding trade causes the market maker to exceed the 50% quote to trade ratio established in the primary market maker standards. If the market maker, on the other hand, chooses not to narrow its quote after the auto-refresh, that market maker runs the risk that it may not meet the 102% of the average spread test. Finally, Nasdaq notes that if a market maker fails to meet the standards and falls below the test regarding being a primary market maker in 80% or more of the securities for which it is registered as a market maker, it will not be allowed to register as a primary market maker in an initial public offering, even if it is an underwriter of that security and may be required to play an important liquidity providing role in that stock's initial trading activity.

Nasdaq believes that it is in the public investor's best interests to temporarily suspend the operation of the primary market maker standards that currently exist. If the standards are not suspended, the significant shift in the patterns of quotation and executions that Nasdaq is beginning to experience is going to cause primary market makers operating under the existing standards to lose that status. Loss of the designation would mean that market makers without the designator would not be permitted to avail themselves of the short sale exemption for primary market makers. If a significant number of registered market makers were to lose the short sale exemption, or if a single market maker that handled a significant portion of the order flow in a security were to lose the exemption, liquidity in that particular stock could be seriously harmed.

Therefore, as of February 3, 1997, any registered market maker would be able to avail itself of the short sale exemption for qualified market makers found in Rule 3350(c)(1). In seeking to temporarily suspend the use of the primary market maker qualification criteria, Nasdaq believes that the suspension of the criteria is an appropriate balance between the need for limitations on the market maker short sale exemption and the potential for loss of liquidity and market disruption in a period when new patterns and practices of trading are first being developed. Nasdaq believes that the period of time in which the new SEC Rules are first being implemented may be a period of uncertainty for market makers and investors alike and that the prudent course of action would be to identify and eliminate as many potential areas for increasing that uncertainty as possible. Nasdaq has identified this issue as a critical area of uncertainty and believes that the suspension of the market maker qualification standards on a temporary basis is an appropriate market quality response. This relief will enable Nasdaq market makers to better satisfy investor liquidity demands and could help to promote pricing efficiency.

Nasdaq also plans to develop new standards as soon as practicable so that Nasdaq can obtain experience with the manner in which the new SEC Rules affect market makers. The plan is to analyze the data from January and February and discuss the practices among staff and with the Quality of Markets Committee.

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and facilities transactions in securities. In particular, this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. It should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully Nasdaq's proposed rule change and believes, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 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 the Act, of achieving more efficient and effective market operation, fair competition among brokers and dealers, and economically efficient execution of investor orders in the best market. In particular, this temporary amendment to the existing rule should avoid frustrating the operation of the Order Handling Rules in light of the existence of market factors not readily apparent at the time the NASD requested more limited relief with respect to the suspension of primary market maker standards.[4] The Commission is approving the rule change on a pilot basis through October 1, 1997. During this time, however, the Commission expects that, as with the NASD's excess spread rule,[5] the NASD must develop

[4] *Id.*

[5] As with the primary market maker standards, there is also a dealer spread test that is part of the NASD's ''excess spread rule,'' Rule 4613(d). The Commission recently approved a proposed rule change on a pilot basis through July 1, 1997, providing that a registered market maker in a security listed on the Nasdaq stock market shall be precluded from being a registered market maker in that issue for twenty business days if its average

new primary market maker standards well before the expiration of the pilot.

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will accommodate the Order Handling Rules, which went into effect January 20, 1997.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–07 and should be submitted by March 17, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved on an accelerated basis, effective February 14, 1997 through October 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4445 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38292; File No. SR–Phlx–96–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to Index Value Calculations by the Index Calculation Engine (''ICE'') System

February 14, 1997.

On October 3, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 permit the Phlx to act as the reporting authority for its index options under certain circumstances.

The proposed rule change was published for comment in the Federal Register on October 10, 1996.[3] No comments were received on the proposal. Subsequently, the Phlx amended the proposed rule change.[4] This order approves the proposal, including Amendment No. 1 on an accelerated basis.

Currently, three market (broad-based) index options, seven industry (narrow-based or sector) index options, and the Super Cap Index option trade on the Exchange. The reporting authority for each index option is currently Bridge Data. For each index option listed on the Exchange, the specifications and descriptions filed with the Commission detail how the index value is calculated and that the calculation is conducted by Bridge.

In the course of reviewing inconsistencies in index value calculations, as well as the disaster recovery implications of using a single, outside reporting authority, the Exchange decided to create its own internal system for the calculation and dissemination of index values—the Index Calculation Engine (''ICE'') system. Recently, this system was completed, tested, and implemented as a surveillance tool for Phlx Regulatory Services and Market Surveillance staff monitoring Exchange index options trading. In an effort to make use of the capabilities of the ICE system, the Phlx proposes to utilize the ICE system value as the official index value in two situations.

First, the ICE system value would act as the official index value in the event the reporting authority designated by the Phlx is experiencing difficulties in disseminating an accurate value (*e.g.*, computer failure, line problem). Under these circumstances, the Exchange would automatically switch to using the ICE system value as the official index value, but only for the time period that is necessary for the designated agent to correct its problem.

Second, the Phlx, when determining which entity to utilize as the permanent reporting authority for its index options, would like to be able to select the ICE system as the designated reporting authority.[5] Economic and efficiency considerations are the impetus for this request.

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, with the

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spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. *See* Securities Exchange Act Release No. 38180 (January 16, 1997), 62 FR 3725. Although the Commission approved the proposed rule change on a temporary basis to facilitate compliance with the Commission's Order Handling Rules, the Commission stated that during this time period, the NASD should monitor the effects of the pilot, as well as study alternative methods that would enhance market making performance while completely fulfilling the NASD's obligation regarding the excess spread rule before the August 8, 1997, deadline contained in the Commission's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

[6] The Division of Market Regulation issued an interim no-action letter to the NASD and Nasdaq with respect to the enforcement of the NASD's primary market maker standards during the consideration of this proposed rule change. The approval of this rule change supersedes that no-action position. *See* Letter from Howard Kramer, Associate Director, Division of Market Regulation, SEC, to Eugene A. Lopez, Assistant General Counsel, Nasdaq, dated February 3, 1997.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 U.S.C. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37782 (Oct. 3, 1996), 61 FR 53254.

[4] *See* Letter from Theresa McCloskey, Vice President, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Office of Market Supervision, SEC, dated January 23, 1997, and letter from Theresa McCloskey, Vice President, Regulatory Services, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Office of Market Supervision, SEC, dated January 29, 1997 (collectively ''Amendment No. 1''). Amendment No. 1 withdraws that portion of the proposal seeking ''interim authority'' to utilize the ICE system value. Interim authority, in this case, refers to the Exchange's ability to continue to utilize the ICE system during that interim time period after a temporary operational problem at the designated reporting authority is corrected, but before receiving Commission approval to appoint a different reporting authority. In addition, Amendment No. 1 clarifies that designation of ICE as the reporting authority for a particular options product must be filed pursuant to Section 19(b) of the Act and that the Phlx's request for using ICE as the reporting authority for FLEX options will be incorporated into the FLEX options proposal (SR-Phlx–96–38).

[5] Any request to utilize ICE as the permanent reporting authority for a particular options product will have to be submitted to the Commission for approval under Section 19(b) of the Act. *See* Amendment No. 1, *supra* note 4.

requirements of Section 6(b).[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designated to promote just and equitable principles of trade, to facilitate transactions in securities, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8]

The Commission believes it is appropriate to allow the temporary use of the ICE system value as the official index value when the designated reporting authority is experiencing operating difficulties. Utilizing the ICE system as a backup in such situations will add stability to the affected options market because it will ensure the continued availability of current index values, which are essential to investment decisions in index options, while the designated reporting authority identifies and corrects the problems prohibiting the dissemination of an accurate index value.

The Commission also believes it is appropriate to provide the Phlx with the option of designating the ICE system as the reporting authority for its proprietary index options as long as prior Commission approval pursuant to Section 19 of the Act is obtained. Permitting the Phlx to act as the reporting authority for its proprietary index options should benefit investors by reducing the response time needed in the event there is a problem disseminating index values. Moreover, the Phlx has represented that the ICE system has been tested fully and that this system is capable of handling the proposed tasks.[9]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 simply clarifies that designation of ICE as the reporting authority must be filed pursuant to Section 19(b) of the Act, explains that the Phlx's request for using ICE as the reporting authority for FLEX options will be proposed in the FLEX options proposal (SR–Phlx–96–38), and removes the previous request for interim authority to utilize ICE which was deemed to be unnecessary given the Exchange's ability to use ICE until a problem in the designated reporting authority has been corrected.[10]

Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 6 and Section 19(b)(2) of the Act.[11]

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change 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 the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–36 and should be submitted by March 17, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–96–36), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4447 Filed 2–21–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See* letter from Thomas A. Wittman, Vice President, Trading Systems Development, Phlx, to George Jenkins, Division of Market Regulation, SEC, dated November 20, 1996; telephone conversation between Thomas A. Wittman, Vice President, Trading Systems Development, Phlx, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, November 22, 1996 (representing that ICE is capable of acting as a primary system despite the fact that it originally was designed as a backup system).

[10] The proposal allows the Phlx to utilize the ICE system as the official reporting authority whenever the designated reporting authority is experiencing operating difficulties, but only until such difficulties are resolved. As soon as the problem is corrected, the Phlx must switch back to the designated reporting authority. If the reporting authority's problems occur on a regular basis, the Phlx can designate a different reporting authority, including ICE, by submitting a filing with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder.

[11] 15 U.S.C. 78f, 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area Number 9378]

North Dakota (And Contiguous Counties in Minnesota, South Dakota & Montana); Declaration of Disaster Loan Area

All counties in the State of North Dakota except Billings, Bowman, Golden Valley, and Slope; Clay, Kittson, Marshall, Norman, Polk, Traverse, and Wilkin Counties in Minnesota; Brown, Campbell, Corson, Marshall, McPherson, Perkins, and Roberts Counties in South Dakota; and Richland, Roosevelt, and Sheridan Counties in Montana constitute an economic injury disaster loan area as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 12, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 11, 1997.

Philip Lader,

Administrator.

[FR Doc. 97–4431 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Economic Injury Disaster Loan Area # 9382]

Commonwealth of Pennsylvania; Declaration of Disaster Loan Area

Allegheny County and the contiguous counties of Armstrong, Beaver, Butler, Washington, and Westmoreland in the Commonwealth of Pennsylvania constitute an economic injury disaster loan area as a result of damages caused by a fire which occurred on January 31, 1997 in the Glassport Industrial Park. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office,

360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 14, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–4433 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Economic Injury Disaster Loan Area # 9383]

South Dakota (And Contiguous Counties in Minnesota, Iowa, Nebraska & Wyoming)

Declaration of Disaster Loan Area Aurora, Dewey, Hamlin, Hutchinson, Lake, Lincoln, Lyman, McPherson, Pennington, Perkins, Roberts, Shannon, Spink, and Todd Counties, which together with their contiguous counties comprise the entire State of South Dakota; as well as Big Stone County, Minnesota; Lyon and Sioux Counties in Iowa; Cherry, Dawes, Keya Paha, and Sheridan Counties in Nebraska; and Weston County, Wyoming constitute an economic injury disaster loan area as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. Any contiguous counties not listed herein have been covered under a separate declaration for the same occurrence.

The economic injury numbers assigned to this disaster are 938300 for South Dakota; 938400 for Minnesota; 938500 for Iowa; 938600 for Nebraska; and 938700 for Wyoming.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 14, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–4432 Filed 2–21–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Information on Imports During First 10 Months of 1996; Opportunity for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: By this notice, the Trade Policy Staff Committee informs the public of certain U.S. import statistics for the period from January through October 1996 and affords the public an opportunity to comment on decisions, (including certain discretionary decisions) the President will make with respect to the Generalized System of Preferences (GSP) program. Before July 1, 1997, the President must announce the GSP ''competitive need'' limits set forth in section 503(c)(2)(A) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2463(c)(2)(A)). The discretionary decisions concern (1) the ''de minimis waiver'' authority set forth in section 503(c)(2)(F) of their 1974 Act; and (2) the redesignation authority set forth in section 503(c)(2)(C) of the 1974 Act. Presidential decisions concerning the application of competitive need limits and other product-related decisions stemming from the 1995 Annual Review are expected to be announced in April, and implemented no later than July 1, 1997. (Note because the program's authorization previously expired on July 31, 1995, the Annual Review for that year was delayed until the program's reauthorization was signed into law on August 20, 1996. At that time the 1995 Annual Review resumed and no review for 1996 was conducted.

FOR FURTHER INFORMATION CONTACT:

GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limits

Pursuant to section 503(c)(2)(A), any GSP-eligible beneficiary country that exported to the United States in 1996 a quantity of any one GSP eligible article in excess of (1) $75 million, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility with respect to that article not later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act permits the President to disregard the 50 percent ''competitive need'' limit with respect to any eligible article if the value of total imports of the article during calendar year 1996 did not exceed $13 million.

B. Redesignation of Eligible Articles

If a country is no longer a beneficiary developing country with respect to an eligible article because imports exceeded the competitive need limits in a prior year, then, pursuant to section 503(c)(2)(C) of the 1974 Act, the President may redesignate the beneficiary developing country with respect to the eligible article if imports do not exceed the competitive need limits in a subsequent year.

III. Implementation of Competitive Need Limits, Waivers, and Redesignations

A proclamation will be issued to be effective no later than July 1, 1997, making the adjustments to the list of eligible articles that are required by section 503(c)(2)(A) of the 1974 Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1996.

It should be emphasized that the information set forth below covers only the first 10 months of 1996. Partial year data is being published now to provide the maximum possible advance indication of adjustments that may be made to meet the requirements of section 503(c)(2)(A) of the 1974 Act and to afford the earliest opportunity for comment on the possible discretionary decisions.

List I below shows specific GSP-eligible articles for beneficiaries which have already exceeded estimated competitive need limitations (i.e., a beneficiary supplied over $75 million of an article and/or over 50 percent of imports of an article during the period from January through October, 1996) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows beneficiaries which are approaching the competitive need limitations (i.e., a beneficiary accounted for over 48 percent of the value of total U.S. imports and/or over $63 million during the period from January through October 1996).

List III below shows beneficiaries which, despite accounting for more than 50 percent of the value of total U.S. imports of an article, may be eligible to

receive GSP benefits through the *de minimis* waiver (i.e., where a beneficiary accounted for more than the applicable percentage limit but the value of total U.S. imports of the item was less than $13 million during the period from January through October 1996).

List IV below shows articles from beneficiaries which are currently ineligible for GSP duty-free treatment but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (i.e., a beneficiary accounted for less than 50 percent of the value of U.S. imports and the value of U.S. imports of the article from the beneficiary developing country was less than the applicable dollar limit during the period from January through October 1996). This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamations 6425 of April 29, 1992 (57 FR 19067).

IV. Public Comments

All written comments with regard to the decisions summarized above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR part 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (e.g., the use of the President's *de minimis* waiver authority) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Friday, March 19. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential''.

Written comments submitted in connection with these decisions, except for information granted ''business confidential'' status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room (202) 395–6186. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0603.10.70	Colombia	131,132,564	89.8%
G	1605.10.20	Thailand	6,776,453	20.8%
	1701.11.10	Dominican Republic	150,323,267	18.3%
*	1701.11.10	Brazil	125,346,935	15.3%
*	2402.10.80	Dominican Republic	79,297,735	59.5%
G	2825.90.15	Brazil	8,107,374	57.1%
	2909.19.10	Venezuela	124,068,871	17.8%
	4015.11.00	Thailand	92,143,155	15.2%
	4015.11.00	Malaysia	403,594,940	66.7%
	4015.19.10	Malaysia	78,151,933	58.2%
	4104.31.40	Argentina	110,779,117	38.7%
	4412.13.30	Indonesia	199,685,156	68.5%
G D	4412.22.30	Brazil	420,133	10.0%
G	4412.29.35	Brazil	947,633	5.8%
G D	4412.29.45	Brazil	2,395,802	36.2%
G D	4412.29.45	Philippines	57,519	0.8%
*	6406.10.65	Dominican Republic	151,607,563	59.4%
	7113.11.50	Thailand	84,898,651	30.3%
	7113.19.50	Dominican Republic	75,938,166	4.2%
*	7113.19.50	India	170,902,473	9.5%
G	7202.21.50	Brazil	14,749,033	10.5%
G	7307.21.50	Brazil	177,996	0.7%
G	7307.91.50	Brazil	48,865	0.1%
*	7402.00.00	Chile	106,670,859	58.3%
	7403.11.00	Peru	107,278,492	11.3%
*	7403.11.00	Chile	156,599,059	16.6%
G D	7604.10.30	Venezuela	35,000	0.2%
G	7604.29.30	Venezuela	249,984	0.8%
G	7605.11.00	Venezuela	33,138	0.0%
G	7605.21.00	Venezuela	1,658,545	7.5%
	8413.30.10	Brazil	88,036,104	43.3%
*	8471.60.35	Thailand	287,280,589	5.8%
	8471.60.35	Malaysia	546,558,120	11.1%
	8471.70.50	Philippines	85,021,051	26.7%
	8516.50.00	Thailand	109,112,019	19.2%
	8517.11.00	Malaysia	254,697,792	22.1%
	8517.19.80	Malaysia	141,224,989	15.8%
*	8517.21.00	Thailand	112,202,262	18.0%
	8517.21.00	Malaysia	84,858,897	13.6%
	8517.80.10	Indonesia	141,726,079	46.9%
	8519.99.00	Malaysia	330,885,706	27.4%
*	8521.10.60	Thailand	143,925,909	6.5%
	8521.10.60	Malaysia	487,708,553	22.0%
*	8527.21.10	Brazil	155,280,859	10.8%
	8527.21.10	Malaysia	92,158,641	6.4%
	8527.31.40	Malaysia	363,479,609	50.2%
	8527.31.40	Indonesia	76,940,540	10.6%
	8527.39.00	Malaysia	273,521,734	64.5%
	8528.12.12	Malaysia	151,613,959	63.3%
	8531.20.00	Malaysia	87,780,110	13.8%
*	8544.30.00	Thailand	147,883,558	4.7%
*	8802.30.00	Brazil	92,502,023	4.9%
	9006.53.00	Malaysia	103,797,634	16.0%
*	9009.12.00	Thailand	78,782,756	4.2%
*	9018.90.80	Dominican Republic	244,038,834	33.4%
G	9401.61.40	Croatia	267,098	0.1%
G	9401.61.40	Slovenia	505,625	0.2%
G	9401.69.60	Croatia	1,371,269	0.3%
G	9401.69.60	Slovenia	16,005,690	4.4%
	9401.69.60	Malaysia	95,529,427	26.5%
G	9401.90.40	Croatia	259,127	0.4%
G	9401.90.40	Slovenia	2,442,451	4.6%
	9403.60.80	Malaysia	108,837,365	8.0%

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	110,779,117	1
Brazil	488,012,757	11
Chile	263,269,918	2
Colombia	131,132,564	1
Croatia	1,897,494	3
Dominican Republic	701,205,565	5
India	170,902,473	1
Indonesia	418,351,775	3
Malaysia	3,604,399,409	16
Peru	107,278,492	1
Philippines	85,078,570	2
Slovenia	18,953,766	3
Thailand	1,063,005,352	9
Venezuela	126,045,538	5
TOTAL	7,290,312,790	63

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.02	Uruguay	53,636	71.2%
D	0302.65.00	Ecuador	1,534,170	44.0%
D	0302.69.10	Ecuador	20,956	44.4%
D	0303.32.00	Russia	117,704	69.0%
D	0303.71.00	Venezuela	633,696	45.5%
D	0303.77.00	Argentina	4,783,361	71.5%
D	0304.10.30	Chile	79,410	54.7%
* D	0304.20.50	Argentina	2,022,733	83.6%
D	0305.20.20	Russia	4,500	100.0%
1 D	0708.10.20	Guatemala	542,490	51.9%
D	0708.90.15	India	65,324	59.4%
D	0708.90.30	Ecuador	197,999	63.0%
* D	0709.20.10	Peru	4,516,837	63.0%
1 D	0710.29.30	Dominican Republic	1,060,549	43.7%
D	0710.29.30	Ecuador	1,054,419	43.5%
1 D	0710.80.93	Guatemala	916,135	48.8%
1 D	0711.30.00	Turkey	952,027	45.0%
D	0711.30.00	Morocco	1,113,108	52.6%
D	0711.40.00	India	1,522,862	68.6%
D	0713.31.40	Thailand	968,139	42.1%
D	0713.90.10	Peru	741,781	64.3%
D	0714.10.10	Costa Rica	2,862,804	95.3%
1 D	0714.10.20	Costa Rica	9,886,504	98.7%
1 D	0714.20.20	Dominican Republic	3,397,411	93.8%
1	0714.90.10	Costa Rica	7,730,779	49.3%
	0714.90.20	Costa Rica	5,904,984	42.5%
	0714.90.20	Jamaica	5,915,424	42.6%
1 D	0802.50.20	Turkey	204,806	57.8%
1 D	0802.50.40	Turkey	280,751	75.8%
1 D	0804.50.80	Thailand	1,017,355	51.5%
*	0811.20.20	Chile	8,416,137	63.5%
D	0811.90.10	Costa Rica	1,589,962	65.2%
1 D	0811.90.50	Costa Rica	2,227,918	83.4%
*	0813.10.00	Turkey	21,771,875	94.3%
* D	0813.30.00	Argentina	4,577,770	52.5%
1 D	0813.40.10	Thailand	784,727	77.3%
D	1007.00.00	Argentina	215,728	70.3%
D	1102.30.00	Thailand	2,096,095	80.8%
D	1102.90.30	India	11,512	43.6%
D	1103.14.00	Thailand	135,707	73.8%
1 D	1106.30.20	Ecuador	24,172	59.9%
D	1212.92.00	Thailand	17,450	46.3%
D	1301.90.40	Indonesia	742,816	61.9%
D	1403.90.40	India	1,279,732	50.3%
*	1602.50.20	Argentina	52,337,571	74.2%
D	1604.14.50	Philippines	117,873	91.4%
* D	1604.15.00	Chile	6,694,903	72.1%
*	1604.16.10	Morocco	8,719,681	53.4%
1 D	1604.16.30	Morocco	855,710	81.6%
1 D	1604.30.20	Russia	4,700,206	82.0%
D	1605.90.55	Indonesia	1,078,971	48.3%
D	1701.11.05	India	5,964,507	99.8%
D	1702.60.22	Argentina	45,420	100.0%
1 D	1702.90.35	Belize	4,079,796	79.2%
D	1702.90.40	Dominican Republic	1,025,126	93.7%
D	1703.10.30	Dominican Republic	1,030,424	53.0%
1 D	1703.90.30	Lebanon	20,850	56.8%
D	1806.32.55	Colombia	174,900	54.1%
D	2004.10.40	Colombia	17,807	75.2%
D	2005.10.00	Guatemala	118,473	54.6%
1 D	2005.80.00	Thailand	2,011,374	81.0%
D	2006.00.70	Thailand	1,747,027	50.5%
	2008.19.15	Dominican Republic	6,497,254	42.2%
D	2008.30.10	Dominican Republic	61,669	50.0%
* D	2008.50.20	Argentina	640,730	69.8%
D	2008.99.13	Costa Rica	6,103,696	71.5%
D	2008.99.23	Dominican Republic	325,061	78.0%
1 D	2008.99.35	Thailand	3,103,219	82.9%
D	2008.99.45	Dominican Republic	102,683	54.1%
D	2106.90.03	Dominican Republic	10,200	44.9%
D	2106.90.12	Dominican Republic	4,761	66.4%
D	2202.90.36	Dominican Republic	112,649	98.5%
* D	2208.60.50	Russia	67,368	79.3%
D	2516.22.00	India	85,851	76.1%
1 D	2516.90.00	Republic of South Af	1,783,565	48.7%
	2603.00.00	Chile	48,563,636	70.2%
D	2608.00.00	Peru	2,349,969	54.3%
D	2619.00.30	Venezuela	403,276	73.3%
D	2707.99.40	Czech Republic	597,100	52.6%
1 D	2804.29.00	Ukraine	1,756,474	56.9%
D	2811.29.50	Brazil	6,041,378	60.3%
D	2819.10.00	Kazakhstan	2,714,927	46.7%
1 D	2825.30.00	Republic of South Af	4,113,768	84.6%
1 D	2825.70.00	Chile	4,899,779	79.2%
* D	2827.39.20	India	41,583	49.7%
* D	2833.29.30	India	14,905	100.0%
D	2836.99.20	Brazil	150,733	86.4%
1 D	2840.11.00	Turkey	2,410,000	99.5%
D	2840.19.00	Turkey	27,599	94.9%
D	2841.61.00	Czech Republic	1,059,798	43.4%
D	2841.90.10	Republic of South Af	397,631	83.9%
D	2841.90.20	Chile	1,781,314	66.5%
* D	2848.00.10	India	5,040	61.5%
D	2849.10.00	Argentina	165,449	48.6%
	2849.90.50	Trinidad and Tobago	9,534,233	45.3%
D	2850.00.20	Republic of South Af	3,486,838	100.0%
D	2902.60.00	Brazil	1,298,461	48.9%
* D	2902.90.40	India	11,686	50.7%
* D	2903.19.10	Brazil	244,799	56.5%
1 D	2903.23.00	Brazil	6,184,112	74.7%
* D	2904.90.04	India	81,444	92.8%
D	2904.90.15	Brazil	12,576,566	99.9%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	2905.11.20	Trinidad and Tobago.	56,552,817	31.7%
*	2906.11.00	India.....	11,033,770	45.9%
D	2908.90.24	Czech Republic.....	196,249	74.3%
D	2909.50.40	Indonesia.....	2,586,025	52.1%
D	2912.13.00	Colombia.....	13,205	100.0%
D	2914.40.20	Czech Republic.....	43,533	92.3%
* D	2914.69.10	India.....	64,700	55.8%
D	2916.31.15	Estonia.....	6,339,551	49.3%
D	2916.39.08	Hungary.....	179,380	89.7%
* D	2916.39.15	India.....	2,406,192	67.8%
D	2917.19.10	Hungary.....	1,384,399	73.3%
* D	2917.32.00	Brazil.....	358,030	45.9%
	2918.21.10	Brazil.....	6,519,431	47.3%
D	2918.21.50	Poland.....	355,294	70.4%
D	2918.22.50	Jordan.....	70,401	64.8%
D	2918.90.35	Romania.....	674,707	76.8%
* D	2921.42.21	India.....	363,616	100.0%
D	2921.42.23	Guatemala.....	221,432	70.1%
* D	2921.42.55	India.....	431,058	75.6%
D	2921.43.19	Hungary.....	366,786	60.9%
* D	2922.29.26	India.....	472,180	99.4%
D	2931.00.25	Brazil.....	2,520,154	100.0%
D	2932.13.00	Republic of South Af	3,261,187	67.3%
D	2932.29.25	Czech Republic.....	6,714	100.0%
*	2933.29.45	Slovenia.....	15,956,977	51.8%
* D	2933.39.25	Brazil.....	4,188,000	56.9%
1 D	2933.40.08	Hungary.....	346,243	95.9%
D	2933.40.10	Russia.....	3,615,624	53.9%
* D	2933.40.30	Brazil.....	5,037,311	69.8%
D	2934.90.08	Czech Republic.....	15,850	100.0%
1 D	2938.10.00	Brazil.....	529,859	52.5%
*	3301.12.00	Brazil.....	18,646,112	78.6%
* D	3301.24.00	India.....	5,713,436	87.8%
*	3301.90.10	India.....	11,777,182	69.9%
D	3603.00.30	Brazil.....	1,930,359	63.9%
D	3808.20.28	Colombia.....	2,240,160	47.9%
D	3808.30.20	Brazil.....	1,771,176	82.9%
* D	3808.90.70	India.....	615,538	69.4%
D	3823.11.00	Malaysia.....	717,682	53.1%
D	3823.12.00	Malaysia.....	500,245	76.3%
D	3823.19.20	Malaysia.....	5,162,531	59.0%
	3824.90.40	Malaysia.....	30,640,741	64.0%
D	3912.90.00	Brazil.....	3,388,301	42.9%
D	3920.59.80	Dominican Republic..	1,065,858	61.0%
	3921.12.11	Colombia.....	29,148,693	47.1%
D	4010.19.50	Malaysia.....	2,814,014	54.4%
D	4010.24.41	Malaysia.....	47,526	97.4%
*	4011.10.10	Brazil.....	66,890,327	6.1%
*	4016.99.35	Thailand.....	8,262,454	43.0%
D	4104.39.20	Thailand.....	2,220,624	79.4%
D	4104.39.50	India.....	3,957,873	58.4%
* D	4106.19.30	Pakistan.....	194,063	51.1%
* D	4106.20.60	Pakistan.....	6,806,332	65.2%
*	4107.90.60	Republic of South Af	16,259,416	66.2%
* D	4109.00.70	Brazil.....	340,139	63.8%
*	4203.21.20	Indonesia.....	10,814,253	61.4%
D	4205.00.60	Venezuela.....	304,780	66.7%
D	4302.20.60	Brazil.....	73,003	55.8%
*	4411.11.00	Brazil.....	20,468,003	51.2%
* D	4411.19.20	Brazil.....	4,090,264	57.7%
D	4412.13.25	Malaysia.....	1,318,543	49.9%
	4412.13.30	Malaysia.....	59,141,059	20.3%
	4412.13.55	Indonesia.....	10,134,707	65.7%
* D	4412.14.25	Brazil.....	5,610,847	96.7%
* D	4412.19.10	Brazil.....	348,888	91.9%
* D	4412.22.30	Indonesia.....	2,700,701	64.6%
D	4412.22.40	Colombia.....	815,956	52.5%
D	4412.22.50	Malaysia.....	2,776,529	47.6%
* D	4412.92.10	Brazil.....	29,635	100.0%
D	4412.92.50	Indonesia.....	71,963	57.4%
D	4412.92.90	Malaysia.....	336,817	43.2%
* D	4412.99.15	Brazil.....	551,891	100.0%
1 D	4412.99.45	Indonesia.....	112,876	49.6%
D	4412.99.55	Colombia.....	736,714	62.1%
* D	4417.00.60	Brazil.....	705,910	54.0%
D	4421.90.30	Philippines.....	375,816	46.9%
D	4602.10.23	Indonesia.....	1,822	100.0%
1	4823.90.20	Philippines.....	8,362,976	61.2%
D	5110.00.00	Czech Republic.....	36,883	52.9%
* D	5208.31.20	India.....	167,351	99.0%
* D	5208.32.10	India.....	404,413	62.7%
* D	5208.41.20	India.....	520,836	78.7%
* D	5208.42.10	India.....	1,216,312	93.7%
* D	5208.51.20	India.....	10,776	67.1%
* D	5208.52.10	India.....	88,671	55.6%
* D	5209.31.30	India.....	1,347,446	96.9%
* D	5209.41.30	India.....	2,303,201	97.6%
* D	5209.51.30	India.....	89,110	65.5%
* D	5310.90.00	India.....	268,113	70.5%
1 D	5607.30.20	Philippines.....	3,481,331	86.1%
1 D	5609.00.20	Philippines.....	383,457	50.0%
* D	5702.20.10	India.....	3,956,456	98.9%
D	5702.49.15	India.....	1,502,835	76.6%
* D	5702.99.20	India.....	1,445,234	58.5%
* D	5703.90.00	India.....	4,873,827	55.7%
D	5904.91.00	India.....	6,770	100.0%
	6116.10.08	Thailand.....	8,607,562	44.2%
D	6116.99.35	Philippines.....	71,341	61.4%
D	6304.99.25	Philippines.....	99,041	61.2%
1 D	6501.00.60	Czech Republic.....	8,210	50.7%
D	7002.10.20	Malaysia.....	506,560	65.8%
D	7010.91.30	Egypt.....	543,852	47.0%

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'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	7018.90.50	Czech Republic.....	5,762,544	57.1%
D	7019.19.30	Brazil.....	3,602,910	85.9%
D	7109.00.00	Peru.....	528,785	61.9%
	7113.19.21	Peru.....	20,383,225	49.8%
D	7113.20.21	India.....	123,171	56.5%
D	7113.20.30	Mauritius.....	508,445	52.1%
*	7116.20.05	Thailand.....	8,512,189	47.6%
D	7202.21.10	Egypt.....	619,814	49.9%
D	7319.20.00	Malaysia.....	1,397,752	50.8%
1 D	7403.12.00	Peru.....	723,176	100.0%
D	7409.39.50	Hungary.....	186,550	64.8%
D	7411.21.50	Trinidad and Tobago.	2,877,193	49.7%
* D	7614.90.20	Venezuela.....	1,296,914	50.5%
1 D	7614.90.50	Venezuela.....	3,838,319	82.0%
	7616.99.50	Malaysia.....	60,120,515	13.6%
D	7904.00.00	Republic of South Af	661,131	47.0%
	7905.00.00	Peru.....	15,377,152	94.0%
*	8104.11.00	Russia.....	41,353,782	81.0%
	8108.90.60	Russia.....	41,658,207	59.8%
	8112.30.60	Russia.....	6,917,123	46.9%
1 D	8112.91.50	Chile.....	6,368,902	83.1%
D	8202.91.30	Brazil.....	2,200,553	52.2%
D	8211.92.60	Pakistan.....	1,800,157	49.8%
1 D	8213.00.60	Brazil.....	286,955	51.8%
	8412.10.00	Russia.....	12,896,789	87.5%
	8414.30.40	Brazil.....	74,422,749	47.6%
	8414.30.80	Brazil.....	64,662,208	15.3%
	8426.11.00	Brazil.....	8,997,507	44.6%
	8428.32.00	Slovenia.....	6,540,500	45.3%
*	8429.30.00	Brazil.....	19,096,315	70.6%
1 D	8450.90.40	Brazil.....	29,093	63.5%
D	8459.51.00	Czech Republic.....	2,021,724	59.4%
*	8471.49.26	Thailand.....	68,485,132	12.2%
D	8471.49.31	Malaysia.....	1,302,135	49.0%
	8471.60.35	Indonesia.....	65,144,707	1.3%
	8483.10.30	Brazil.....	57,316,358	31.0%
D	8483.50.40	Malaysia.....	355,867	66.2%
	8504.40.90	Malaysia.....	67,347,783	4.9%
D	8519.21.00	Malaysia.....	414,572	62.4%
D	8519.31.00	Malaysia.....	226,701	52.2%
	8520.33.00	Malaysia.....	69,253,134	23.8%
	8521.10.90	Malaysia.....	22,950,172	70.1%
	8525.20.05	Thailand.....	10,260,287	47.2%
	8525.20.30	Malaysia.....	58,101,088	12.9%
	8527.12.00	Malaysia.....	62,119,565	52.6%
	8527.13.60	Malaysia.....	72,865,797	20.3%
	8527.29.40	Brazil.....	26,874,947	50.1%
	8527.32.50	Malaysia.....	19,300,796	74.2%
	8528.12.04	Indonesia.....	61,416,774	98.8%
D	8528.12.16	Hungary.....	1,760,551	47.9%
D	8528.12.76	Malaysia.....	4,987,343	57.2%
	8531.20.00	Thailand.....	67,782,301	10.7%
	8541.40.20	Malaysia.....	59,238,326	23.3%
D	8543.81.00	Philippines.....	1,856,042	43.4%
	8544.30.00	Indonesia.....	57,199,581	1.8%
* D	8546.10.00	Brazil.....	735,580	52.0%
D	8703.10.50	Poland.....	2,080,695	42.1%
	8708.39.50	Brazil.....	69,229,772	5.3%
D	9006.62.00	Thailand.....	10,383,025	82.5%
D	9009.30.00	Malaysia.....	3,058,035	49.0%
D	9013.10.30	Ukraine.....	709,325	43.2%
D	9018.90.10	Argentina.....	614,391	68.5%
1 D	9102.29.04	Philippines.....	909,635	80.8%
D	9401.69.40	Indonesia.....	6,118,886	50.6%
D	9403.50.60	Macao.....	3,308	49.0%
	9403.60.80	Indonesia.....	72,389,582	5.3%
*	9405.50.30	India.....	19,487,961	63.9%
D	9506.19.40	Czech Republic.....	1,653,743	62.3%
* D	9506.61.00	Philippines.....	5,278,022	76.3%
1 D	9614.20.60	Turkey.....	86,762	54.9%
1 D	9614.20.80	Turkey.....	182,963	46.7%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	65,403,153	9
Belize.....	4,079,796	1
Brazil.....	497,948,636	38
Chile.....	76,804,081	7
Colombia.....	33,147,435	7
Costa Rica.....	36,306,647	7
Czech Republic.....	11,402,348	11
Dominican Republic..	14,693,645	12
Ecuador.....	2,831,716	5
Egypt.....	1,163,666	2
Estonia.....	6,339,551	1
Guatemala.....	1,798,530	4
Hungary.....	4,223,909	6
India.....	83,732,474	38
Indonesia.....	290,513,664	14
Jamaica.....	5,915,424	1
Jordan.....	70,401	1
Kazakhstan.....	2,714,927	1
Lebanon.....	20,850	1
Macao.....	3,308	1
Malaysia.....	607,001,828	27
Mauritius.....	508,445	1
Morocco.....	10,688,499	3
Pakistan.....	8,800,552	3
Peru.....	44,620,925	7
Philippines.....	20,935,534	10
Poland.....	2,435,989	2
Republic of South Af	29,963,536	7
Romania.....	674,707	1
Russia.....	111,331,303	9
Slovenia.....	22,497,477	2
Thailand.....	196,394,667	17
Trinidad and Tobago.	68,964,243	3
Turkey.....	25,916,783	8
Ukraine.....	2,465,799	2
Uruguay.....	53,636	1
Venezuela.....	6,476,985	5
TOTAL.....	2,298,845,069	275

LIST III : POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.02	Uruguay	53,636	71.2%
D	0302.65.00	Ecuador	1,534,170	44.0%
D	0302.69.10	Ecuador	20,956	44.4%
D	0303.32.00	Russia	117,704	69.0%
D	0303.71.00	Venezuela	633,696	45.5%
D	0303.77.00	Argentina	4,783,361	71.5%
D	0304.10.30	Chile	79,410	54.7%
* D	0304.20.50	Argentina	2,022,733	83.6%
D	0305.20.20	Russia	4,500	100.0%
1 D	0708.10.20	Guatemala	542,490	51.9%
D	0708.90.15	India	65,324	59.4%
D	0708.90.30	Ecuador	197,999	63.0%
* D	0709.20.10	Peru	4,516,837	63.0%
1 D	0710.29.30	Dominican Republic	1,060,549	43.7%
D	0710.29.30	Ecuador	1,054,419	43.5%
1 D	0710.80.93	Guatemala	916,135	48.8%
1 D	0711.30.00	Turkey	952,027	45.0%
D	0711.30.00	Morocco	1,113,108	52.6%
D	0711.40.00	India	1,522,862	68.6%
D	0713.31.40	Thailand	968,139	42.1%
D	0713.90.10	Peru	741,781	64.3%
D	0714.10.10	Costa Rica	2,862,804	95.3%
1 D	0714.10.20	Costa Rica	9,886,504	98.7%
1 D	0714.20.20	Dominican Republic	3,397,411	93.8%
1 D	0802.50.20	Turkey	204,806	57.8%
1 D	0802.50.40	Turkey	280,751	75.8%
1 D	0804.50.80	Thailand	1,017,355	51.5%
D	0811.90.10	Costa Rica	1,589,962	65.2%
1 D	0811.90.50	Costa Rica	2,227,918	83.4%
* D	0813.30.00	Argentina	4,577,770	52.5%
1 D	0813.40.10	Thailand	784,727	77.3%
D	1007.00.00	Argentina	215,728	70.3%
D	1102.30.00	Thailand	2,096,095	80.8%
D	1102.90.30	India	11,512	43.6%
D	1103.14.00	Thailand	135,707	73.8%
1 D	1106.30.20	Ecuador	24,172	59.9%
D	1212.92.00	Thailand	17,450	46.3%
D	1301.90.40	Indonesia	742,816	61.9%
D	1403.90.40	India	1,279,732	50.3%
D	1604.14.50	Philippines	117,873	91.4%
* D	1604.15.00	Chile	6,694,903	72.1%
1 D	1604.16.30	Morocco	855,710	81.6%
1 D	1604.30.20	Russia	4,700,206	82.0%
D	1605.90.55	Indonesia	1,078,971	48.3%
D	1701.11.05	India	5,964,507	99.8%
D	1702.60.22	Argentina	45,420	100.0%
1 D	1702.90.35	Belize	4,079,796	79.2%
D	1702.90.40	Dominican Republic	1,025,126	93.7%
D	1703.10.30	Dominican Republic	1,030,424	53.0%
1 D	1703.90.30	Lebanon	20,850	56.8%
D	1806.32.55	Colombia	174,900	54.1%
D	2004.10.40	Colombia	17,807	75.2%
D	2005.10.00	Guatemala	118,473	54.6%
1 D	2005.80.00	Thailand	2,011,374	81.0%
D	2006.00.70	Thailand	1,747,027	50.5%
D	2008.30.10	Dominican Republic	61,669	50.0%
* D	2008.50.20	Argentina	640,730	69.8%
D	2008.99.13	Costa Rica	6,103,696	71.5%
D	2008.99.23	Dominican Republic	325,061	78.0%
1 D	2008.99.35	Thailand	3,103,219	82.9%
D	2008.99.45	Dominican Republic	102,683	54.1%
D	2106.90.03	Dominican Republic	10,200	44.9%
D	2106.90.12	Dominican Republic	4,761	66.4%
D	2202.90.36	Dominican Republic	112,649	98.5%
* D	2208.60.50	Russia	67,368	79.3%
D	2516.22.00	India	85,851	76.1%
1 D	2516.90.00	Republic of South Af	1,783,565	48.7%
D	2608.00.00	Peru	2,349,969	54.3%
D	2619.00.30	Venezuela	403,276	73.3%
D	2707.99.40	Czech Republic	597,100	52.6%
1 D	2804.29.00	Ukraine	1,756,474	56.9%
D	2811.29.50	Brazil	6,041,378	60.3%
D	2819.10.00	Kazakhstan	2,714,927	46.7%
1 D	2825.30.00	Republic of South Af	4,113,768	84.6%
1 D	2825.70.00	Chile	4,899,779	79.2%
* D	2827.39.20	India	41,583	49.7%
* D	2833.29.30	India	14,905	100.0%
D	2836.99.20	Brazil	150,733	86.4%
1 D	2840.11.00	Turkey	2,410,000	99.5%
D	2840.19.00	Turkey	27,599	94.9%
D	2841.61.00	Czech Republic	1,059,798	43.4%
D	2841.90.10	Republic of South Af	397,631	83.9%
D	2841.90.20	Chile	1,781,314	66.5%
* D	2848.00.10	India	5,040	61.5%
D	2849.10.00	Argentina	165,449	48.6%
D	2850.00.20	Republic of South Af	3,486,838	100.0%
D	2902.60.00	Brazil	1,298,461	48.9%
* D	2902.90.40	India	11,686	50.7%
* D	2903.19.10	Brazil	244,799	56.5%
1 D	2903.23.00	Brazil	6,184,112	74.7%
* D	2904.90.04	India	81,444	92.8%
D	2904.90.15	Brazil	12,576,566	99.9%
D	2908.90.24	Czech Republic	196,249	74.3%
D	2909.50.40	Indonesia	2,586,025	52.1%
D	2912.13.00	Colombia	13,205	100.0%
D	2914.40.20	Czech Republic	43,533	92.3%
* D	2914.69.10	India	64,700	55.8%
D	2916.31.15	Estonia	6,339,551	49.3%
D	2916.39.08	Hungary	179,380	89.7%
* D	2916.39.15	India	2,406,192	67.8%
D	2917.19.10	Hungary	1,384,399	73.3%
* D	2917.32.00	Brazil	358,030	45.9%

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LIST III : POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2918.21.50	Poland	355,294	70.4%
D	2918.22.50	Jordan	70,401	64.8%
D	2918.90.35	Romania	674,707	76.8%
* D	2921.42.21	India	363,616	100.0%
D	2921.42.23	Guatemala	221,432	70.1%
* D	2921.42.55	India	431,058	75.6%
D	2921.43.19	Hungary	366,786	60.9%
* D	2922.29.26	India	472,180	99.4%
D	2931.00.25	Brazil	2,520,154	100.0%
D	2932.13.00	Republic of South Af	3,261,187	67.3%
D	2932.29.25	Czech Republic	6,714	100.0%
* D	2933.39.25	Brazil	4,188,000	56.9%
1 D	2933.40.08	Hungary	346,243	95.9%
D	2933.40.10	Russia	3,615,624	53.9%
* D	2933.40.30	Brazil	5,037,311	69.8%
D	2934.90.08	Czech Republic	15,850	100.0%
1 D	2938.10.00	Brazil	529,859	52.5%
* D	3301.24.00	India	5,713,436	87.8%
D	3603.00.30	Brazil	1,930,359	63.9%
D	3808.20.28	Colombia	2,240,160	47.9%
D	3808.30.20	Brazil	1,771,176	82.9%
* D	3808.90.70	India	615,538	69.4%
D	3823.11.00	Malaysia	717,682	53.1%
D	3823.12.00	Malaysia	500,245	76.3%
D	3823.19.20	Malaysia	5,162,531	59.0%
D	3912.90.00	Brazil	3,388,301	42.9%
D	3920.59.80	Dominican Republic	1,065,858	61.0%
D	4010.19.50	Malaysia	2,814,014	54.4%
D	4010.24.41	Malaysia	47,526	97.4%
D	4104.39.20	Thailand	2,220,624	79.4%
D	4104.39.50	India	3,957,873	58.4%
* D	4106.19.30	Pakistan	194,063	51.1%
* D	4106.20.60	Pakistan	6,806,332	65.2%
* D	4109.00.70	Brazil	340,139	63.8%
D	4205.00.60	Venezuela	304,780	66.7%
D	4302.20.60	Brazil	73,003	55.8%
* D	4411.19.20	Brazil	4,090,264	57.7%
D	4412.13.25	Malaysia	1,318,543	49.9%
* D	4412.14.25	Brazil	5,610,847	96.7%
* D	4412.19.10	Brazil	348,888	91.9%
* D	4412.22.30	Indonesia	2,700,701	64.6%
D	4412.22.40	Colombia	815,956	52.5%
D	4412.22.50	Malaysia	2,776,529	47.6%
* D	4412.92.10	Brazil	29,635	100.0%
D	4412.92.50	Indonesia	71,963	57.4%
D	4412.92.90	Malaysia	336,817	43.2%
* D	4412.99.15	Brazil	551,891	100.0%
1 D	4412.99.45	Indonesia	112,876	49.6%
D	4412.99.55	Colombia	736,714	62.1%
* D	4417.00.60	Brazil	705,910	54.0%
D	4421.90.30	Philippines	375,816	46.9%
D	4602.10.23	Indonesia	1,822	100.0%
D	5110.00.00	Czech Republic	36,883	52.9%
* D	5208.31.20	India	167,351	99.0%
* D	5208.32.10	India	404,413	62.7%
* D	5208.41.20	India	520,836	78.7%
* D	5208.42.10	India	1,216,312	93.7%
* D	5208.51.20	India	10,776	67.1%
* D	5208.52.10	India	88,671	55.6%
* D	5209.31.30	India	1,347,446	96.9%
* D	5209.41.30	India	2,303,201	97.6%
* D	5209.51.30	India	89,110	65.5%
* D	5310.90.00	India	268,113	70.5%
1 D	5607.30.20	Philippines	3,481,331	86.1%
1 D	5609.00.20	Philippines	383,457	50.0%
* D	5702.20.10	India	3,956,456	98.9%
D	5702.49.15	India	1,502,835	76.6%
* D	5702.99.20	India	1,445,234	58.5%
* D	5703.90.00	India	4,873,827	55.7%
D	5904.91.00	India	6,770	100.0%
D	6116.99.35	Philippines	71,341	61.4%
D	6304.99.25	Philippines	99,041	61.2%
1 D	6501.00.60	Czech Republic	8,210	50.7%
D	7002.10.20	Malaysia	506,560	65.8%
D	7010.91.30	Egypt	543,852	47.0%
D	7018.90.50	Czech Republic	5,762,544	57.1%
D	7019.19.30	Brazil	3,602,910	85.9%
D	7109.00.00	Peru	528,785	61.9%
D	7113.20.21	India	123,171	56.5%
D	7113.20.30	Mauritius	508,445	52.1%
D	7202.21.10	Egypt	619,814	49.9%
D	7319.20.00	Malaysia	1,397,752	50.8%
1 D	7403.12.00	Peru	723,176	100.0%
D	7409.39.50	Hungary	186,550	64.8%
D	7411.21.50	Trinidad and Tobago	2,877,193	49.7%
* D	7614.90.20	Venezuela	1,296,914	50.5%
1 D	7614.90.50	Venezuela	3,838,319	82.0%
D	7904.00.00	Republic of South Af	661,131	47.0%
1 D	8112.91.50	Chile	6,368,902	83.1%
D	8202.91.30	Brazil	2,200,553	52.2%
D	8211.92.60	Pakistan	1,800,157	49.8%
1 D	8213.00.60	Brazil	286,955	51.8%
1 D	8450.90.40	Brazil	29,093	63.5%
D	8459.51.00	Czech Republic	2,021,724	59.4%
D	8471.49.31	Malaysia	1,302,135	49.0%
D	8483.50.40	Malaysia	355,867	66.2%
D	8519.21.00	Malaysia	414,572	62.4%
D	8519.31.00	Malaysia	226,701	52.2%
D	8528.12.16	Hungary	1,760,551	47.9%
D	8528.12.76	Malaysia	4,987,343	57.2%
D	8543.81.00	Philippines	1,856,042	43.4%
* D	8546.10.00	Brazil	735,580	52.0%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST III ; POSSIBLE de MINIMIS ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	8703.10.50	Poland.....	2,080,695	42.1%
D	9006.62.00	Thailand.....	10,383,025	82.5%
D	9009.30.00	Malaysia.....	3,058,035	49.0%
D	9013.10.30	Ukraine.....	709,325	43.2%
D	9018.90.10	Argentina.....	614,391	68.5%
1 D	9102.29.04	Philippines.....	909,635	80.8%
D	9401.69.40	Indonesia.....	6,118,886	50.6%
D	9403.50.60	Macao.....	3,308	49.0%
D	9506.19.40	Czech Republic.....	1,653,743	62.3%
* D	9506.61.00	Philippines.....	5,278,022	76.3%
1 D	9614.20.60	Turkey.....	86,762	54.9%
1 D	9614.20.80	Turkey.....	182,963	46.7%

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	13,065,582	8
Belize.....	4,079,796	1
Brazil.....	64,824,907	27
Chile.....	19,824,308	5
Colombia.....	3,998,742	6
Costa Rica.....	22,670,884	5
Czech Republic.....	11,402,348	11
Dominican Republic..	8,196,391	11
Ecuador.....	2,831,716	5
Egypt.....	1,163,666	2
Estonia.....	6,339,551	1
Guatemala.....	1,798,530	4
Hungary.....	4,223,909	6
India.....	41,433,561	35
Indonesia.....	13,414,060	8
Jordan.....	70,401	1
Kazakhstan.....	2,714,927	1
Lebanon.....	20,850	1
Macao.....	3,308	1
Malaysia.....	25,922,852	16
Mauritius.....	508,445	1
Morocco.....	1,968,818	2
Pakistan.....	8,800,552	3
Peru.....	8,860,548	5
Philippines.....	12,572,558	9
Poland.....	2,435,989	2
Republic of South Af	13,704,120	6
Romania.....	674,707	1
Russia.....	8,505,402	5
Thailand.....	24,484,742	11
Trinidad and Tobago.	2,877,193	1
Turkey.....	4,144,908	7
Ukraine.....	2,465,799	2
Uruguay.....	53,636	1
Venezuela.....	6,476,985	5
TOTAL.....	346,534,691	216

LIST IV : POSSIBLE REDESIGNATION ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0703.10.20	Chile	0	0.0%
*	0709.10.00	Chile	95,570	11.4%
*	0710.80.70	Guatemala	848,201	18.2%
*	0811.20.40	Chile	735,503	25.6%
*	1005.90.20	Argentina	0	0.0%
*	1005.90.40	Argentina	35,556	2.2%
*	1301.90.40	Brazil	425,808	35.5%
*	1604.14.50	Thailand	0	0.0%
*	1701.11.05	Brazil	0	0.0%
*	1701.11.20	Guatemala	49,814,034	36.5%
*	1701.11.20	Brazil	9,552,693	7.0%
*	1701.12.10	Brazil	0	0.0%
*	1701.91.05	Brazil	0	0.0%
*	1701.91.10	Brazil	0	0.0%
*	1701.99.05	Brazil	0	0.0%
*	1701.99.10	Brazil	1,088,400	6.3%
*	1806.10.65	Brazil	0	0.0%
*	2007.99.48	Argentina	77,844	25.0%
*	2007.99.50	Brazil	596,812	6.4%
*	2515.11.00	Brazil	0	0.0%
*	2603.00.00	Indonesia	0	0.0%
*	2804.69.10	Brazil	14,425,657	25.8%
*	2843.30.00	Chile	0	0.0%
*	2849.10.00	Brazil	102,157	30.0%
*	2905.11.20	Trinidad and Tobago	56,552,817	31.7%
*	2906.11.00	Brazil	1,104,000	4.5%
*	2907.23.00	Brazil	270,011	6.2%
*	2909.44.00	Brazil	0	0.0%
*	2915.31.00	Brazil	0	0.0%
*	2917.32.00	Brazil	358,030	45.9%
*	2918.22.10	Turkey	0	0.0%
*	2921.12.00	Brazil	0	0.0%
*	2933.71.00	Russia	0	0.0%
*	2934.90.15	Brazil	1,347,580	28.9%
*	3806.30.00	Argentina	0	0.0%
*	3812.20.10	Brazil	76,032	1.6%
*	3824.90.40	Brazil	2,154,746	4.5%
*	3904.21.00	Brazil	0	0.0%
2	3926.20.30	Pakistan	391,460	12.0%
*	4006.10.00	Brazil	52,810	14.5%
*	4011.10.10	Brazil	66,890,327	6.1%
*	4011.10.50	Brazil	2,723,377	11.5%
*	4011.20.10	Brazil	37,627,642	4.7%
*	4011.20.50	Brazil	986,835	0.9%
*	4016.99.30	Thailand	591,093	2.2%
*	4016.99.35	Thailand	8,262,454	43.0%
*	4104.21.00	Argentina	3,240,405	14.3%
*	4104.22.00	Brazil	512,896	7.1%
*	4104.22.00	Argentina	145,249	2.0%
*	4104.29.50	Argentina	75,011	3.4%
*	4104.29.90	Argentina	51,728	0.2%
*	4104.31.50	Argentina	1,455,083	5.4%
*	4104.31.60	Argentina	606,617	2.2%
*	4104.31.80	Argentina	1,014,435	1.0%
*	4104.39.50	Argentina	14,865	0.2%
*	4104.39.60	Argentina	2,899,103	22.1%
*	4104.39.80	Argentina	446,468	1.1%
*	4105.20.60	Argentina	69,836	0.2%
*	4106.12.00	India	223,204	11.6%
*	4106.20.30	India	646,710	20.5%
*	4106.20.60	India	2,692,475	25.8%
*	4107.21.00	Argentina	0	0.0%
*	4107.29.30	Argentina	173,767	2.8%
*	4107.29.60	Argentina	37,847	0.4%
*	4107.90.60	Argentina	279	0.0%
*	4109.00.70	Argentina	0	0.0%
2	4203.21.20	Pakistan	211,833	1.2%
2	4203.21.55	Pakistan	358,261	21.6%
2	4203.21.60	Pakistan	593,862	10.9%
2	4203.21.80	Pakistan	6,087,354	8.0%
*	4205.00.60	Argentina	16,684	3.6%
*	4411.19.40	Brazil	3,742,570	8.5%
*	4411.21.00	Brazil	0	0.0%
*	4411.29.60	Brazil	0	0.0%
*	4411.29.90	Brazil	0	0.0%
*	4412.13.05	Indonesia	10,903,891	33.9%
*	4412.13.25	Brazil	977,513	37.0%
*	4412.13.25	Indonesia	10,314	0.3%
*	4412.14.30	Brazil	25,091,876	22.4%
*	4412.14.30	Indonesia	36,121,665	32.3%
*	4412.14.55	Brazil	856,137	9.6%
*	4412.14.55	Indonesia	990,744	11.1%
*	4412.22.40	Indonesia	369,225	23.7%
*	4412.22.40	Brazil	0	0.0%
*	4412.29.35	Indonesia	1,236,742	7.5%
*	4412.29.45	Indonesia	292,744	4.4%
*	4421.90.50	Brazil	0	0.0%
*	4421.90.60	Brazil	0	0.0%
*	4802.60.10	Brazil	8,385	0.9%
*	4823.20.10	Brazil	0	0.0%
*	5607.29.00	Brazil	1,538,667	23.6%
2	5701.10.13	Pakistan	26,054	27.1%
2	5702.10.10	Pakistan	2,165	0.4%
2	5702.91.20	Pakistan	1,600	6.0%
2	5805.00.20	Pakistan	0	0.0%
2	6304.99.10	Pakistan	0	0.0%
2	6304.99.40	Pakistan	0	0.0%
*	6406.10.65	Brazil	4,618,180	1.8%
*	6406.99.60	Argentina	4,177,941	20.7%
*	6702.90.65	Thailand	0	0.0%
*	6905.10.00	Venezuela	2,839,964	36.1%
*	6908.10.20	Thailand	600,646	6.4%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

LIST IV : POSSIBLE REDESIGNATION ITEMS
1996 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	6910.10.00	Brazil	1,518,126	2.9%
*	6910.90.00	Brazil	157,832	0.1%
*	6911.90.00	Brazil	0	0.0%
*	6912.00.44	Brazil	109,398	0.1%
*	7103.99.10	Thailand	20,046,064	22.8%
*	7106.92.00	Chile	0	0.0%
*	7113.11.20	Thailand	0	0.0%
*	7113.19.50	Thailand	0	0.0%
*	7115.90.10	Argentina	0	0.0%
*	7115.90.20	Argentina	1,400	0.0%
*	7116.10.10	Thailand	0	0.0%
*	7116.20.05	Thailand	8,512,189	47.6%
*	7116.20.15	Thailand	1,959,395	11.7%
*	7202.21.10	Brazil	0	0.0%
*	7202.30.00	Brazil	0	0.0%
*	7308.90.70	Venezuela	0	0.0%
*	7403.12.00	Chile	0	0.0%
*	7403.13.00	Chile	0	0.0%
*	7403.19.00	Chile	38,819,569	13.3%
*	7403.21.00	Chile	0	0.0%
*	7403.22.00	Chile	0	0.0%
*	7403.23.00	Chile	0	0.0%
*	7403.29.00	Chile	0	0.0%
*	7407.21.90	Brazil	921,050	1.2%
*	7413.00.10	Peru	0	0.0%
*	7604.10.50	Russia	0	0.0%
*	7605.11.00	Russia	0	0.0%
*	7614.10.50	Brazil	2,627	2.3%
*	7615.19.10	Thailand	0	0.0%
*	8408.20.20	Brazil	2,299,910	2.5%
*	8408.20.90	Brazil	311,048	1.8%
*	8409.91.30	Brazil	0	0.0%
*	8409.91.50	Brazil	20,214,299	1.8%
*	8409.99.91	Brazil	38,507,328	13.8%
*	8409.99.99	Brazil	38,396,440	12.9%
*	8419.90.20	Brazil	0	0.0%
*	8429.11.00	Brazil	11,196,427	10.5%
*	8429.20.00	Brazil	1,624,449	5.0%
*	8431.49.90	Brazil	28,384,737	3.7%
*	8469.12.00	Indonesia	81,633	0.4%
*	8471.49.26	Thailand	68,485,132	12.2%
*	8471.49.29	Thailand	34,111	0.2%
*	8471.60.45	Thailand	2,521,914	0.6%
*	8517.19.40	Thailand	0	0.0%
*	8517.19.80	Thailand	49,427,934	5.5%
*	8527.90.90	Philippines	39,435,995	23.1%
*	8535.40.00	Dominican Republic	0	0.0%
*	9018.11.60	Argentina	0	0.0%
2	9018.90.80	Pakistan	19,284,777	2.6%
*	9025.11.20	Brazil	970,522	41.4%
*	9025.11.20	India	494,669	21.1%

TOTALS BY PARTNER

FLAGS	HTSUS	PARTNER	IMPORTS	IMPORTS	SHARE
*	9105.19.10	Brazil		0	0.0%
*	9105.19.40	Brazil		4,273	0.0%
*	9401.30.40	Croatia		0	0.0%
*	9401.30.40	Slovenia		0	0.0%
*	9403.60.80	Thailand		0	0.0%
*	9405.30.00	Thailand		14,628,867	3.6%
2	9506.62.80	Pakistan		2,978,319	3.4%
2	9506.91.00	Pakistan		216,127	0.0%

PARTNER	IMPORTS	COUNT
Argentina	14,540,118	25
Brazil	321,747,607	64
Chile	39,650,642	12
Croatia	0	1
Dominican Republic	0	1
Guatemala	50,662,235	2
India	4,057,058	4
Indonesia	50,006,958	9
Pakistan	30,151,812	14
Peru	0	1
Philippines	39,435,995	1
Russia	0	3
Slovenia	0	1
Thailand	175,069,799	19
Trinidad and Tobago	56,552,817	1
Turkey	0	1
Venezuela	2,839,964	2
TOTAL	784,715,005	161

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min; 'X'=Reduced limit waiver
'H'=Grad, Reduced limit would apply; 'Z'=Subject to reduced limits, All limits waived.

[FR Doc. 97–4476 Filed 2–21–97; 8:45 am]

BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 14, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2127.

Date filed: February 11, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-AFR 0010 dated February 7, 1997 r1; PTC2 EUR-AFR 0011 dated February 7, 1997 r2–3; PTC2 EUR-AFR 0012 dated February 7, 1997 r4, Expedited Resolutions (Summaries attached.)

Intended effective date: March 14/March 15/April 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–4465 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 14, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2136.

Date filed: February 14, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 14, 1997.

Description: Application of Royal Jordanian Airlines, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, requests an amendment of its foreign air carrier permit to authorize Royal Jordanian to engage in the authority available to carriers from Jordan under the terms of the recently concluded U.S.-Jordan Air Transport Agreement. This includes the authority to engage in scheduled foreign air transportation of persons, property and mail from points behind Jordan via Jordan and intermediate points to a point or points in the United States and beyond; to engage in charter air transportation between any point or points in Jordan and any point or points in the United States; to engage in charter air transportation between any point or points in the United States and any point or points in a third country or countries, provided such service constitutes part of a continuous operation that includes service to Jordan; and to engage in other charter air transportation in accordance with the Department's regulation contained in 14 C.F.R. Part 212.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–4466 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application (#97–01–C–00–COD) To Impose and use the Revenue From a Passenger Facility Charge (PFC) at Yellowstone Regional Airport, Submitted by the Joint Powers Board, Yellowstone Regional Airport, Cody, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Yellowstone Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

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

ADDRESS: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Co 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Ulane, Airport Manager, at the following address: Joint Powers Board, Yellowstone Regional Airport, P.O. Box 2748, Cody, WY 82414.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yellowstone Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–01–C–00–COD) to impose and use PFC revenue at Yellowstone Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 13, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Joint Powers Board, Yellowstone Regional Airport, Cody, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 17, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1997.

Proposed charge expiration date: October 1, 1999.

Total requested for use approval: $102,662.00.

Brief description of proposed project: Aircraft rescue and fire fighting (ARFF) vehicle; Installation of FAR Part 139 signs; Master plan update; ARFF/maintenance hall; Construct/overlay terminal apron area; Snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** *and at the FAA Regional Airports Office located at:* Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yellowstone Regional Airport.

Issued in Renton, Washington on February 13, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–4499 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement Suspension; Santa Fe and San Miguel Counties, NM

SUMMARY: The FHWA is issuing this notice to advise the public that we have suspended preparation of an environmental impact statement for a proposed transportation improvement project in Santa Fe and San Miguel Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo, Santa Fe, NM 87505. Telephone: (505) 820–2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and

Transportation Department (NMSHTD), has decided to suspend preparation of an environmental impact statement (EIS) on three alternative alignments for connecting NM 50 to I–25 in the vicinity of the Glorieta Unit of the Pecos National Historical Park.

In the late fall of 1996 the FHWA and NMSHTD concluded from the information prepared in the EIS study, from public and agency input received over the course of the study and from the lack of available funding, that an alternative outside the existing roadway corridor would not be in the best interest of the traveling public. Likewise, the FHWA/NMSHTD concluded that any improvements along the existing roadway corridor within the Pecos National Historical Park, Pigeon's Ranch Subunit, do not appear to be compatible with National Park Service preservation and interpretation commitments. Therefore this notice of EIS study suspension has been published in the Federal Register. Work to date is documented in an Environmental Data Investigation Report. This report is available for review in the Santa Fe offices of NMSHTD and FHWA.

Issued on: February 4, 1996.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 97–4463 Filed 2–21–97; 8:45 am]

BILLING CODE 4010–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Worcester County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Worcester County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research and Environment Team Leader, Federal Highway Administration, The Rotunda-Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and Worcester County, will prepare an environmental impact statement (EIS) on a proposal to improve US 113 in Worcester County. The proposed improvement would address the project's purpose and need which is to improve safety and traffic flow along US 113 from Snow Hill to the Delaware State Line.

Improvements to this roadway are considered necessary because of the high number of fatal accidents in the study area. Additionally, an increase in travel demand is projected to lower the level of service of this roadway throughout the project area by the year 2020.

The alternatives under consideration include: (1) Taking no action, (2) construction improvements that are part of an integrated plan of phased safely and capacity improvements, as well as traffic management strategies, that would provide lower cost refinements to the existing transportation system without major alteration to the existing two lane highway, (3) dualization on existing alignment, (4) dualization on new alignment and (5) a combination of dualization on new alignment with dualizing US 113 in selected areas.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held in May of 1997. Public notice will be given of the time and place of this hearing.

The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting for this project was held in May of 1995.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. [Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above]. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on: February 12, 1997.

Renee Sigel,

Planning, Research and Environment Team Leader.

[FR Doc. 97–4379 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Docket Number RST–95–3]

Amendment to Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request from the New York State Department of Transportation (NYDOT) for a waiver of compliance with certain requirements of 49 CFR Part 213, Track Safety Standards.

In its original request, NYDOT requested to operate the Rohr Turboliner trainsets at higher cant deficiencies on the Empire Corridor extending from New York City, New York, to Niagara Falls, New York, (see 60 Federal Register No. 230, November 30, 1995). Due to an FRA clerical error, the notice of NYDOT's request to add various types of equipment to its original petition did not clearly indicate that NYDOT seeks to add equipment owned by the Metro North Commuter Railroad as well as equipment owned by the National Railroad Passenger Corporation.

The second paragraph of the notice, Addendum to Petition for Waiver of Compliance (see 61 Federal Register No. 234, December 4, 1996), should read as follows: NYDOT now requests to add the National Railroad Passenger Corporation's (Amtrak) equipment and the following Metro North Commuter Railroad (Metro-North) equipment types: FL–9, FL–9 AC, Genesis I and II locomotives, Bombardier Shoreliner coaches, M–1 and M–3 electric-propelled coaches. NYDOT also proposes to limit its request to underbalance levels up to six inches and limit the territory of its request to that portion of the Empire Corridor extending between Penn Station, New York, and Poughkeepsie, New York, over track segments owned by Amtrak and Metro North.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver

Petition Docket Number RST–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on February 19, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–4487 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3415

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of signals 1636 and 1644, on the single main track automatic block signal system, near Hampton, Iowa, milepost 164.0, on the Mason City Subdivision.

The reason given for the proposed change is that the two signals are no longer needed.

BS–AP–No. 3416

Applicant: Terminal Railroad Association of St. Louis, Mr. C. D. Trice, Manager Signals and Communications, 1201 McKinley Street, Venice, Illinois 62090.

The Terminal Railroad Association of St. Louis seeks approval of the proposed relocation of automatic signal 211, southward a distance of 1,350 feet, near Brooklyn, Illinois, on the Illinois Transfer District.

The reasons given for the proposed change are that the signal no longer serves the purpose for which it was intended, the relocation will improve functionality of the signal, make signal spacing more uniform and less confusing to train crews, and increase braking distance.

BS–AP–No. 3417

Applicant: Union Pacific Railroad, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Union Pacific Railroad (former Southern Pacific Lines, St. Louis and Southwestern Railroad) seeks approval of the proposed modification of the traffic control system, on the single main track and siding, mileposts 339.9 and 340.9, near Herbert, Arkansas, Central Region, Midwest Division, Pine Bluff Subdivision, consisting of the following: discontinuance of East and West Herbert control points; conversion of the power-operated switches to hand operation; discontinuance and removal of controlled signals 62L, 62RA, and 60LA; conversion of controlled signal 60R to back-to-back automatic signals; and retention of the trailing siding signals in lieu of electric locks at each end of the siding.

The reason given for the proposed changes is that Herbert siding is no longer used to meet or pass trains, and is used as a storage track no longer requiring the power-operated switches.

BS–AP–No. 3418

Applicant: Union Railroad Company, Mr. J. J. Lacey, Assistant Vice President and General Manager, 135 Jamison Lane, P.O. Box 68, Monroeville, Pennsylvania 15146.

The Union Railroad Company seeks approval of the proposed discontinuance and removal of a portion of the automatic block signals from the Munhall Branch, near West Mifflin, Pennsylvania, and govern train movements by yard limit rules.

The reason given for the proposed changes is that traffic and train movements have declined during recent years as a result of the retired Homestead Works steel plant, and traffic presently averages between 30 and 35 movements per week.

BS–AP–No. 3419

Applicant: Bessemer and Lake Erie Railroad Company, Mr. J. J. Lacey, Assistant Vice President and General Manager, 135 Jamison Lane, P.O. Box 68, Monroeville, Pennsylvania 15146.

The Bessemer and Lake Erie Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between ''KO North End,'' milepost 93.5, near Adamsville, Pennsylvania and ''RX Interlocking,'' milepost 123.8, near Albion, Pennsylvania, a distance of approximately 30 miles; and the associated installation of a Dispatcher Control Track Warrant System to govern train movements.

The reason given for the proposed changes is that traffic and train movements have declined during recent years with the vast reduction of ore and coal movements associated with declining steel operations, and traffic reductions do not support the expense to maintain the centralized traffic control system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on February 19, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–4488 Filed 2–21–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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 the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is Being Settled Without Administration.

DATES: Written comments should be received on or before April 28, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Dispostion—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Abstract: The information is requested to support a request for distribution when a decedent's estate is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 40,000.

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 costs of operation, maintenance, and purchase of services to provide information.

Dated: February 18, 1997.

Vicki S. Thorpe,

Manager, Graphic's, Printing and Records Branch.

[FR Doc. 97–4449 Filed 2–21–97; 8:45 am]

BILLING CODE 4810–39–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 the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

DATES: Written comments should be received on or before April 28, 1997, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By legal Representative(s) of Decedent's Estate, During Administration, Of Authority To Act and Of Distribution Where Estate Holds No More Than $1000 (face amount) United States Savings and Retirement Securities, Excluding Checks Representing Interest.

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Abstract: The information is requested to establish legal representative of a decedent's estate authority to act and request disposition of securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,575.

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: February 18, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–4450 Filed 2–21–97; 8:45 am]

BILLING CODE 4810–39–P

Submission for OMB Review; Comment Request

February 11, 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.

SPECIAL REQUEST: In order to begin the survey described below in May

1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 24, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Project Number: PC:V 97–003–G
Type of Review: Revision
Title: Examination Customer Satisfaction Survey
Description: The purpose of this survey will be to provide the IRS with the following information concerning its two principal Examination Programs (office audit, and field audit):

- What is the present level of satisfaction among taxpayers with recent income tax examinations conducted by the IRS?
- What comments and suggestions do taxpayers with recent income tax examinations have that would enable the IRS to increase this level of satisfaction, and thereby improve the efficiency and effectiveness of the examination process?
- What recurrent operational and programmatic problems are evident? How can IRS correct these problems
- How do our customers' perceptions of the quality and efficiency of the examination process compare to our internal assessments of examination quality and productivity?

This survey will enable IRS to realize its ongoing objective of providing improved services to taxpayers, increase the operational efficiency of the Examination process, and strengthen its efforts in this vital area of voluntary tax compliance.
Respondents: Individuals or households
Estimated Number of Respondents: 5,940
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 990 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. 97–4438 Filed 2–21–97; 8:45 am]
BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

February 11, 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.

SPECIAL REQUEST: In order to begin the survey described below during the April-May 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 24, 1997. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–25.
Type of Review: Revision.
Title: 1997 First Quarter Form 941 TeleFile System Customer Satisfaction Survey.
Description: The survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again. Data collected during the surveys will only be used to make recommendations and improvements to the Transcript application.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,275.
Estimated Burden Hours Per Respondent: 1 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 38 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. 97–4439 Filed 2–21–97; 8:45 am]
BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

February 11, 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: 1545–1237
Regulation Project Number: CO–24–96 (formerly CO–78–90) NPRM and TEMP
Type of Review: Extension
Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions
Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.
Respondents: Business or other for-profit
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,000 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. 97–4440 Filed 2–21–97; 8:45 am]
BILLING CODE 4830–01–P

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue Availability of Report of 1996 Closed Meetings

AGENCY: Internal Revenue Service.

ACTION: Notice of availability of report on closed meetings of the art advisory panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 1996, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW Washington, DC 20224 .

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS:4, 901 D Street, SW., Room 224, Washington, DC 20024, Telephone (202) 401–4128 (Not a toll free telephone number).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–4492 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–U

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of art advisory panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held April 8th and 9th, 1997.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 8th and 9th, 1997 in Room 240 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS:4 901 D Street, SW, Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 8th and 9th, 1997 in Room 240 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW, Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–4491 Filed 2–21–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that four objects to be included in the exhibit ''Images in Ivory: Precious Objects from the Gothic Age'' (see list*), imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the British Museum. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, Detroit, MI, beginning on or about March 7, 1997, to on or about May 11, 1997, and at the Walters Art Gallery, Baltimore, MD, beginning on or about June 22, 1997, to on or about August 31, 1997, is in the national interest.

Public notice of these determinations is ordered to be published in the Federal Register.

Dated: February 19, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–4537 Filed 2–21–97; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is USIA, 301–4th Street SW., Room 700, Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs Special Medical Advisory Group for Fiscal Year 1996 has been issued.

The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs, Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540; and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Room 811, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: February 13, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4416 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on March 6 and

March 7, 1997. The meetings will take place at the Department of Veterans Affairs, Veterans Benefits Administration Office, Room 542, 1800 G. St., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m. on Thursday, March 6, and from 8:30 a.m. to 12:00 p.m. on Friday, March 7. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommends needed new programs and services. The agenda for both days will be devoted to discussion of the Montgomery GI Bill—Selected Reserve (MGIB–SR) program and if it is fulfilling its intention as a recruitment and retention tool.

The meeting will be open to the public. Those wishing to attend should contact Ms. June Schaeffer, Assistant Director, Education Policy and Program Administration, (phone 202–273–7187) prior to February 28, 1997.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:00 a.m., Friday, March 7, 1997.

Dated: February 11, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4417 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs: Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Tuesday and Wednesday, March 11–12, 1997, at VA Headquarters, 810 Vermont Avenue, N.W., Washington, D.C. The meeting on March 11 will be held in Room 630 and the meeting on March 12 will be held in the Omar Bradley Conference Room, 10th Floor. The March 11 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the March 12 session will convene at 9:00 a.m. and adjourn at 12:00 noon. The meeting on March 11 will involve briefings by the National Program Directors of the Special-disabilities Programs regarding the status of their activities over the last six months, a status report on implementation of the Veterans' Health Care Eligibility Reform Act of 1996 as it pertains to the Benefits Package and the legislative requirement to maintain capacity to meet specialized needs of disabled veterans. The meeting on March 12 will consist of a joint meeting of the Advisory Committee on Prosthetics and special-Disabilities Programs and the Veterans Advisory Committee on Rehabilitation. The purpose of this meeting is to discuss program issues of mutual interest and concern.

The purpose of the Advisory committee on Prosthetics and Special-disabilities Program is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, prior to March 7, 1997.

Dated: February 13, 1997.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–4418 Filed 2–21–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 36
Monday, February 24, 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 DEFENSE

Office of the Secretary

Continued Health Care Benefit Program (CHCBP) Premium Rate Change

Correction

In notice document 97–3243 appearing on page 6225 in the issue of Tuesday, February 11, 1997 under SUMMARY: in the 20th line ''$993'' should read ''$933''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Polio Vaccine Information Materials

Correction

In notice document 97–2927, beginning on page 5659, in the issue of Thursday, February 6, 1997, make the following corrections:

1. On page 5696, in the third column, in the first full paragraph, in the eighth line, ''Untied'' should read ''United''.
2. On the same page, in the same column, in the second full paragraph, in the third line, ''poliomyelitis'' should read ''Poliomyelitis''.
3. On the same page, in the same column, in the same paragraph, in the ninth line, ''practices'', should read ''Practices''.
4. On the same page, in the same column, in the same paragraph, in the 12th line, ''weekly report'' should read ''Weekly Report''.
5. On page 5697, in the second column, under Polio Vaccines, in the second full paragraph, in the fourth line, ''whole'' should read ''world''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 96F-0184]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sulphopropyl Cellulose

Correction

In rule document 97–4082 beginning on page 7678 in the issue of Thursday, February 20, 1997, make the following corrections:

On page 7678, in the second column, in the DATES section, in the first line ''February 19, 1997'' should read ''February 20, 1997'' and in the third line ''March 21, 1997'' should read ''March 24, 1997''.

BILLING CODE 1505-01-D

Federal Register

Monday
February 24, 1997

Part II

Environmental Protection Agency

40 CFR Part 51, et al.
Credible Evidence Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60 and 61

[FRL–5691–2]

RIN 2020–AA27

Credible Evidence Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In an October 22, 1993 Federal Register, EPA solicited public comment on a proposal to amend 40 CFR Parts 51, 52, 60 and 61 to eliminate language that has been read to provide for exclusive reliance on reference test methods as the means of demonstrating compliance with various emission limits under the Clean Air Act (''CAA'' or ''Act''). These revisions—generally referred to as the ''credible evidence'' revisions—were designed to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for compliance certifications under Section 114 and Title V of the Act. In the same document, EPA proposed an ''enhanced monitoring'' rule under Section 114 and Title V. EPA subsequently decided to suspend development of the original enhanced monitoring rule and develop a compliance assurance monitoring (''CAM'') approach to serve the same statutory goals as the original enhanced monitoring proposal. Today's rulemaking finalizes the previously proposed credible evidence revisions to Parts 51, 52, 60 and 61. EPA will take final action regarding enhanced monitoring and CAM in a separate rulemaking.

DATES: *Effective Date:* April 25, 1997. *Judicial Review:* Under CAA section 307(b)(1), judicial review of this nationally applicable final action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under CAA section 307(b)(2), the regulations that are the subject of today's rule may not be challenged later in civil or criminal proceedings brought by EPA in reliance on them.

ADDRESSES: *Docket.* Supporting information used in developing this rulemaking is contained in Public Docket No. A–91–52. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m. on weekdays, excluding federal holidays, at the EPA Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Gregory Jaffe, Air Enforcement Division (Mailcode 2242–A), Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone (202) 564–2260.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Background

A. Statutory and Regulatory Authority

The credible evidence revisions are based on EPA's long-standing authority under the Act, and on amplified authority provided by the 1990 CAA Amendments. Section 113(a) of the Act authorizes EPA to bring an administrative, civil or criminal enforcement action ''on the basis of any information available to the Administrator.'' In this provision, which predates the 1990 CAA Amendments, Congress gave EPA clear statutory authority to use any available information—not just data from reference tests or other federally promulgated or approved compliance methods—to prove CAA violations. (The preamble will generally use the phrase ''reference tests'' to include all these compliance methods. Where appropriate, the phrase ''reference tests'' will also include test conditions specified in individual regulations.)

In the 1990 CAA Amendments, Congress included an enforcement title (Title VII) to enhance EPA's compliance and enforcement authorities. Among other things, Congress revised Section 113(e)(1) of the Act to overrule a federal court decision (*Kaiser Steel*, discussed below) that had held that only specified reference test data could prove violations. Thus, although the pre-existing authority of Section 113(a) forms the principal basis for today's action, the credible evidence revisions are also supported by the language, history and intent of the 1990 CAA Amendments. *See also* Section III.C. below.

In addition to clarifying EPA's, states' and citizens' enforcement authorities under the Act, the credible evidence revisions eliminate any potential ambiguity regarding the use of non-reference test data as a basis for Title V compliance certifications. Such potential ambiguity could arise from comparing the draft compliance assurance monitoring (CAM) approach and associated Part 70 changes, which would allow sources to include CAM data as a basis for certifying compliance, with various EPA regulations that could be read on their face to specify reference test methods as the sole means of determining compliance.

B. Benefits of the Credible Evidence Revisions

As a preliminary matter, EPA wishes to clearly state that this rulemaking merely addresses an evidentiary issue. The credible evidence revisions are not

intended to and will not serve to affect the stringency of underlying emission standards by amending the nature of the compliance obligation. This rulemaking does not amend existing emission standards nor does it modify generic regulations affecting the compliance obligation such as exceptions for startup, shutdown, and malfunctions. See, e.g., 40 CFR 60.8(c). This regulation also does not designate any particular data as probative of a violation of an emission standard. Rather, this regulation merely removes what some have construed to be a regulatory bar to the admission of non-reference test data to prove a violation of an emission standard, no matter how credible and probative those data are that a violation has occurred. The credible evidence revisions do not affect the compliance obligation and thus do not affect the stringency of existing emission standards. What compliance obligation is imposed by any given emission standard remains an issue ultimately to be determined based on that emission standard and not this rulemaking.

For these reasons, we do not believe that this rulemaking affects whether emission standards require intermittent or continuous compliance. However, as made clear below, and in the detailed response to comments document, EPA's position continues to be that an emission standard requires continuous compliance unless the emission standard specifically provides otherwise.

Today's credible evidence revisions will benefit sources, state environmental agencies, EPA and the public. EPA, states and citizens will be able to use credible evidence to assess a source's compliance status and respond to noncompliance. This will help ensure that the government and citizens alike can respond to sources that are not complying with air pollutant emission standards on an ongoing basis, thus furthering the protection of public health and the environment. At the same time, sources will be able to use credible evidence for contesting allegations of noncompliance in enforcement actions. Accordingly, today's rulemaking exemplifies EPA's ''common sense'' approach to environmental protection, which encourages smarter, cheaper and more flexible means of achieving environmental goals without compromising the fundamental health and environmental protections provided by federal environmental laws.

In the past, state regulatory authorities and EPA have relied primarily on infrequent on-site inspections and even more infrequent reference tests in order to check compliance with emission limits at major stationary sources. According to a September, 1990, General Accounting Office (GAO) report, these on-site inspections were performed approximately once a year; the reference tests, typically once every five years. ''Air Pollution: Improvements Needed in Detecting and Preventing Violations,'' GAO, No. GAO/RCED–90–155, September 1990, at 12, 19. These methods are inadequate to ensure that sources continuously stay within their emission limits: for example, Pennsylvania officials have estimated that, in comparison with continuous emissions monitoring, on-site inspections may be 50 times less likely to detect non-compliance. *Id.* at 18. Reference tests may not yield a representative emissions picture because the sources typically schedule, set up and run the tests themselves. This allows sources to ''fine tune'' their operations and emissions control processes prior to the tests, and generate results that may not be typical of day-to-day source operations. *Id.* at 19–20. Reference tests can also be expensive and burdensome: They can cost up to $100,000, and take a week or more to complete. *See, e.g.*, 43 FR 7568, 7571 (1978).

In contrast to the above approach, today's rule will make it clear that various kinds of information other than reference test data, much of which is already available and utilized for other purposes, may be used to demonstrate compliance or noncompliance with emission standards. (The preamble generally refers to this other information as ''non-reference test data''). EPA, state agencies and industry routinely rely on many types of information, including engineering calculations, indirect estimates of emissions, and direct measurement of emissions by a variety of means, in order to assess compliance with CAA requirements. Where available, continuous emission monitoring (CEM) data and well-chosen parametric monitoring data, such as the operating temperature and air flow rate of a regenerative thermal oxidizer, generally provide accurate data regarding a source's compliance with emission limits and standards. These data also generally cover a greater percentage of a source's time in operation and are more representative of a source's ongoing compliance status than sporadic performance testing.

Under today's rule both sources and potential enforcers will be put on the same evidentiary footing in an enforcement action. Further, since 1992, EPA's Part 70 operating permit regulations have allowed the use of this data in compliance certifications. Today's action reaffirms this approach, and removes any potential ambiguity regarding the use of such data for this purpose.

Today's action reflects EPA's efforts to make existing regulatory programs work better rather than creating additional requirements. By ensuring greater compliance with existing emissions limits, the credible evidence revisions will help minimize the need for further requirements to achieve air quality goals. *See* the October, 1993, proposal, 58 FR 54654.

C. Public Participation

The final credible evidence revisions were developed with the benefit of insight from many parties that will be affected by the regulations, including State and local air pollution control agencies, large and small industries, trade associations and environmental organizations. Many comments regarding credible evidence issues were received during the development and after the proposal of the original enhanced monitoring rule, in 1991 through 1995. Many additional comments were received after the Agency announced that it was continuing to go forward with the credible evidence revisions in 1996.

To obtain the views of all interested parties at the early stages of developing the enhanced monitoring rulemaking, EPA published a notice in the Federal Register on August 8, 1991, to make available a Public Information Document on enhanced monitoring and to provide notice of a public meeting to be held on August 22, 1991, on the subject (56 FR 37700–37701, August 8, 1991). In response to the public meeting, EPA received many comments which were included in the docket for the proposed regulations.

Over the next four years, EPA held over one hundred informal informational and discussion sessions with representatives of interested organizations to receive their views on enhanced monitoring, as well as a second informational meeting with approximately fifty attendees held on August 12, 1993. Following publication of the proposed enhanced monitoring regulations on October 22, 1993 at 58 FR 54648, EPA conducted a public hearing in Washington, D.C., on November 19, 1993. Testimony was given by twelve individuals, representing industry and environmental organizations.

In addition, during the public comment period, which was first scheduled to close on December 30, 1993, and was extended until January 31, 1994, in response to requests for

extension, EPA received comments from a wide variety of interested parties concerning the enhanced monitoring proposal, including numerous comments on credible evidence issues. In the fall of 1994, EPA held a series of informational meetings with interested parties affected by the rule. The Agency then reopened the public comment period on specific issues to solicit additional comments, and held an additional stakeholder meeting. In response to the reopened public comment period, EPA received over 200 additional comment letters.

In April, 1995, EPA announced that it was suspending development of the enhanced monitoring rule while it developed the CAM approach to serve the same statutory goals. In a September, 1995, public draft of the CAM approach, EPA stated that it would hold further discussions with stakeholders before it proceeded to finalize the credible evidence revisions. On March 8, 1996, EPA announced that a public meeting on credible evidence issues would be held on April 2, 1996. To focus the meeting's discussion, EPA released a paper on March 21, 1996, entitled ''The Use of Information Other Than Reference Test Results for Determining Compliance With the Clean Air Act'' (sometimes referred to as the ''Credible Evidence White Paper''). EPA distributed this paper by electronic bulletin board to the same stakeholders who were involved in the enhanced monitoring and CAM rulemakings, further distributed it to various other interested parties, and made it generally available to the public.

The public meeting was held on April 2, 1996, where twenty-three organizations and individuals presented oral statements and written comments. At the meeting, EPA announced that, although the rulemaking docket would not formally be re-opened, additional written comments would be accepted for at least another 30 days. Moreover, EPA stated that it would meet with any interested parties to discuss the credible evidence rules. As a result, many additional written comments have been received, and numerous additional EPA/stakeholder meetings have been held.

Section III of this preamble contains a description of the most significant public comments and EPA's responses to them. Summaries of other public comments on the credible evidence revisions received over the past five years, together with the Agency's responses, are available in the docket in a document entitled ''Credible Evidence Revisions: Detailed Response to Comments Document'' (referred to in this preamble as the ''Detailed Response Document'').

II. Summary of Final Rule

The credible evidence revisions consist of various changes to 40 CFR 51.212, 52.12, 52.30, 60.11 and 61.12. These revisions provide minor modifications to existing regulatory provisions to clearly allow for the use of any credible evidence—that is, both reference test and comparable non-reference test data—to prove or disprove violations of the Act in enforcement actions. These revisions make clear that enforcement authorities can prosecute actions based exclusively on any credible evidence, without the need to rely on any data from a particular reference test. The revisions also have the effect of eliminating any potential ambiguity regarding the use of non-reference test data as a basis for Title V compliance certifications. The credible evidence revisions do not call for the creation or submission of any new emissions or parametric data, but rather address the role of existing data in enforcement actions and compliance certifications. As such, today's final action is distinct and separable from the bulk of the proposed enhanced monitoring rule, which addressed new monitoring requirements.

By clearly providing that federally approved SIP test methods or Agency reference test methods are not the exclusive means of establishing noncompliance or compliance, EPA in no way intends to alter the underlying emission standards. The Agency will still use the reference methods for exactly what they are: test methods of reference against which to compare information generated by means other than the reference tests. The National Bureau of Standards maintains a number of standards against which other measuring devices, used in scientific or commercial applications, are calibrated. Similarly, where a SIP, New Source Performance Standard or permit specifies EPA Method 25A, for example, for determining the amount of volatile organic compounds (''VOCs'') that are emitted, the ''other evidence'' that could establish compliance would have to relate to the likely measurement of VOCs that would be obtained by a Method 25A measurement. This could include, for example, consideration of key operating parameters for the facility as correlated with emissions during a Method 25A test.

A. 40 CFR Part 51, § 51.212

Section 51.212(c) is revised to clarify that the inclusion in a state implementation plan (SIP) of enforceable test methods for SIP emissions limits does not preclude enforcement based on other credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed. This revision does not affect the existing requirements in §§ 51.212(a) and (b) for periodic testing and inspections, and establishment of a system of violation detection and investigation.

The proposed revisions to § 51.212 contained detailed lists of ''presumptively credible evidence'' and ''presumptively credible monitoring methods.'' After consideration of public comments, EPA has decided to delete these lists because they are potentially confusing and unnecessary. While EPA continues to believe that the listed evidence and monitoring methods are indeed credible, the Agency recognizes that both judicial and administrative tribunals routinely make determinations concerning the admissibility and weight of evidence on a case-by-case basis.

B. 40 CFR Part 52, § 52.12

Section 52.12(c) is revised to clarify that, for purposes of federal enforcement, any credible evidence relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed may be used to establish whether or not SIP violations have occurred. As with § 51.212 above, EPA has deleted the proposed lists of presumptively credible evidence and monitoring methods for the same reasons stated above. Under today's final action, where an emission limitation specifies a particular monitoring or testing method approved by EPA for use in the SIP to determine compliance, data from such method will continue to be the benchmark against which other emissions or parametric data, or engineering analyses, will be measured. Similarly, where there are no approved SIP methods, the test methods specified in part 60 of this chapter will remain the standard against which other such information will be evaluated.

C. 40 CFR Part 52, § 52.30

Proposed § 52.30(a), which concerned compliance certifications, has been revised in accordance with § 51.212 above, and the same comments apply. The enforcement-related § 52.30(b) is rendered unnecessary by today's final § 52.12(c), which effectively

encompasses it. Finally, the entire section has been renumbered as § 52.33.

D. 40 CFR Part 60, § 60.11

Similar to the existing regulation, § 60.11(a) states that compliance with Part 60 standards shall be determined in accordance with the applicable performance tests and performance testing provisions in this part. A new § 60.11(g) clarifies that nothing in § 60.11 precludes the use, including exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed, for purposes of submitting compliance certifications or establishing whether or not a source has violated or is in violation of any Part 60 standard, including opacity standards.

The first sentence in today's final § 60.11(a) has been modified from the proposal. EPA has decided to use mandatory phrasing in the first sentence (''Compliance with standards * * * shall be determined in accordance with the applicable performance tests * * *'') as is included in the existing regulation, rather than adopt the permissive language proposed in 1993 (''Compliance with standards * * * may be determined by performance tests * * *). The rationale for retaining this mandatory language is to make clear that, although the regulation is being modified to clarify that it does not establish an exclusive method of determining compliance, the reference tests remain the benchmark against which other emissions or parametric data, engineering analyses, or other information will be evaluated. For similar reasons, EPA included in § 60.11(g) the requirement that evidence or information gathered by other means than the reference tests be ''relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed''. This phrase means that the evidence or information must bear on whether a facility would have been found to be in compliance, during the time period in question, if the appropriate performance test had been conducted. It does not mean that, to prove a violation occurred, ideal testing conditions, for example the sun light at a certain angle to the tester for an opacity reading, must exist if other credible evidence, such as continuous opacity monitor data, can establish that a violation occurred. These changes have been made in response to comments that EPA's proposal did not give full recognition to the role of reference tests in determining compliance with emission standards. Section 60.11(g) combines the requirements of the proposed subsections (g) and (h) with the exception of presumptions included in those sections which have been deleted. The clarifying language in § 60.11(g) renders unnecessary the previously proposed language in § 60.11(b). Accordingly, the proposed language for that subsection is deleted from today's rule. The proposed changes to subsection (e) have been deleted as unnecessary due to changes to subsections (a) and (g). Finally, § 60.11(f) is revised so as to clarify that it does not countermand subsection (g).

Under today's revisions, information generated from an appropriate and properly conducted test method established under the general provisions of Part 60 or in the applicable subpart will still generally be the best method for determining a source's compliance during the test period. Other emissions or parametric data, or engineering analyses, may be considered if relevant to the results that would have been obtained by the appropriate, properly conducted reference test methods.

E. 40 CFR Part 61, § 61.12

Today's revisions to § 61.12 generally mirror the revisions to § 60.11, largely for the same reasons. Section 61.12(b) remains unchanged from its current promulgated version because credible evidence has always been used to establish violations of these standards.

III. Major Issues

Throughout the development of this rulemaking, various commenters have expressed concerns regarding the proposed rule's potential effects on CAA enforcement, compliance certifications and emissions standards. The most significant of these comments, together with EPA's responses, are discussed below.

A. Use of Credible Evidence in Enforcement Actions

Commenters raised various concerns regarding the potential use of credible evidence in enforcement actions. Some commenters argued that the use of such evidence would be unconstitutional, unprecedented and unfair. Others expressed concern that EPA, states or citizen groups would use credible evidence to bring enforcement actions for insignificant violations. These comments are addressed below.

Industry commenters have argued that the use of credible evidence in enforcement actions would violate sources' constitutional right to due process. Specifically, the commenters argue that EPA must comprehensively identify the precise types of information that can be used as credible evidence, or else sources will not have sufficient ''fair warning'' regarding potential enforcement. EPA rejects this view. ''Fair warning'' jurisprudence holds that regulated sources must have adequate notice identifying ''the standards with which the agency expects parties to conform.'' *General Electric Co.* v. *U.S. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995). Today's rule does not establish or alter standards with which sources regulated under the CAA must comply. Rather, today's rule only concerns the evidence that can be used to prove violations of a standard, giving full recognition to the role of reference test methods under the standards. The Federal Rules of Evidence govern the admission of evidence in all federal district court litigation, including CAA enforcement actions, without any discernible constitutional infirmity. Similar evidentiary rules govern federal administrative and state environmental actions. Our legal system provides that a federal or administrative law judge will be the ultimate, independent arbitrator of the evidence's admissibility and credibility.

Credible evidence is far from a new concept in judicial and administrative actions. In private lawsuits such as contract disputes, and in governmental and citizen enforcement actions brought under environmental laws other than the CAA, litigants can and do use a wide variety of information to prove their claims, or to refute the claims of opposing parties. In all these lawsuits, the judge acts as the final, independent arbitrator of what constitutes credible and admissible evidence. Today's final rule addresses problems arising from certain CAA regulations, which predate the 1990 Amendments to the CAA, containing language that has been read to allow only a very limited amount of information, i.e., data from reference test methods, to be used as evidence of violations. As such, the rule merely corrects an anomaly that has been read into these regulations, and brings their potential enforcement into line with that of other CAA requirements such as the ''general duty obligations'' in 40 CFR 60.11(d) (for NSPS standards) and 40 CFR 61.22(c) (for National Emission Standards for Hazardous Air Pollutants (NESHAPs)), and with other environmental statutes. It should be emphasized that the determination that evidence or information is credible is merely a threshold determination that

the evidence or information in question is technically relevant, and therefore, legally admissible in an enforcement action. In light of section 113(a) providing that the Administrator may bring an enforcement action based on ''any information'', EPA believes that Congress intended this threshold to be a low one.

Industry commenters have also argued that using credible evidence in enforcement actions is unfair because sources will not know what credible evidence may be used against them. EPA believes that this claim lacks merit. This issue is no different in CAA enforcement than in any civil or criminal matter resolved by our nation's courts. Further, EPA disagrees with the notion that sources will likely be faced with an unknown and unlimited array of evidence. To the contrary, with regard to sources subject to Title V permits, EPA generally expects that most if not all of the data that EPA would consider as potentially credible evidence of an emission violation at a unit subject to monitoring under the agency's proposed CAM rule would be generated through means of appropriate, well-designed parametric or emission monitoring submitted by the source itself and approved by the permitting authority, or through other requirements in the source's permit. Sources not subject to CAM should still be readily able to discern the information, for example information about the operation of pollution control devices, that is relevant to their compliance with applicable regulation.

Some industry representatives have expressed concern that the use of credible evidence in compliance determinations will reveal multiple minor violations for which EPA, the states or citizens will bring lawsuits. It is not EPA's intent to foster frivolous lawsuits, and EPA does not expect that such lawsuits will occur as the result of today's action. As EPA explained in the Credible Evidence March 1996 memorandum, EPA generally focuses its judicial enforcement resources on violations that (1) may threaten or result in harm to public health or the environment, (2) are of significant duration or magnitude, (3) represent a pattern of noncompliance, (4) involve a refusal to provide specifically requested compliance information, (5) involve criminal conduct, or (6) allow a source to reap an economic windfall. *See* March 1996 Memorandum, p. 5.

An examination of EPA's judicial enforcement cases over the past few years reveals that EPA has focused its judicial enforcement resources on large, significant cases rather than a large number of relatively minor matters. The Credible Evidence March 1996 memorandum contains several examples that illustrate this point. In contrast, EPA's approach to minor unexcused violations generally has been to exercise prosecutorial discretion and use tools such as notices of violation and administrative compliance and penalty orders. In every case, EPA considers the nature and extent of the violation and all other circumstances surrounding the violation in determining whether and what kind of enforcement response is appropriate. Further, for any type of noncompliance, EPA generally will not bring a federal enforcement action where a state or local permitting authority has taken timely and appropriate action under existing policies to resolve the violations. Finally, for all violations, EPA will apply all other existing specific enforcement policies, such as the May, 1996, *Policy on Compliance Incentives for Small Businesses*, in accordance with their terms. EPA does not intend to use credible evidence to change any of these policies.

EPA has a balanced enforcement program that seeks to assure compliance using the mix of the compliance and enforcement tools available to it. Deterrence is also an overall goal of the program. Judicial enforcement against minor CAA violations generally is a lower enforcement priority, because EPA believes its other enforcement and compliance assistance tools allow it to respond to such violations without the need to file an action in federal court. Accordingly, in considering whether to bring a judicial action, or whether to use some other enforcement or compliance tool, EPA generally takes into consideration such factors as number and duration of the exceedances, harm or risk posed by the exceedance, potential for recurrence, the source's compliance history, and other circumstances surrounding the violation. For example, if a source were installing a new unit subject to an NSPS standard and had some difficulty getting the control equipment to operate properly after the ''shakedown'' period permitted before the initial performance test (*see* 40 CFR 60.8(a)) but solved the problem promptly after the test, this generally would be a low enforcement priority, absent other circumstances indicating a need for judicial action.

These same general policies regarding EPA's use of judicial and administrative enforcement actions were discussed in Section I.D. of the August 2, 1996, CAM draft approach. Therein, EPA provided various specific examples of circumstances where the Agency was or was not likely to take compliance or enforcement action based on the examination of CAM data.

Finally, the NSPS general provisions and many SIPs generally excuse sources from compliance with emissions limits during periods of startup, shutdown or malfunction. *See* 40 CFR 60.11(c). Some specific NSPS standards additionally excuse sources from compliance during certain operating periods. Exceedances monitored during any of these specifically excused periods are not violations of the emission limit. Moreover, some NSPS standards specify averaging periods for determining compliance and noncompliance. As a result, many short term emissions values when averaged with other values in the relevant averaging period, will not constitute violations. The credible evidence proposal does not change any of these general or specific periods of excused noncompliance, or any averaging periods, or any of their effects on compliance.

Regarding citizen suits, in February, 1996, EPA performed a review of citizen enforcement actions under the Clean Water Act (CWA), and found that citizen enforcers generally do not focus on sporadic, inconsequential violations. This analysis was summarized in the Credible Evidence White Paper, and is included in the Air Docket. Although to date there have been far fewer CAA citizen suits than CWA citizen suits, there have been at least two notable CAA citizen cases involving serious violations: *National Wildlife Federation* v. *Copper Range Co.*, Civil Action No. 2:92–CV–186 (W.D. Michigan), involving one of the largest sources of particulate matter in Michigan's Upper Peninsula, which was emitting particulates at 230 lbs/hour (over five times its permitted limit) and toxic air pollutants including mercury, arsenic, cadmium and lead; and *Sierra Club* v. *Public Service Company*, 894 F. Supp. 1455 (D.C. Col. 1995), involving a power plant that had committed over 19,000 opacity emission violations, which had allegedly affected a nearby wilderness area. Both of these suits were ultimately settled (with the United States an intervenor) for multi-million dollar penalties and significant injunctive relief, including the installation of appropriate pollution controls.

EPA notes that today's rule creates no new rights or powers for citizen enforcers; instead, the rule clarifies existing EPA regulations. Citizens have been free to use credible evidence in Clean Air Act enforcement, and have won at least two court cases using it. *See Sierra Club* v. *PSC*, cited above, and *Unitek Environmental Services* v.

Hawaiian Cement, Civ. No. 95–00723 (D. Hawaii 1996). Also, EPA is aware of no increase in citizen suits in any of the five states—Kansas, Iowa, Nebraska, North Dakota and Georgia—whose SIPs, based on EPA's SIP Call, have specifically clarified that credible evidence can be used for enforcement, or in those states that have credible evidence provisions in other parts of their state law.

Finally, EPA takes this opportunity to further elaborate on certain credible evidence and enforcement issues that were discussed in the August, 1996, draft CAM approach preamble. Therein, EPA explained that ''the CAM rule cannot and does not replace a source's obligation to comply with otherwise applicable emission limits.'' Nonetheless, as a practical matter, ''EPA expects that a unit that is operating within appropriately established indicator ranges as part of an approved CAM plan will, in fact, be in compliance with its applicable limits.'' (*See* draft CAM rule § 64.6(c), which requires that ''the ranges shall be established so as to provide a reasonable assurance of compliance with emission limitations or standards for the anticipated range of operations at a pollutant-specific emissions unit.'') Such a unit generally will not be an enforcement target. However, if the Agency obtains information that the unit is in fact exceeding its applicable emission limit even though it is operating within its approved indicator ranges, the Agency will consider whether or not to take compliance or enforcement action in accordance with its general enforcement policies. Further, under the CAM approach, the source has such information, it would have to promptly remedy the exceedance and notify the permitting authority and submit a proposed permit modification to correct its CAM monitoring as required under draft CAM rule § 64.3(b)(5).

Under today's rule, the legal burdens regarding the establishment of violations or compliance in an enforcement action are not changed. The means of meeting these burdens will vary in different circumstances. Today's rule provides that where information (such as non-reference emissions data, parametric data or engineering analyses) is equivalent to information generated by reference test methods, the former may be used to establish compliance or noncompliance in an enforcement action. There is no need to establish that every test condition specified in a reference test method has been matched by a surrogate condition in the method used to generate the comparable information. Typically, reference test methods (and any additional test conditions specified in individual regulations) quantify the presence of particular physical attributes—for example, mass or concentration of a chemical or group of chemicals—over a specified period of time. As long as these two elements—quantification and specified time period—are retained and the data from the alternate method is related to the reference test, information generated by alternate methods yield data bearing on what the results of a reference test would have been, and the use of such information to establish compliance or noncompliance in an enforcement action will not affect the stringency of the underlying standard. Of course, non-reference data that is already quantified in the same units as the underlying standard, e.g., emissions data generated by properly operating and calibrated non-reference CEMs, should generally be comparable to reference test data, with all specified averaging periods still applying.

For example, Method 9, the NSPS reference method for opacity, requires that a trained visible emissions observer (VEO) view a smoke plume with the sun at a certain angle to the plume in order to properly illuminate it. In contrast, a continuous opacity monitor (COM) contains a calibrated light source that provides for accurate and precise measurement of opacity at all times. Notably, EPA uses COM data to certify and re-certify the credentials of VEOs under Method 9. Accordingly, since a comparable light source is provided by a COM, if COM data were offered in an enforcement action to prove or disprove opacity violations, there would be no need to establish that the sun was shining during the period the COM data was collected. Where a reference test method or test requirements in an individual regulation include plant operating conditions, e.g., a requirement that testing be conducted at a specified percentage of maximum plant capacity, this does not mean that the underlying standard applies only when the plant is operating at that capacity or that the ''other information'' would have to show that the plant was operating at the specified capacity during the period that the other ''credible evidence'' was obtained.

Where a party seeks to introduce other sorts of information in an enforcement action, for example, expert testimony as to whether a unit was able to meet its emission limit based on the operation or nonoperation of its control equipment during the period of alleged violation, the information would still need to be relevant to reference test data in the sense that it must be related to reference test data in some fashion. In the expert testimony example, this might be accomplished by a qualified expert opinion that a reference test would have demonstrated noncompliance in these same circumstances. Finally, where general burdens of proof for the proponent of this information are reduced through statutory provisions or other means, the same reduced burdens will apply in circumstances where EPA uses non-reference test data to assert noncompliance. *See, e.g.,* CAA section 113(e)(2).

B. Use of Credible Evidence in Compliance Certifications

Some commenters argued that today's final action will create new uncertainties and burdens for sources, because sources will not know what information they must consider before certifying compliance with Title V permit requirements. Previously, these commenters argue, sources would have needed to consider only the results of any specified reference tests, whereas under the credible evidence revisions almost any information could be potentially relevant to determining compliance. Thus, as a practical matter sources would need to ''go through every file drawer'' and examine a great deal of additional information before certifying compliance. Even then, sources would not know whether they had reviewed all compliance information that was potentially credible. According to some commenters, even if the source determined its compliance using a reference method, the source would still be uncertain as to whether it could certify compliance during that period, because other contemporaneous information might still indicate noncompliance. Still other commenters argue that allowing a broad array of information to be considered in compliance certifications would render the certification requirement void for vagueness.

At the outset, EPA notes that today's action merely eliminates any potential ambiguity or conflict between Parts 51, 52, 60, and 61 and Part 70 regarding the ability of sources to use non-reference test data in compliance certifications. Consistent with the congressional intent reflected in Title V and section 114(a)(3), Part 70 already contemplates use of non-reference test data in compliance certifications. There are other pending rulemakings—specifically, pending actions involving the CAM approach and Part 70—that are

proposing to modify existing Part 70 requirements to provide additional detail as to what information sources must consider when certifying compliance. Nothing in these rule revisions is meant to specify what degree of correlation there must be between CAM monitoring data and emissions violations or compliance certifications; rather this issue will be discussed in the CAM rulemaking.

In addition, EPA believes that the commenters have greatly exaggerated the purported uncertainties and burdens in certifying compliance under Part 70 and notes that facilities routinely determine their compliance with numerous statutory or regulatory obligations without government imposed ''checklists.'' Under Title V, the source's substantive CAA obligations (i.e., the source's applicable requirements) are clearly set forth in the source's CAA operating permit.

Contrary to the commenters' claims, sources that are certifying compliance using properly conducted continuous reference methods may generally certify compliance based solely on the continuous reference method data, although naturally such sole reliance would be inappropriate in the face of obvious contrary information or fraud as discussed below.

Of course, if a source becomes aware of other material information that indicates that an emission unit has experienced deviations (as that term is defined in the draft CAM approach) or may otherwise be out of compliance with an applicable requirement even though the unit's permit-identified data indicates compliance, the source must consider this information, identify and address it in the compliance certification, and certify accordingly. This ensures, among other things, that sources will not certify compliance in circumstances where doing so would constitute a violation of CAA section 113(c) and 18 U.S.C. Section 1001, which prohibits sources from knowingly making a false certification or omitting material information, or a violation of other prohibitions on fraud. EPA emphasizes, however, that its purpose here is to make clear that sources may not ignore obvious relevant information. EPA does not view compliance certification requirements as imposing a duty on the source to search out and review every possible document to determine its relevance on the issue of the source's compliance.

Following on the above discussion, the Agency takes this opportunity to restate that while a Title V permit can include a ''permit shield'' protecting it from allegations that it has failed to satisfy CAA *monitoring* requirements, such shield does not relieve the source of its obligation to comply with the underlying emission limits or other applicable requirements being monitored. In other words, even where a source receives a ''shield'' providing that the monitoring provisions set forth in its Title V permit constitute compliance with all monitoring requirements of the CAA, the source would not be shielded from allegations of noncompliance with the underlying substantive requirements (e.g., emission limits) being monitored even if the source's required monitoring failed to detect the violation. *See also* the October, 1993, proposal, 58 FR 54678.

Industry commenters argued that allowing credible evidence in Title V compliance certifications would render the certification requirement constitutionally void for vagueness. According to these commenters, reference test methods are necessary to define, in a consistent and reproducible manner, the level of performance that constitutes compliance; without a reference method, an emission limit would be incomplete. As discussed above, EPA in no way intends to eliminate reference tests or to alter their methodology. Instead, these tests, performed as specified under EPA and state regulations, will remain the benchmark against which to compare other emissions or parametric data, or engineering analyses, regarding source compliance.

Finally, numerous commenters argued that allowing credible evidence in compliance certifications and enforcement actions would disrupt the Title V permit process and cause substantial delays in the issuance of these permits because local permitting authorities would have to adjust many of the sources' emission limits, which the commenters contend were not intended to be complied with continuously. Such Title V gridlock could occur only if today's action in fact changed the stringency of emission standards.

C. EPA's Authority To Promulgate the Credible Evidence Revisions

1. Statutory Authority

Today's rulemaking and related SIP call are based primarily on EPA's existing authority prior to the 1990 CAA Amendments. Section 113(a) of the Act authorizes EPA to bring an administrative, civil or criminal enforcement action ''on the basis of any information available to the Administrator.'' This provision provides the Agency with clear statutory authority to use any available information to prove violations of requirements under the Act, and demonstrates that Congress did not intend to limit EPA to using reference test method results in bringing enforcement actions. The language of Section 113(a), together with the fact that the Act nowhere prohibits the use of information other than reference test results to prove violations, indicates that the Act does not limit the use of any information to prove a violation. Therefore, by law the Agency is limited only by general evidentiary rules in what it can use to prove a violation alleged in an enforcement action.

2. The Kaiser Steel Decision Does Not Constrain EPA's Authority To Amend Its Regulations

Although the Act sets no inherent limits on EPA's authority to use any type of information to prove a violation, some EPA regulations provide for specific test methods for determining compliance and have been read by some to constrain EPA's enforcement authority. In *United States* v. *Kaiser Steel Corp.*, No. CV–82–2623 IH (C.D. Cal. Jan. 17, 1984), the district court construed the language of EPA's regulations at 40 CFR 60.11 as limiting the admissible evidence of violations of opacity standards to observations utilizing Method 9, the opacity reference test method. Thus, when the Agency attempted to use expert testimony pertaining to opacity to prove the existence of violations without Method 9 test data, the court rejected the evidence and held that EPA could prove violations only on those days where the Method 9 test was conducted. This decision—which interpreted only EPA's existing regulations, not the Act—was specifically overruled by Congress in the 1990 CAA Amendments. Today's rulemaking is intended to clarify that EPA's regulations do not constrain EPA to using reference tests to prove a violation of an emission standard. Rather, EPA retains its full authority under Section 113(a) to use ''any information'' as the basis for an enforcement action.

3. Despite Commenters' Claims, Clean Air Act Case Law Does Not Mandate Exclusive Reference Tests

At least one commenter has asserted that the decision in *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 399 (D.C. Cir. 1973), *cert. denied,* 417 U.S. 921 (1974), stands for the proposition that CAA emission standards may be enforced only through an exclusive reference test method. First, the commenter relies on the court's ruling

that a reference test method must make measurements with ''reasonable accuracy'' and be ''objective.'' 486 F.2d at 401 & n. 103. Second, the commenter cited the court's concern with deviations between sampling methods used in gathering data to set an emission standard and sampling methods used in reference methods. The court stated that ''a significant difference between techniques used by the agency in arriving at standards, and requirements presently prescribed for determining compliance with standards [i.e., the reference method], raises serious questions about the validity of the standards.'' 486 F.2d at 396. EPA disagrees with this reading of *Portland Cement.*

These holdings, individually or together, do not support the conclusion that violations of an emission standard may only be demonstrated by an exclusive reference method. The court's statements regarding the reliability of reference methods were made in context of a challenge to an opacity standard. The industry petitioner argued that testing compliance with that standard, inspector observations, is inaccurate and therefore arbitrary. The court agreed that the evidence called the reliability of inspector observations into question and remanded to EPA for it to determine if there was a way to measure compliance with the standard with ''reasonable accuracy.'' In no way did the court imply that the opacity standard had to have an exclusive reference test but simply rejected the test EPA proposed to use as insufficiently supported.

The *Portland Cement* court's discussion of a compliance method that differed from the test method used to develop the standard also lends no support to the conclusion that an exclusive test method is required. It is true that the court mentioned reference methods ''outlined by regulation.'' However, the mere description of an agency practice (here, the inclusion of a reference test in a regulation setting an emission standard) does not transform that practice into a statutory requirement. Moreover, the thrust of the court's remarks was to caution EPA that, where EPA has established by regulation a reference method for sources to demonstrate compliance, the best data EPA can put forth to show that a standard is in fact achievable is data generated by the reference method. The D.C. Circuit, however, has specifically rejected the assertion that standards can only be supported by reference test data. *See National Lime Ass'n* v. *EPA,* 627 F.2d 416, 446, fn.103 (D.C. Cir. 1980). None of this, thus, supports the commenter's claim that a standard's supporting data must be generated using the reference method, and its supposed corollary that only reference method data can be used to enforce the standard, especially where, as here, that other information must be related back to a reference test method. At best, the commenter's arguments would apply only in the context of an original standard-setting, where an emission limitation or other standard newly promulgated by EPA was being challenged on the basis that the standard's supporting data was inadequate. Today's rule sets no new emission or work-practice standards, and amends no existing ones.

Thus, the commenter is mistaken. Neither of the two passages in *Portland Cement* cited by the commenter address whether exclusive reference tests are necessary, much less mandate establishment of such tests. Further, EPA regulations are inconsistent with the exclusivity argument of the commenter. For example, section 60.8(a) of Title 40 of the CFR provides a whole string of circumstances under which a source can alter or completely replace the reference test required by the regulation. Finally, today's final action regarding the use of non-reference test data in enforcement is fully consistent with the court's requirement that reference testing be conducted in a nonarbitrary manner.

4. The 1990 CAA Amendments Further Support EPA's Authority

Various provisions of the 1990 CAA Amendments provide additional support for EPA's position that reference tests are not the exclusive means of proving violations. As noted above, Congress specifically reversed the *Kaiser Steel* decision in Section 113(e) of the Amendments by providing that the duration of a violation may be established ''by any credible evidence (including evidence other than the applicable test method).'' The legislative history for this provision shows that Congress meant to clarify that in an enforcement action courts are not restricted to reference test method data, but may consider any evidence of violation or compliance admissible under relevant evidentiary rules. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 1, 358 (1989) (''Senate Report''), *reprinted in* 1990 U.S. Code Cong. & Admin. News 3385, 3741 (''Reprint'').

Other provisions of the 1990 CAA Amendments also evidence Congressional intent that reference test methods should not be used as the exclusive means for assessing compliance with CAA emission limits. Most pointedly, the requirements in Section 114(a)(3) for enhanced monitoring and for compliance certifications based on a determination of whether compliance was continuous or intermittent presumes that data other than reference tests would be used for these purposes. As explained in the October, 1993, proposal, the use of non-reference test data is also consistent with the monitoring, compliance assurance, and compliance certification requirements in Sections 504(a), 504(c), and 503(b)(2) of the Act. *See* 58 FR 54649–50. In addition, Section 504(b) of the Act grants discretionary authority to the Administrator to prescribe procedures and methods for monitoring, and provides that continuous emission monitoring systems need not be required ''if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.'' In sum, Congress' repeated emphasis on providing reliable and timely compliance information is inconsistent with the notion that only data from infrequently performed reference tests is relevant to compliance certifications and enforcement actions.

5. Commenters' Attempts To Narrow the Scope of Sections 113(e) and 113(a) Are Unpersuasive

Several industry commenters have claimed that the legislative history of the 1990 CAA Amendments shows that section 113(e)(1) does not provide authority for today's final action. Additionally, these commenters have asserted that the section's legislative history upon which EPA has relied is ambiguous.

In the October, 1993, proposal, EPA cited to the Senate Report's discussion of Section 113(e)(1). The Senate Report stated:

> This title of the bill enhances the ability of the Environmental Protection Agency * * * by making clear that the Agency may rely upon any credible evidence of violations in pursuing alleged violations.

Senate Report at 358, Reprint at 3741. The Report further explained:

> [T]he amendment clarifies that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [plan] or regulation. For example, courts may consider evidence from continuous emission monitoring systems, expert testimony, and bypassing and control equipment malfunctions, even if these are not the applicable test methods. Thus, this amendment overrules the ruling in *United States v. Kaiser Steel Corp.*, No. 82–2623 (C.D. Cal. January 17, 1984) to the extent that

the court in that case excluded the consideration of such evidence.

Senate Report at 366, Reprint at 3749. Finally, the Report notes that data from enhanced monitoring and compliance certifications ''will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence.'' Senate Report at 368, Reprint at 3751.

The commenters, in turn, rely on the views of Senator Chafee regarding S. 1630, inserted into the Congressional Record at the time the legislation was introduced. Senator Chafee stated with regard to Section 113(e)(1):

> Subsection 113(e) also clarifies and confirms that once EPA establishes evidence of a violation using a formal test method, EPA can use other credible evidence to prove additional violations, or that violation has continued.

135 Cong. Rec. S 9650, 9655 (August 3, 1989).

EPA believes that the best reading of the legislative history still supports its interpretation of Section 113(e)(1). First, there is no ambiguity in the Senate Report, the language of which unreservedly supports enforcement actions brought on the basis of non-reference test data. Second, EPA does not believe that Senator Chafee's floor statement outweighs the clear statement in the Senate Report. The Senate Report is a more authoritative reflection of congressional intent than a floor statement produced at the beginning of the legislative process.

Various commenters also objected to EPA's reliance on Section 113(a) as a basis for today's action. One commenter argued that Section 113(a) does not preempt regulatorily specified reference test methods. Several commenters asserted that EPA's construction of Section 113(a) would render superfluous the new language in Section 113(e)(1) concerning credible evidence. These commenters claim that, under EPA's interpretation of Section 113(a), Congress could have ''fixed'' the *Kaiser Steel* decision simply by clarifying the scope of EPA's authority under Section 113(a).

These various commenters have misunderstood EPA's interpretation of Section 113(a). EPA has not asserted that Section 113(a) preempts reference test methods. Rather, EPA believes that Section 113(a) provides authority to amend current regulations to make clear that data from reference test methods are not the exclusive means of establishing noncompliance or compliance in enforcement actions. Given this interpretation of Section 113(a), Congress's passage of Section 113(e)(1) cannot be described as superfluous—particularly in light of the decision in *Kaiser Steel.*

6. EPA Can Promulgate the Credible Evidence Revisions Without Reproposal

Several commenters have argued that finalization of the proposed changes in Parts 51, 52, 60 and 61 without first reproposing those changes violates the Administrative Procedure Act (APA), the CAA, and due process. The commenters' main argument is based on EPA's presumed change in course on implementing the requirement in Section 114(a)(3) concerning enhanced monitoring and compliance certification. As noted above, the changes to Parts 51, 52, 60 and 61 were proposed in the same rulemaking that proposed an enhanced monitoring and compliance certification program. Since that proposal, EPA has re-evaluated its approach to enhanced monitoring and has made publicly available and has sought comment on a revised approach—the CAM approach—for satisfying the same statutory goals as the original enhanced monitoring proposal. Some commenters contend that switching to CAM will fundamentally change their view of the proposed changes to Parts 51, 52, 60 and 61 because those proposed changes were evaluated only in terms of how they would be implemented under the October, 1993, proposal on enhanced monitoring. Until CAM is formally proposed, these commenters assert, they cannot give meaningful comments on the credible evidence revisions. Further, the commenters argue that the proposed revisions provided insufficient notice and opportunity to comment because EPA has not adequately defined the term ''credible evidence.''

EPA believes today's rule has no procedural infirmities. EPA is today finalizing the enforcement-related portions of the proposal it made in 1993 with only minor changes.

The commenters' claim that they cannot meaningfully comment on credible evidence revisions prior to proposal of the CAM approach is not well-taken for two reasons. First, EPA does not believe that any knowledge of the draft CAM approach is necessary to comment on today's rulemaking. In today's final rule, EPA has removed any presumptions regarding the credibility of any specific data. If and when the draft CAM approach is finally adopted, CAM data will be treated under today's rule like any other potential source of compliance information. Thus, knowledge of the draft CAM approach is not critical to commenting on this rulemaking. In any event, the nature of the draft CAM approach has been generally available in some detail since September, 1995—well before EPA renewed its request for comment on today's rulemaking. Further, EPA has sought and received additional comment on the enforcement consequences of the draft CAM approach by distribution of a revision of the CAM approach in August, 1996. The revised approach specifically discussed the relationship of the draft CAM approach and today's action.

Second, the October, 1993, proposed rulemaking gave interested parties sufficient notice of the issues raised by the proposed changes to Parts 51, 52, 60 and 61. The Agency made clear that these revisions were designed to remove any potential ambiguity regarding the use of enhanced monitoring data in compliance certifications, and to clarify that any credible evidence of a violation of an emission standard was admissible to prove (or disprove) such a violation. *See* 58 FR 54677. To clarify that these credible evidence revisions extended beyond the data gathered under an enhanced monitoring program, EPA gave two specific examples of evidence collected outside the enhanced monitoring program that under the revised regulations could be used to prove a violation. *See* 58 FR 54676–54677. Thus, the October, 1993, proposal clearly put interested parties on notice that the credible evidence revisions were not merely an adjunct to the enhanced monitoring program. In fact, industry commenters on the October, 1993, proposal clearly understood the central issue posed by the proposed credible evidence changes, and they commented on it extensively. Today's final action promulgates revisions to *existing* regulations, and are not contingent upon *future* promulgation of the CAM approach or any other form of enhanced monitoring requirement.

Neither is this rulemaking procedurally deficient for not providing an express regulatory definition of the term ''credible evidence''—a term which Congress itself inserted, without definition, into the Act. The issues of credibility, admissibility and weight of evidence have been exhaustively addressed by federal and state court evidentiary rules regarding evidence, and the thousands of cases decided under them. Today's final action defers to those regulations and makes clear that there are no bars in regulations under the CAA which prevent the use of evidence or information other than reference test methods in compliance certifications and enforcement actions. Of course, in judicial enforcement

proceedings, what evidence is credible and admissible will be determined by the court taking into account how the evidence was gathered and the specifics of the emission standard and any associated reference method.

Finally, EPA believes that it has taken extensive steps, detailed in Section I.C. above, to ensure that the concerns of affected parties were fully aired. None of the additional public outreach actions that EPA undertook in 1996 were required by the APA or the CAA; instead, EPA undertook them voluntarily to ensure full input by interested parties regarding the credible evidence rules.

D. Stringency

Industry commenters have presented several arguments in support of their position that this rulemaking requires sources to be in continuous compliance and thus would effectively increase the stringency of underlying requirements, including SIP limits and standards established by EPA under the NSPS and NESHAP programs.

EPA believes that industry's arguments on this point are fundamentally wrong. It is not EPA's intent that these rules should increase the stringency of any applicable requirement. These rules do not do so because they maintain the focus of the compliance determination on whether or not the appropriate reference test would have shown a violation.

The commenters' arguments regarding increased stringency are as follows: applicable requirements are accompanied by specified reference tests. Any departure from past practice regarding the use of these tests, including the use of other credible information to directly assess compliance, particularly on a more frequent basis, will inevitably change the results of an inquiry into the compliance status of any source compared to exclusive reliance on the infrequent performance of the reference tests. Therefore, industry argues, using credible evidence would change the underlying applicable requirements—usually in a manner that makes them more stringent—without going through the necessary rulemaking procedures.

Industry's argument hinges on the premise that adoption of an emission standard that includes a particular form of reference test—one that is not required to be performed continuously as a matter of course—limits the compliance obligation. The scope of the compliance obligation is not at issue in this rulemaking. The scope of the compliance obligation prescribed by any particular standard shall be based on the emission standard and not this rulemaking. However, to fully respond to industry comments, and to give notice of the position EPA will take in future enforcement proceedings, EPA believes it is necessary to address in some detail the nature of the compliance obligation under emission standards with particular emphasis on the compliance obligation as it pertains to emission standards which have a reference test method that is not required to be performed continuously.

While the bulk of the commenters' concerns were expressed with respect to NSPS, the same concerns also apply in most cases to NESHAPs and SIPs. Likewise, EPA's responses focus on NSPS, but are generally applicable to other emissions limits as well.

1. Emissions Limits Require Continuous Compliance (Consistent With Any Averaging Times) Except During Periods Where Compliance Is Specifically Excused

To resolve commenters' claims of increased stringency, the nature of the compliance obligation facing owners and operators of sources of air pollution under the Act must be addressed. Under the CAA, its regulations, and the case law, a source's compliance with emission limitations must be continuous (consistent with any averaging times) except where a particular emission standard specifically provides for periods of noncompliance.

The Statute. The Clean Air Act defines the terms ''emission limitation'' and ''emission standard'' as meaning ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a *continuous* basis * * *.'' CAA section 302(k) (emphasis added). In accordance with this clear statutory statement, the Act authorizes penalties for multiple days of violation should a source fail to meet its continuing obligation. *See also* CAA sections 113(e)(2) (providing that ''a penalty may be assessed for each day of violation,'' and establishing a presumption of continuing violation if certain conditions are met) and 113(e)(1).

CAA Regulations. The Act's general requirement of continuous compliance is mirrored in the NSPS regulations, which generally require that sources comply with established emission limits except during certain defined time periods. NSPS provisions typically specify that compliance with stated limits is required ''on and after the date'' of an initial performance test conducted in accordance with 40 CFR 60.8. *See, e.g.,* 40 CFR 60.502. The need for continuous compliance is also discussed in the preambles to numerous NSPS, including many older ones. For example, in proposing standards for glass manufacturing plants (Subpart CC), EPA stressed the need for effective monitoring to assure that affected facilities are ''continuing to maintain the emission reduction observed during the performance test.'' 48 FR 50670, 50675 (1983). EPA has also made this point clear in publicly-available guidance memoranda. *See* Detailed Response Document at Section 4.

In addition to requirements for continuous compliance, NSPS regulations also typically contain specifically excused periods of noncompliance. These periods confirm that compliance is required at other times. They also confirm the basic reasonableness of this compliance scheme—that is, sources must generally comply continuously with their numerical emission limits, but not during periods of specifically excused noncompliance, and only in accordance with any specified averaging periods. For example, for many standards, compliance is not required during periods of startup, shutdown or malfunction. This exception is contained in the NSPS general provisions and in individual standards. *See* 40 CFR 60.8(c); *see also, e.g.,* 40 CFR 60.46a.

Case Law. In various judicial decisions, courts have approved of the basic NSPS regulatory scheme of continuous compliance accompanied by limited, specified exceptions for noncompliance. The courts have stated that the specified exceptions are needed because sources must comply at all other times. *See, e.g., Portland Cement,* 486 F.2d at 399 (court noted EPA's then-proposed ''startup, shutdown and malfunction'' compliance exclusion regulation with approval, suggested that it was a ''limited safety valve'' and stated that it imparts a construction of ''reasonableness'' to the standards as a whole and adopts a more flexible system of regulation that can be had by a system devoid of ''give''; (*Essex Chemical Corp.* v. *Ruckelshaus,* 486 F.2d. 427, 433 (D.C. Cir. 1973), *cert. denied,* 416 U.S. 969 (1974) (in a challenge to sulfuric acid plant and coal-fired steam generator NSPS standards, the court again noted with approval the proposed start-up, shutdown and malfunction exception and remanded the rule stating that ''such variant provisions appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the ''never to be

exceeded'' standard currently in force'') (emphasis added); and *Bunker Hill Co.* v. *EPA,* 572 F.2d 1286, 1301–02 (9th Cir. 1977) (in challenge to SIP sulfur dioxide standard, court observed that EPA regulations required that the standard be met ''all of the time,'' and thus EPA must typically promulgate upset provisions to excuse noncompliance beyond the source's control). Similarly, the proposition that compliance must be continuous is reflected in numerous judicial decisions involving challenges to various NSPS rulemakings. In these cases, both the D.C. Circuit Court and industry petitioners have emphasized that for an emission standard to be achievable it must be able to be continuously complied with over wide operating ranges at varied facilities. *See, e.g., Portland Cement, Essex Chemical, National Lime,* and *Sierra Club* v. *Costle,* 657 F.2d 298 (D.C. Cir. 1981). In *National Lime,* for example, the lime industry's trade association itself complained that the data underlying the promulgated numerical emission standards were insufficient to show that the standards were ''in fact achievable on a continuous basis.'' 627 F.2d at 430. In holding that EPA had not adequately demonstrated the achievability of the standards for the industry as a whole, the court explained that ''to be achievable, we think a uniform standard must be capable of being met under most adverse conditions that can reasonably be expected to recur . . . .'' *Id.* at 431. In *Sierra Club* v. *Costle,* various electric utility companies challenged a particulate standard on the basis that ''the data reflect only short term performance while the standard requires long term continuous compliance.'' 657 F.2d at 377 (emphasis added). This challenge was rejected by the court based on data showing that certain sources had ''consistently complied with the standard.'' *Id.* at 382.

2. Commenters' Advocacy of Noncontinuous Compliance Would Lead to Numerous Anomalies

Some industry commenters have argued that numerous emissions limitations do not require continuous compliance or, alternatively, that ''continuous'' does not have the straightforward meaning suggested above. The commenters' argument centers on NSPS standards issued under CAA section 111. In the commenters' view, many such standards do not contemplate that facilities will operate in compliance on a continuous basis with stated emissions limits, but rather require only an initial demonstration of compliance with stated limits upon start-up or shortly thereafter. After an initial performance test, continuous compliance is required only with respect to operation and maintenance ''in a manner consistent with good air pollution control practice'' as specified in 40 CFR 60.11(d). As to numerical emissions limits, commenters suggest that these must be met only on those infrequent occasions that a subsequent performance test is conducted. So long as any such performance test is passed, the source is in ''continuous'' compliance with numerical emissions limits without regard to whether its emissions in fact exceeded the numerical limit during the time between the tests, no matter how long that may be.

EPA rejects this view of the nature of the obligation to comply with NSPS and other emission limits under the CAA. *See* Detailed Response Document. EPA and the courts have long held that emission limits must be complied with continuously, consistent with any associated averaging periods, except where a particular limit provides otherwise. Adopting the commenters' view of compliance would lead to numerous anomalies.

In the April 2, 1996, public meeting and in follow-up written comments, several commenters argued that many reference test methods were selected specifically because they would only be performed infrequently—for example, on a yearly basis. These once a year tests would be proper for their associated emission standards, which in the commenters' view were intended to be complied with only 95% of the time. Specifically, performing a reference test once a year would yield ''acceptable'' compliance results, because on average a source would be found out of compliance only 5% of the time—that is, in one in twenty tests, or once every twenty years. According to these commenters, testing for compliance more frequently would be unfair, because it would increase the likelihood that the source would be found out of compliance during periods where the standard itself contemplated noncompliance. In order to avoid being found in noncompliance, sources would have to continuously stay below their emission limits—which in these commenters' view would effectively increase the stringency of the emission standard.

EPA disagrees with the commenters' notion that sources must meet their legal numerical air emission limits only seldomly. Further, EPA rejects as inconsistent with the Act and its underlying purposes the notion that sources can somehow be in routine ''compliance'' without staying within these limits on an ongoing basis. The fundamental goal of the CAA and the emission standards established under it, is to achieve clean air. Moreover, many emission standards, such as hazardous air pollutant standards under Section 112 and emission standards in State Implementation Plans designed to implement national ambient air quality standards, have a direct relationship to the protection of human health. Routine compliance with numerical emission standards is critical to achieving this goal. The commenters' view that such compliance is somehow not required would completely undercut these public health and safety goals.

If the commenters' view was correct, any EPA or state targeting of a specific source by requiring the source to perform more frequent reference tests would be unfair and presumably illegal, because any such increased frequency in reference testing would destroy the delicate balance of frequent noncompliance and infrequent testing that the commenters claim is contemplated by the rules. Under this view, EPA and states might not be able to require an apparently violating source to conduct a previously unscheduled reference test, because it would improperly raise the source's chances of being found in noncompliance and thereby ''increase the stringency of the underlying standards.''

The commenters'' argument is also inconsistent with the language, structure, and purpose of the CAA. For example, if the frequency of testing must be limited to meet the intent of the emission limits, to be fair to all sources EPA's regulations should have required that the tests be performed only at infrequent intervals. EPA's rules contain no such restrictions; rather, CAA section 114(a)(1)(D) grants EPA broad discretion to order reference tests whenever the Administrator deems it appropriate. Moreover, commenters'' argument is inconsistent with CAA section 113(e)(1), which even on its narrowest reading (note that EPA's reading is considerably broader) specifically provides for use of non-reference test data to prove continuing additional days of violation after an initial violation is established by reference test data, and by CAA section 113(e)(2), which establishes a presumption of continuing violation after notice of the violation has been given to the source, provided that EPA can make a prima facie showing that ''the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice.'' This presumption continues until the violator ''establishes that continuous compliance has been achieved.''

Likewise, sections 114(a)(3) and 504(a)-(c) regarding enhanced monitoring and certification as to whether compliance is continuous or intermittent, and prompt reporting of deviations, are simply inconsistent with a regulatory regime that would require only occasional demonstrations of compliance with emission limits. Taken together, these provisions, represent a fundamental statutory rejection of the commenters' argument. *See* Detailed Response Document, Section 4, which discusses other reasons why these comments are without merit.

3. Comments Regarding Continuous Compliance Are Not Directed at Today's Action, but Rather at Underlying Emission Standards

Industry commenters have argued that the quality and quantity of the data used in establishing emissions limitations, such as those under the NSPS and NESHAP programs, reflect a conscious decision by EPA that compliance with such standards would need to be demonstrated only periodically. It follows that requiring continuous compliance with stated limits at this juncture would effectively increase the stringency of the standards. As discussed above, EPA believes that the commenters' general arguments strain common sense. Commenters have pointed to various NSPS standards to support their views, but EPA finds these examples unpersuasive.

In particular, commenters have pointed to the NSPS for kraft pulp mills, 40 CFR Part 60, Subpart BB, and for steam electric generators constructed between 1971 and 1978, Subpart D, as reflecting a general acknowledgment by EPA that national standards need not be complied with at all times. EPA believes that, to the contrary, Subparts BB and D and other cases demonstrate that where EPA intended to allow affected sources to exceed stated emissions limits, the standards in question expressly so provide. It is true that in the development of some NSPS and NESHAP standards, EPA was concerned with the limited number and distribution of test runs and the inherent variability in levels of emissions from even well-controlled facilities. Where appropriate, EPA addressed those concerns by adjusting the numerical value of the standard, providing excess emissions allowances and provisions for noncompliance during certain upset conditions, or through changes in averaging times. With other standards, EPA did not provide for any departure from the general requirement that compliance must be continuous. Examples of all these approaches, and specific responses to comments regarding Subparts D and BB, are provided in the Detailed Response Document.

The commenters' assertions that sources cannot comply on a continuous basis are really directed not to the propriety of today's rules, but rather to the adequacy of the underlying NSPS and other emission standards that are not at issue in this rulemaking. To the extent there is any documentation that a well-run facility cannot comply consistently with underlying national emission standards, or applicable SIP requirements, such documentation would be relevant only to those existing standards, not to today's rule. EPA notes that despite several requests to commenters to identify any standards that cannot be complied with on a regular basis, no specific information has been provided to this rulemaking docket that demonstrates that well operated and maintained facilities employing pollution control technologies of the types upon which the underlying emission standards were based cannot comply with those standards on a continuing basis. The most that was submitted was a statistical re-analysis of the data relied upon by EPA in promulgating several emission standards and a one page graph purporting to show that an industrial boiler could not comply with the NO_X emission limit at low levels.

The agency has considered this comment concerning the Subpart D NO_X standard carefully, as it does not intend to impose requirements that are impossible for well-designed sources to meet, but believes that this concern is largely theoretical. The information provided by the commenter to EPA was vague and did not prove that the undisclosed source could not comply with the emission standard. Further, if a standard was impossible to achieve under some circumstance, EPA and citizens are not likely to bring enforcement cases in such instances. In reviewing CAA enforcement actions the agency has been unable to identify any case where either the agency or a citizen sought to enforce a standard that was impossible to achieve. The agency was also unable to identify any case in which a defendant established that compliance was not possible at the time of the alleged violation. This appears to be the case even in those states and localities that have had ''credible evidence'' rules for years.

Additionally, should it be determined that a standard could not be met during some relatively infrequent or inconsequential period of source activity, the potential for significant adverse impact on that source is remote. The agency has previously expressed its policy that, generally, judicial enforcement is not the appropriate vehicle to redress sporadic, infrequent violations with no environmental consequence. Further, it is unlikely that a citizen could prevail in enforcing a theoretically impossible standard since Courts will not issue an injunction where there is nothing to be done. Similarly, where one cannot establish that a source failed to act in a manner required by law a significant penalty will not be imposed by the courts. The agency is not aware of any situation in which it has filed, and one should not anticipate large numbers of citizen suits being filed, where there is nothing the source could have done or could do to achieve a greater degree of compliance. Moreover, the courts today have additional tools, including fee awards and sanctions available under the Federal Rules of Civil Procedure and other statutes to address meritless suits.

In further response to these industry comments, EPA has included in the record a 1993 study conducted by EPA Region V that shows that almost all (95%) of sources with sulfur dioxide CEMs were meeting their federal and state sulfur dioxide emission limits approximately 97% of the time, with excess emission periods totaling only 3%. *See* Region V Study, Figure 2. Because this 3% figure included excess emissions recorded during periods in which compliance is specifically not required, such as startup and shutdown, the percentage of operating time in noncompliance with the standard is even smaller and may mean that most sources are in compliance all the time. EPA Region V sources with continuous opacity monitors showed similar results: the average source's percentage of opacity exceedances was less than 2%, with 95% of sources at or below approximately 4%. *See* Study, Figure 1. As with the sulfur dioxide data, opacity exceedances during periods of startup, shutdown and other excused periods were not excluded. Accordingly, the percentage of actual noncompliance with opacity limits was even smaller. Note that these figures are for the average (50th percentile) and worst (95th percentile) facilities. The best run facilities have fewer excess emissions reports.

Additional CEM data from EPA Region V that focused specifically on exceedances from NSPS Subpart D SO_2 emission standards shows similar results. This data shows that Subpart D sources report few or no excess SO_2 emissions. Approximately two-thirds of the sources report no excess emissions

at all, during any three month reporting period. Further, since 1990, the vast majority of sources (95%) have reported total excess emissions averaging less than 2.5% of operating time; since 1993, less than 1.7%. Since these figures include all excess emission periods, including periods that are probably excused, the actual SO_2 exceedance rates were even lower.

These data show that there are not ''fundamental flaws'' in the subject standards such that the standard cannot be met. *Indeed,* the data demonstrate that most sources do comply all or nearly all of the time.

If the regulated community believes that a standard cannot be met across some meaningful range of normal operating conditions, or if specific exemptions beyond those currently provided are proper, we believe the appropriate action is for the affected industry to file a petition for amendment of the standard at issue or propose more specific permit conditions so that the matter can be fully assessed and addressed through the regulatory process. However, the information submitted by the commenters does not show that there currently exists a significant ''impossibility'' issue that is so widespread as to outweigh the benefits of the proposed rule.

4. Enforcement Using Continuous Monitoring Data Does Not Increase the Stringency of Applicable Requirements

Industry commenters have argued that the stringency of emission standards will be increased if enforceable data is obtained more frequently than has been ordinarily obtained in the past through reference testing. Further, the commenters argue that direct enforceability of this data would contradict EPA's stated positions in adopting standards under the NSPS and NESHAP programs because EPA intended that continuous monitoring would only show compliance with good operation and maintenance procedures, i.e., general duty requirements, and would not be otherwise used in enforcement. (*See, e.g.,* 38 FR 10820 (1973) (preamble to proposed startup, shutdown and malfunction regulation); 43 FR 7571 (1978) (preamble to final kraft pulp mill standards).

Because the NSPS and NESHAP emission standards must be met continuously, consistent with any averaging times and except during periods where compliance is specifically excused, any more frequent or continuous monitoring of the standards and any enforcement based on violations uncovered thereby have no effect on the stringency of the standards. To take a simple analogy, allowing the use of radar guns or increasing the number of police checking for speeding may raise the chance that a speeder will be detected, but this does not alter the legal stringency of a posted speed limit.

In some early NSPS, the agency required the installation of what were styled ''indicator monitors'' and provided policy guidance that such monitoring data would not be used as the sole basis of enforcement actions absent further rulemaking. 38 FR 10820. To the extent that the CAA Amendments of 1990 did not supersede this policy statement, today's action is that future rulemaking. These policy statements, like today's rulemaking, pertain only to the kinds of evidence EPA uses to prove violations. The policy change that was contemplated in our 1993 proposal and 1996 memorandum are supported by technological advances in the accuracy and reliability of continuous emission monitors, deficiencies in EPA's previous practices identified by GAO and others, and the language and intent of the Act and the 1990 CAA Amendments.

EPA's past statements regarding limitations on the use of data derived from continuous monitoring methods for purposes of enforcing standards were motivated in part by concerns over the cost and availability of such methods and their ability to accurately determine compliance. *See, e.g., National Lime,* 627 F.2d at 450 (responding to petitioners' argument that there was no adequately demonstrated technology for monitoring opacity, EPA stated that the continuous monitoring data would not be used to determine compliance with the opacity standard but ''to keep a check on the operation and maintenance of the control equipment,'' and that the monitors were reliable enough to perform this limited function). For example, in the 1973 startup, shutdown and malfunction regulation proposal, EPA noted that while continuous monitoring data would not, at that time, be used to determine compliance as a general matter, such data could be used if ''approved as [an] equivalent or alternative method for performance testing.'' 38 FR 10820. Indeed, the NSPS general provisions have long provided that in lieu of performance tests using reference methods, a source could demonstrate compliance using an approved equivalent or alternative method, and that EPA can waive reference tests where the source has otherwise satisfactorily demonstrated compliance. *See* 40 CFR 60.8(b).

Since the 1970s, the availability, cost and accuracy of methods that enable determinations of compliance on a continuous basis has improved markedly. *See, e.g.,* 1990 GAO report at 19, 22–23 (1986 and 1988 EPA studies showed CEM data highly reliable); *Continuous Emission Monitoring,* 1993, Jahake, Thomas Publishing Co. For these reasons, EPA believes it is appropriate as a technical matter to allow information derived from these methods to be used in compliance certifications and enforcement actions. In fact, more recent national standards issued by EPA provide for determining and enforcing compliance directly by use of continuous monitoring data.

5. Sources Must Comply Both With Good Operation and Maintenance Requirements and With Emission Limits

Industry commenters have claimed that as to the NSPS program, the only goal of the program was to insure that best demonstrated technology was employed, such that once an initial reference test demonstrated that compliance with the standards could be achieved, it need not be demonstrated thereafter, and that an affected source's only ongoing obligation was its ''general duty'' to employ good operation and maintenance practices to minimize emissions in accordance with 40 CFR 60.11(d).

EPA agrees that proper operation and maintenance of an emissions unit and any associated pollution controls in accordance with 40 CFR 60.11(d) is vital to complying with emission standards. However, while it is true that sources have a continuing duty to employ good operations and maintenance practices, this duty does not substitute for the sources' obligation to comply with its emission limits. The two obligations, while related, are separate requirements in the NSPS regulations and in legal effect.

EPA has made these points plain as far back as 1973 in the proposed NSPS startup, shutdown and malfunction rulemaking:

> It is anticipated that the initial performance test and subsequent performance tests will ensure that equipment is installed which will permit the standards to be attained and that such equipment is not allowed to deteriorate to the point where the standards are no longer maintained. In addition, the proposed regulation requires that the plant operator use maintenance and operating procedures designed to minimize emissions in excess of the standard.

38 FR 10820 (1973) (emphasis added). This preamble text clearly states both that proper equipment maintenance is vital to remaining within an emission

standard (otherwise equipment would deteriorate to the point where standards were not met) and that the general operation and maintenance obligation is a separate regulatory requirement. Additional discussion of the distinction between the emission limits and good operating practice requirements can be in the Detailed Response Document. These statements make it clear that good operating practices requirements are separate and distinct from the need to continuously comply with emissions limits.

E. SIP Call

In the October, 1993, proposal, EPA announced that it planned to call for States to amend their applicable implementation plans to ensure that owners or operators may use enhanced monitoring (or other monitoring approved for the source pursuant to part 70) for compliance certification purposes, and that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan. 58 FR 54660. In December, 1993, and February, 1994, the Office of Air and Radiation's Stationary Source Compliance Division, the division then responsible for writing and implementing the enhanced monitoring rules, issued memoranda to EPA's Regional offices instructing them to conduct the SIP call. As of September, 1996, fifteen states and local air pollution control districts, together with the Commonwealth of Puerto Rico, had responded to the call and submitted SIP amendments for EPA approval. Kansas, Iowa, Nebraska, North Dakota, Georgia and Puerto Rico had received approval; the other states and districts' revisions were pending.

For substantially the same reasons that allow EPA to go forward with today's final rule, EPA has the authority to initiate and continue this SIP call. EPA's decision to forego the enhanced monitoring approach in favor of the CAM proposal has no effect on the basic goals of the SIP call, which are to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications.

Today's action ensures that the evidentiary rules for CAA violations are consistent in all fifty states. EPA has surveyed those states that have responded to the SIP call and has determined that the credible evidence changes have not created the difficulties forecast by the commenters.

IV. Administrative Requirements

A. Docket

Today's final rulemaking action is subject to Section 307(d) of the Act. Accordingly, EPA has established a docket (No. A–91–52), which consists of an organized and complete file of all information submitted to, or otherwise considered by, EPA in the development of today's action and the CAM approach. The docket includes all memoranda and studies cited by EPA in this preamble. The principal purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Office of Management and Budget (OMB) Review

Today's rulemaking is not a ''significant regulatory action'' because the revisions make only evidentiary changes and do not impose any additional implementation costs on regulated sources. Nevertheless, EPA submitted this final rule to OMB for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA generally must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more. Before promulgating a rule for which such a statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rulemaking makes only evidentiary changes and does not impose any additional costs on regulated sources or State, local, or tribal governments. For the same reason, these evidentiary changes will not significantly or uniquely affect small governments. Accordingly, this rulemaking is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

D. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this rulemaking does not impose any additional implementation costs on small or large entities.

E. Paperwork Reduction Act

The information collection requirements for the proposed enhanced monitoring rule were previously submitted for approval to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* In contrast, today's rule does not contain any information collection requirements subject to OMB review under the PRA.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Controller General of the General Accounting Office prior to publication of this rule in today's Federal Register. For the same reasons that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866, this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control.

40 CFR Part 52

Air pollution control.

40 CFR Part 60

Air pollution control.

40 CFR Part 61

Air pollution control.

Dated: February 13, 1997.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, 40 CFR Chapter I is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 51.212 is amended by revising paragraph (c) to read as follows:

§ 51.212 Testing, inspection, enforcement, and complaints.

* * * * *

(c) Enforceable test methods for each emission limit specified in the plan. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. As an enforceable method, States may use:

(1) Any of the appropriate methods in appendix M to this part, Recommended Test Methods for State Implementation Plans; or

(2) An alternative method following review and approval of that method by the Administrator; or

(3) Any appropriate method in appendix A to 40 CFR part 60.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

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

2. Section 52.12 is amended by revising paragraph (c) to read as follows:

§ 52.12 Source surveillance.

* * * * *

(c) For purposes of Federal enforcement, the following test procedures and methods shall be used, provided that for the purpose of establishing whether or not a person has violated or is in violation of any provision of the plan, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed:

(1) Sources subject to plan provisions which do not specify a test procedure and sources subject to provisions promulgated by the Administrator will be tested by means of the appropriate procedures and methods prescribed in part 60 of this chapter unless otherwise specified in this part.

(2) Sources subject to approved provisions of a plan wherein a test procedure is specified will be tested by the specified procedure.

3. Subpart A is amended by adding a new § 52.33 to read as follows:

§ 52.33 Compliance certifications.

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601 and 7602.

2. Section 60.11 is amended by revising paragraphs (a) and (f) and by adding paragraph (g) to read as follows:

§ 60.11 Compliance with standards and maintenance requirements.

(a) Compliance with standards in this part, other than opacity standards, shall be determined in accordance with performance tests established by § 60.8, unless otherwise specified in the applicable standard.

* * * * *

(f) Special provisions set forth under an applicable subpart shall supersede any conflicting provisions in paragraphs (a) through (e) of this section.

(g) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

2. Section 61.12 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined in accordance with emission tests established in § 61.13 or as otherwise specified in an individual subpart.

* * * * *

(e) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

[FR Doc. 97–4196 Filed 2–21– 97; 8:45 am]

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 223 and 239
Passenger Train Emergency Preparedness; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

[FRA Docket No. PTEP–1, Notice No. 1]

RIN 2130–AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Railroad Safety Authorization Act of 1994, FRA proposes a rule to require minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. The proposed rule also requires each affected railroad to instruct its employees on the plan's provisions. Elements of this emergency preparedness plan would include communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad would be subject to formal review and approval by FRA.

This proposal for emergency preparedness regulations, which formalizes a planning requirement and identifies certain mandatory elements, is the second phase in a four-phase process that began in 1994. In the first phase, FRA encouraged railroads to examine their programs to determine what improvements could be made, while in the third phase, FRA will review the railroad plans to determine if all emergency preparedness issues have been adequately addressed within the varying contexts of railroad operations. In the fourth phase, FRA will review the implementation and effectiveness of the proposed standards and related voluntary developments, and will address the need for further rulemaking activity.

The proposed rule does not apply to tourist and historic railroad operators. However, after appropriate consultation with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger operations.

DATES: (1) *Written comments:* Written comments must be received on or before April 25, 1997. Comments received after that date will be considered by FRA and the Passenger Train Emergency Preparedness Working Group in preparing the final rule to the extent possible without incurring additional expense or delay. The docket will remain open until the Working Group proceedings are concluded. Requests for formal extension of the comment period must be made by April 10, 1997.

(2) *Public hearings:* FRA intends to hold two public hearings, and the dates of these hearings will be published in a forthcoming notice in the Federal Register. Anyone who desires to make an oral statement at either of the hearings must notify the Docket Clerk by telephone (202–632–3198) or mail, and must submit three copies of the oral statement that he or she intends to make at the hearing. The dates by which the Docket Clerk must be notified about the oral statement and receive the three copies of this statement will be set forth in the notice announcing the public hearings.

ADDRESSES: *Written Comments:* Written comments should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours on the Seventh floor of 1120 Vermont Avenue, N.W. in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3191).

SUPPLEMENTARY INFORMATION:

Request for Comments

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is necessary for parties with interests that were not represented by the working group on passenger train emergency preparedness that has been established by the agency under 49 U.S.C. 20133.

Background

The overall safety record of conventional intercity and commuter passenger train operations in the United States has been exemplary. However, accidents continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger operating environment in the United States is rapidly changing—technology is advancing, equipment is being designed for ever-higher speeds, and many potential new operators of passenger equipment are appearing. With this more complex operating environment, FRA must become more proactive to ensure that operators of passenger train service, as well as freight railroads hosting passenger operations, engage in careful, advance planning to minimize the consequences of emergencies that could occur. Even minor incidents could easily develop into life-threatening events if they are not addressed in a timely and effective manner.

In recent years, passenger train accidents, such as the tragic ''Sunset Limited'' passenger train derailment near Mobile, Alabama in September 1993, have demonstrated the need to improve the way railroads respond in emergency situations. On September 22, 1993, at about 2:45 a.m., barges that were being pushed by the towboat Mauvilla in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. At about 2:53 a.m., National Railroad Passenger Corporation (Amtrak) train no. 2, the Sunset Limited, en route from Los Angeles, California to Miami, Florida with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed, and 103 passengers were injured. The towboat's four crewmembers were not injured.

In a report on the accident released on September 19, 1994, the National Transportation Safety Board (NTSB) determined that several circumstances hampered emergency response efforts. NTSB Railroad-Marine Accident Report 94/01. In its assessment of emergency

response at the accident site, the NTSB noted that the location of the accident was remote (accessible only by rail, water, or air), fog in the area was dense (requiring the use of radar to navigate boats), limited modes of transportation were available for bringing in personnel and equipment, and the magnitude of the accident was great. Nevertheless, the NTSB concluded that, following the delay while emergency responders identified the location of the accident, emergency response activities were efficient and effective. The report did find, however, that Amtrak did not have an effective system in place to apprise passengers of train safety features, passengers were at a disadvantage during evacuation due to the absence of portable lighting on the passenger cars, and emergency responders were at a disadvantage because they were unable to obtain an adequate passenger and crew list from Amtrak until the next day. The NTSB also noted that had the Mobile County Emergency Management Agency held drills to simulate a train accident, the incident commander may have known about Amtrak's procedure for accounting for passengers, and CSX Transportation, Inc., the owner of the bridge, may have had the correct telephone number to contact the U.S. Coast Guard.

Considerable effort has focused on how to mitigate casualties after a train accident occurs. In this regard, even before the occurrence of the tragic accident near Mobile, FRA had tasked DOT's Volpe National Transportation Systems Center (TSC), in Cambridge, Massachusetts, to perform research and to recommend emergency preparedness guidelines for passenger train operators. The results were published at the end of 1993 as a publication entitled ''RECOMMENDED EMERGENCY PREPAREDNESS GUIDELINES FOR PASSENGER TRAINS'' (Volpe Report), which is available to the public through the National Technical Information Service, Springfield, VA 22161 (DOT/FRA/ORD–93–24—DOT–VNTSC–FRA–93–23). The publication references safety recommendations of the NTSB, as well as many other publications on the subject of emergency preparedness, and contains recommended guidelines designed to assist passenger train operating systems and emergency response organization management in evaluating and modifying or supplementing their emergency response plans. A copy of the Volpe Report has been placed in the public docket for this rulemaking.

The Volpe Report recommendations address guidelines relating to emergency plans, procedures, and training. In addition, guidelines for passenger train and facility features intended to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency are presented. The publication also lists inter-organizational emergency protocols, which include those of fire departments, emergency medical services (EMS), police departments, public utilities, hospitals, and local, State, regional, and Federal governments.

In an effort to be proactive after the accident near Mobile, FRA mailed the Volpe Report to all intercity passenger and commuter railroads, freight railroads, the United Transportation Union, and the Brotherhood of Locomotive Engineers in March 1994 for their information and guidance. Concurrent with this mailing, FRA invited the railroads to attend a roundtable meeting in Washington, D.C., on June 9, 1994, to discuss the emergency preparedness issues addressed in the publication. The 23-member roundtable discussion was comprised of representatives from the following organizations:

Amtrak,
FRA,
Long Island Rail Road (LIRR),
MTA Metro-North Railroad (METRO-NORTH),
Northeast Illinois Regional Commuter Railroad Corporation (METRA),
Peninsula Corridor Joint Powers Board (CALTRAIN),
Port Authority Trans-Hudson Corporation (PATH),
Southern California Regional Rail Authority (METROLINK),
Southeastern Pennsylvania Transportation Authority (SEPTA),
Tri-County Commuter Rail Authority (TRI-RAIL),
TSC, and
Virginia Railway Express (VRE).

During the meeting, FRA agreed to assist the passenger railroads in establishing improved working relationships with their host freight railroads. FRA also promised to help the passenger railroads in their emergency response efforts in larger metropolitan areas by contacting emergency response agencies and eliciting more cooperation between them. In addition, FRA stated that it would conduct field visits to several passenger railroads to study their equipment and their emergency response and training programs.

At that same meeting, the passenger railroads agreed to provide stronger supervisory oversight of their emergency response and training programs, and stated that they would offer additional, structured ''hands-on'' training to their train crews concerning the removal of emergency windows and passenger evacuation. They also agreed to develop programs for recurring passenger car inspections, emphasizing checking of emergency equipment such as windows, tools, and fire extinguishers. Further, they agreed to improve their methods of apprising passengers of emergency information, to include seat drops, placards inside each car, and messages in on-board magazines. While FRA is encouraged that passenger railroads have already begun to incorporate the recommendations of the Volpe Report into their own emergency preparedness plans, more progress by the entire industry is needed.

As a result of concerns raised about the safety of the operation of rail passenger service, Congress enacted section 215 of the Federal Railroad Safety Authorization Act of 1994, Public Law No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994), entitled ''Passenger Car Safety Standards.'' Section 215, as now codified at 49 U.S.C. 20133, reads as follows:

§ 20133. Passenger cars.

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

(1) the crashworthiness of the cars;

(2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;

(3) maintenance and inspection of the cars;

(4) emergency response procedures and equipment; and

(5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number

permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

FRA is committed to the maximum feasible use of collaborative processes in the development of safety regulations. Consistent with the intent of Congress that FRA consult with the railroad industry, FRA invited various organizations to participate in a working group (Working Group) to focus on the issues related to passenger train emergency preparedness and build the framework for the development of a Notice of Proposed Rulemaking (NPRM) and, ultimately, a final rule. FRA held its first Working Group meeting on August 8, 1995. The 33-member Working Group was comprised of representatives from the following organizations:

American Public Transit Association (APTA),
Amtrak,
Association of American Railroads (AAR),
Brotherhood of Locomotive Engineers (BLE),
CALTRAIN,
FRA,
LIRR,
Maryland Mass Transit Administration (MARC),
Massachusetts Bay Transportation Authority (MBTA),
METRA,
METRO-NORTH,
METROLINK,
National Association of Railroad Passengers (NARP),
NTSB,
New Jersey Transit Rail Operations, Inc. (NJTR),
Northern Indiana Commuter Transportation District (NICTD),
PATH,
Safe Travel America (STA),
SEPTA,
TRI-RAIL,
TSC,
United Transportation Union (UTU), and
VRE.

Regulations covering rail passenger equipment safety standards—inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service—supplementing existing railroad safety standards, will be covered by a separate rulemaking and are being addressed by a separate working group. Persons wishing to receive more information regarding this other rulemaking should refer to FRA Docket No. PCSS–1 and contact either Mr. Thomas Peacock, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, RRS–14, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3338), or Daniel L. Alpert, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3186).

The proposed rule was developed by FRA in consultation with the Working Group. The proposal incorporates comments submitted by the Working Group in response to a preliminary draft of the proposed rule text. FRA expects that the Working Group will help FRA develop the final rule based on a consensus process, with facts and analysis flowing from both the Working Group's deliberations and information submitted by commenters on this NPRM. In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group meetings and associated documentation, together with data provided by the membership during their deliberations—will be placed in the public docket of this rulemaking. All comments submitted in response to this NPRM will be provided to the Working Group for their consideration in preparation of the final rule.

FRA convened the first meeting of the Working Group on August 8, 1995, by announcing that the purpose of the meeting was to provide an opportunity to collectively focus on evaluating issues related to passenger train emergency preparedness, as well as to develop and formulate plans and programs that would culminate in a final rule. The discussion focused on the key issues of emergency notification, training of railroad employees and emergency responders, suitability of on-board emergency equipment, and the Volpe Report. While FRA did not limit the Working Group's discussions, the agency requested that, at a minimum, the following topics and issues should be considered and addressed during the consultation process for possible inclusion in the rule:

- Types of safety equipment that should be required in each passenger car (*e.g.*, fire extinguishers, saws, hammers, and flashlights) including where the equipment should be located, who should have access to it, and how to avoid pilferage;
- Training for railroad employees on the use of on-board emergency equipment;
- Frequency of inspection of on-board emergency equipment;
- Effective marking of emergency windows on each passenger car;
- Informing passengers about safety procedures and emergency equipment, including locations of exit doors and windows;
- Demonstrations by on-board crewmembers of emergency procedures and exits after major station stops;
- Communication capabilities of on-board crewmembers;
- Requiring on-board crewmembers to be trained to provide cardio-pulmonary resuscitation (CPR) and/or first aid treatment;
- Ensuring that on-board crewmembers have contact telephone numbers for control centers and local authorities;
- Requiring preparation of an emergency preparedness plan, including periodic exercises to test employee knowledge of proper procedures involving passenger illness or injury, stalled trains, evacuation procedures, derailments, collisions, severe weather, and security threats;
- Coordinating applicable portions of emergency preparedness plans between passenger railroads and freight railroads that host these passenger operations;
- Extent to which safety action plans should be regulated in terms of content or format, and whether such plans should be subject to FRA review and approval;
- Training for auxiliary individuals participating in passenger emergencies (*e.g.*, control center employees, on-board service staff, and appropriate supervisory and maintenance personnel);
- Training for emergency responders along passenger corridor routes;
- Accounting for the unique emergency preparedness concerns raised by passenger operations through tunnels, on elevated structures, and in electrified territory;
- Level of training specificity required for each category of employee;
- Requiring passenger railroads to develop and update inter-organizational emergency protocols with local communities, in order to augment safety action plans;

• Providing emergency responders with accurate passenger counts; and

• Emergency lighting in passenger cars (*e.g.,* floor strip lighting, flood lighting, and emergency exit lighting), including standards for testing and reliability.

FRA deliberated at length with members of the Working Group about what the proposed rule would demand of affected railroads, in order to achieve the goal of optimizing their level of preparedness when faced with passenger train emergencies. The consensus was that the final rule needed to be flexible in its requirements to allow each railroad to address the unique characteristics of its individual operation. The Working Group recommended that FRA require each affected railroad to prepare a formal emergency preparedness plan covering broad elements, such as: employee and emergency responder training; on-board crewmember responsibilities; communication between the train crew and the control center, and between the control center and the emergency responders; delineation of passenger railroad and freight railroad responsibilities in cases of joint operations; and operations in tunnels or over elevated structures. However, the group urged FRA to afford railroads considerable latitude to design and administer emergency preparedness plans that best address each railroad's specific safety issues and concerns, with each plan then subject to review and approval by FRA.

FRA incorporated the Working Group's recommendations into a draft NPRM, and mailed the draft to the group on December 14, 1995, along with a copy of the minutes of the first meeting of the Working Group. Copies of both documents, and other relevant enclosures, have been placed in the public docket for this rulemaking. The 34-member Working Group held its second meeting on February 6–7, 1996, and was comprised of representatives from the same organizations in attendance at the first Working Group meeting. The Working Group reviewed the draft and presented its comments, and a copy of the minutes of the second meeting of the group has also been included in the rulemaking docket. The Working Group's comments were then incorporated into this NPRM. Through subsequent communication with the Working Group, additional specificity has been incorporated into this proposal.

While FRA has focused on crafting a rule containing comprehensive requirements in connection with railroads adopting, implementing, and complying with their emergency preparedness plans, many details remain unresolved concerning the enforcement obligations that FRA will impose in the final rule. Among the broad range of possibilities, the final rule could impose a ''reasonable care'' standard and focus on achieving substantial compliance, with an emphasis on determining whether each railroad has demonstrated a general effort to fulfill each of the elements of its emergency preparedness plan. Under this approach, for example, FRA would verify whether a railroad has established a training program for its employees on the applicable provisions of the emergency preparedness plan, and could impose a civil penalty on a railroad for failing to comply with this basic element of emergency preparedness. However, if FRA concluded that the railroad had properly adopted a training program, but during the occurrence of an actual emergency several employees failed (under the stress of the situation) to fulfill all of their responsibilities under the emergency preparedness plan, FRA would not penalize the railroad. Also, if a railroad failed to designate an employee to maintain a current list of emergency telephone numbers, for use by control center personnel to notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred, FRA could clearly penalize the railroad for this omission. However, if a railroad's plan properly provided for the maintenance of the list of emergency telephone numbers, but one telephone number on a long list of accurate numbers was found by FRA to be out of date, and thus incorrect, the railroad would not face the imposition of a civil penalty.

As an alternative, FRA could maintain strict oversight by requiring compliance with every individual element of the emergency preparedness plan, and impose a civil penalty in every instance in which a railroad fails to achieve compliance. Accordingly, under this approach, a railroad could be penalized for failing to constantly update its list of emergency telephone numbers, neglecting to distribute applicable portions of its emergency preparedness plan to all on-line emergency responders, or operating a train with an incorrect type of on-board emergency equipment. Rather than stress the concept of determining the overall level of emergency preparedness achieved by a railroad before the emergency occurs, this enforcement philosophy would specifically focus on whether the railroad in fact complied with all of the written emergency plan procedures for implementing each plan element. FRA invites commenters to address the questions of what compliance obligations should exist in the final rule, in the context of requiring railroads to adopt and implement procedures for achieving emergency preparedness, and what enforcement policy should be exercised by the agency regarding those obligations. Commenters are also asked to review the language of the section-by-section analysis and rule text of the proposed rule and to offer suggestions on whether FRA's expectations for compliance with the emergency preparedness plan elements are too rigid, or not strict enough.

In drafting the final rule, FRA also expects to incorporate all relevant information derived from the investigation of the accident involving Amtrak train no. 1, the ''Sunset Limited,'' which occurred in Hyder, Arizona on October 9, 1995. In that accident, the initial notification was made by the Amtrak locomotive engineer to the Southern Pacific Transportation Company (SP) train dispatcher's office in Denver, Colorado, which then notified the appropriate local emergency response agencies. The SP yardmaster in Phoenix Yard also dialed 911 after hearing the engineer's radio transmissions to the train dispatcher.

While the local emergency responders stated that the accident was handled well by all parties involved, the responders noted that they were hampered in reaching the accident site by extremely rough terrain, initially negotiable only by four-wheel drive vehicles until graders and earth movers created a trail for conventional vehicles. The responders were somewhat confused by being provided with only a milepost location instead of a more familiar identifier. The responders were also frustrated by the lack of an accurate passenger count, but Amtrak has stated that once it has satellite cellular telephone capabilities train conductors will report passenger counts to a central telephone number after leaving each station. In addition, the responders indicated that, although the emergency lighting did not function on the overturned passenger cars, passengers were able to disembark through the car doors and emergency windows.

FRA also expects to include requirements in the final rule relating to emergency egress from passenger trains, based upon information obtained from the investigations of the two recent train accidents in New Jersey and Maryland.

In the first accident, a near-head-on collision occurred on February 9, 1996 between NJTR trains 1254 and 1107 at milepost 2.8, on the borderline of Secaucus and Jersey City, New Jersey. Of the 331 passengers and crew on both trains, two crewmembers and one passenger were fatally injured, and an additional 162 passengers reported minor injuries. In the second accident, a near-head-on collision occurred on February 16, 1996 between MARC train 286 and Amtrak train 29 on CSX Transportation, Inc., at Silver Spring, Maryland, milepost 8.3. The accident resulted in 11 fatalities, consisting of three crewmembers and eight passengers, and at least 12 non-fatal injuries to passengers of the MARC train.

While many of the questions raised by the New Jersey and Maryland train accidents are being addressed by the working group which is considering regulations covering rail passenger equipment safety standards, the important issue of emergency egress must be addressed by this rulemaking. Specifically, the Silver Spring accident raised serious concerns as to whether MARC passengers had sufficient information about the location and operation of emergency exits to enable them to find and use those exits in an emergency or accident. FRA believes that all commuter and intercity passenger railroads should review their practices, in addition to marking the exits, for providing this information. On February 20, 1996, FRA issued Emergency Order No. 20 (Notice No. 1), which required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing cab car forward and multiple unit (MU) operations. 61 FR 6876, Feb. 22, 1996. In pertinent part, Notice No. 1 of the Emergency Order stated:

> [T]here is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment used or train control system. FRA's regulations generally require that all passenger cars be equipped with at least four emergency opening windows, which must be designed to permit rapid and easy removal during a crisis situation. The investigation of the Silver Spring accident has raised some concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. Whether those same people eventually were among those who exited safely, or whether those persons were attempting to open windows that were not emergency windows is not known at this time. However, there is sufficient reason for concern to require that measures be taken to ensure that such windows are readily identifiable and operable when they are needed. Accordingly, the order requires that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability. (FRA Safety Glazing Standards, 49 CFR Part 223, require that each passenger car have a minimum of four emergency window exits ''designed to permit rapid and easy removal during a crisis situation.'')

61 FR 6880, Feb. 22, 1996.

On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996. In pertinent part, Notice No. 2 of the Emergency Order stated:

> The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order permits the use of these commonly accepted sampling techniques to determine how many additional windows in [sic] test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.
>
> In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

61 FR 8703, Mar. 5, 1996.

On March 12, 1996, in response to the MARC train accident in Silver Spring, Maryland on February 16, 1996, the NTSB issued ''Safety Recommendations'' to both the Maryland Mass Transit Administration (R–96–4 through R–96–6) and FRA (R–96–7). The NTSB was concerned because the emergency quick-release mechanisms for the exterior doors on MARC's Sumitomo rail cars are located in a secured cabinet some distance from the doors that they control, and the emergency controls for each door are not readily accessible and identifiable. The NTSB recommends that emergency quick-release mechanisms for exterior doors on MARC cars be well marked and relocated, so that they are immediately adjacent to the door control and readily accessible for emergency escape. The NTSB also noted that the left and right rear exterior side doors of the first car and the front interior end door and the right front exterior door of the second car were jammed, and observed that none of the car doors had removable windows or pop-out emergency escape panels (kick panels) for use in an emergency.

In addition, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals. Also, the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency exits. The NTSB recommends that all emergency exits be clearly identified, with easily understood operating instructions prominently located on each car's interior for use by passengers and on the exterior for use by emergency responders.

Based upon its investigation, the NTSB recommends that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retroreflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class 1, Urgent Action) (R–96–7)

Safety Recommendation R–96–7 at page 3.

On March 26, 1996, FRA convened a joint meeting of the Passenger Train Emergency Preparedness Working Group and the Passenger Equipment Safety Standards Working Group to discuss the NTSB's recommendations and incorporate the Safety Board's findings, as appropriate, into each working group's rulemaking proceeding.

Fifty-seven members from 21 different organizations attended the joint meeting. Although some of the recommendations involving structural modifications to rail equipment will be dealt with by the Passenger Equipment Safety Standards Working Group, the remaining NTSB recommendations involving marking, inspection, maintenance, and repair of emergency exits are reflected in proposed § 223.9(d), entitled ''Requirements for new or rebuilt equipment,'' and proposed § 239.17, entitled ''Emergency exits.'' The Section-by-Section Analysis contains a detailed discussion of FRA's proposed requirements, particularly in light of the two recent accidents in New Jersey and Maryland and the NTSB's safety investigations and recommendations.

In a letter to FRA dated June 24, 1996, Mr. Donald N. Nelson, President of Metro-North and Chairperson of APTA's Commuter Railroad Committee, announced that commuter railroads nationwide are implementing a series of rail passenger safety initiatives building on the safety provisions of FRA's Emergency Order No. 20 and the NTSB's Safety Recommendations R–96–4 through R–96–7. In pertinent part, all commuter rail authorities have committed to early voluntary implementation of the emergency preparedness requirements proposed in this NPRM, including requiring inspection and testing of all emergency window exits as part of routine car maintenance to ensure correct operation and ease of egress, offering emergency responder training for every jurisdiction within each commuter railroad's service area, and educating passengers on the use of emergency exits on commuter trains. The commuter railroads also indicated that each one will ensure the safety of its operation by adopting a comprehensive system safety plan that:

(a) Defines the overall safety effort, how it is to be implemented and the staff required to maintain it;

(b) Establishes the safety interface within the railroad, as well as with its key outside agencies;

(c) Clearly indicates Senior Management support for implementing the safety plan and the railroad's overall commitment to safety;

(d) Establishes the safety philosophy of the organization and provides the means for implementation;

(e) Defines the authority and responsibilities of the safety organization and delineates the safety related authority and responsibilities of other departments; and

(f) Incorporates safety goals and objectives into the overall corporate strategic plan.

APTA's Commuter Railroad Committee letter at pages 1 and 2.

As part of the ongoing review process within DOT, and subsequent to the Working Group's previous opportunities to review the proposed rule text, FRA implemented changes to the draft regulatory text and preamble. FRA initiated these changes in order to strengthen the rule's requirements and establish more objective criteria for FRA's review of each railroad's emergency preparedness plan. In a letter dated December 27, 1996, FRA sent a copy of the revised regulatory text to members of the Working Group, and requested comments on issues that the members wished to see included in the preamble section of the proposal. FRA requested that all comments be submitted to FRA by the close of business on January 8, 1997.

Development of the Passenger Safety Program

As discussed above, this proposed rule is one element of a comprehensive effort to address the safety of rail passenger service. In addition to this rulemaking, FRA is currently addressing related issues in several contexts. Recent actions addressing passenger safety needs have included, for instance, Emergency Order No. 20, which addressed on an interim basis key issues regarding railroad operating rules, inspection of required emergency window exits, and emergency exit signage and marking.

In the Passenger Equipment Safety Standards Working Group, FRA is examining possible requirements for improved emergency egress features for both retrofit and new construction. Affected railroads have already completed, or will complete by the end of this calendar year, the removal of latches requiring special tools for access to manual releases on powered doors. Separately, FRA is reviewing the totality of emergency egress requirements and the issue of their overall adequacy, including the relocation of manual releases to locations immediately adjacent to end vestibule doors. FRA anticipates that these efforts will be advanced through a collaborative rulemaking process. However, if necessary to ensure prompt action, FRA may propose specific requirements based upon its own staff analysis.

In the context of improving railroad communications, the Railroad Safety Advisory Committee (RSAC) has established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. FRA expects that that group will report recommendations to the RSAC early in 1997. FRA anticipates that those recommendations will address the issue of whether there should be redundant communications capability on all passenger trains. Although that rulemaking will establish minimum safety requirements with respect to communications equipment, it should be noted that intercity and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies.

FRA plans a four-phase process to address emergency preparedness. In 1994, FRA distributed the Volpe Report described above and encouraged railroads to examine their existing programs to determine what improvements could be made. This rulemaking represents the second step in this process, formalizing a planning requirement and identifying certain mandatory elements. The third phase will begin as FRA reviews railroad plans to determine that the issues presented by the Volpe Report and the rule have been adequately addressed within the varying contexts of the commuter authority operations. FRA will conduct a detailed review of each plan. Following review and formal approval of written plan submissions, it will also be necessary for FRA to determine how the program is being implemented in the field. FRA will also be interested in determining how this effort is being integrated into the overall system safety planning process that commuter authorities have agreed to undertake.

FRA is optimistic that this approach will yield positive results, promoting creativity and cross-fertilization of the emergency preparedness planning process through FRA, APTA, and other channels. This give-and-take approach should facilitate standardization of matters involving interface with passengers, while permitting continued adaptation of programs to local needs.

The fourth phase would involve FRA's review, after having gained at least a full year of actual experience under the standards proposed here, of the implementation and effectiveness of the standards and related voluntary developments. In this phase of activity, FRA would work with interested parties to evaluate whether further rulemaking or other action might be necessary to ensure that, for each program element, standards and practices are sufficiently precise and stringent to achieve the desired improvements in emergency

preparedness. Further, this review will determine whether experience in working with emergency responders indicates that additional program elements should be addressed.

Section-by-Section Analysis

FRA proposes to amend Part 223 to Title 49, Code of Federal Regulations by adding three new definitions and requiring railroads operating passenger train service to clearly mark emergency windows. FRA also proposes to add Part 239 to Title 49, Code of Federal Regulations specifically devoted to prescribing minimum Federal safety standards concerning the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains.

1. Definitions: Section 223.5

Section 223.5 would be reorganized and definitions of three important terms employed in the proposed passenger train emergency preparedness regulations would be added. The three new defined terms are ''emergency responder,'' ''passenger train service,'' and ''railroad.'' For ease of reference, FRA proposes to define the term ''railroad'' so as to include the statutory (49 U.S.C. 20102) definitions of both ''railroad'' and ''railroad carrier'' and to clarify that those who provide railroad transportation directly or through an operating contractor are railroad carriers. Thus, the term ''railroad'' is clearly intended to include commuter authorities. These terms are intended to have the same meaning as in proposed part 239 of this chapter.

Of course, the term ''railroad,'' as used by FRA in the context of regulating passenger train emergency preparedness, is not controlled by the definitions of ''rail carrier'' and ''railroad'' set forth in 49 U.S.C. 20102 (5) and (6). Likewise, FRA does not intend for its definition of ''railroad'' to have any bearing on how the term is used for purposes of the regulatory activities of the Surface Transportation Board.

2. Requirements for New or Rebuilt Equipment: Section 223.9

In accordance with the requirements of 49 CFR 223.9(c) and 223.15(c), all passenger cars must be equipped with at least four emergency windows, which must be designed to permit rapid and easy removal during a crisis situation. Proposed paragraph 223.9(d) requires that all windows intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 223.9(d)(1) requires that the emergency windows be conspicuously and legibly marked on the inside of the car with luminescent material. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency exits, the proposed rule requires luminescent material on all emergency windows to assist and speed passenger egress from the train during an emergency. The marking of the emergency windows must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify a window exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

METROLINK, in noting that the last line of paragraph 223.9(d) requires ''each railroad [to] post clear and legible operating instructions at or near such exits,'' stated that it assumes that the referenced instructions relate to the doors rather than the windows.

Paragraph 223.9(d)(2) requires that the emergency windows intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material. Since FRA recognizes that not every window will be equipped for emergency access, railroads are required to choose a retroreflective, unique and easily recognizable symbol that will readily attract the attention of emergency responders. The proposed rule does not require a specific size or shape for the symbol, but FRA expects the railroad's emergency preparedness plan developed pursuant to § 239.13 of this chapter to contain a provision detailing emergency responder access (along with passenger car egress), consistent with the evacuation strategy formulated jointly by the passenger train operator and the emergency responder organizations, in accordance with the emergency responder liaison provision set forth in § 239.13(a)(5) of this chapter. Of course, while the proposed rule would not require emergency responders to participate in evacuation planning or strategy with the railroads, the railroads would be required to offer liaison assistance. FRA is working to identify an appropriate marking that might be capable of universal recognition. Although the proposed rule allows a marking that could consist of a symbol or words (such as ''RESCUE ACCESS''), FRA reserves the right to be more prescriptive in the final rule based upon a uniform pattern.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency windows. This paragraph does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency windows, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency windows as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with §§ 239.13 (a)(5) and (a)(7) of this chapter.

3. Appendix B to 49 CFR Part 223

FRA plans to revise Appendix B to 49 CFR Part 223—Schedule of Civil Penalties, to include penalties for violations of the provisions of § 223.9(d) to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

4. Purpose and Scope: Section 239.1

Section 239.1(a) states that the purpose of this part is to reduce the magnitude of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage emergencies. Subsection (b) states that

these regulations provide minimum standards for the subjects addressed, and the affected railroads may adopt more stringent requirements, so long as they are not inconsistent with this part. FRA does not in any way intend that the subject matter of 49 CFR Part 239, Passenger Train Emergency Preparedness, be read to impose burdens or requirements on emergency responders who either participate with railroads in emergency simulations involving the operation of passenger train service or respond to actual emergency situations, or on any other person who may be involved with the aftermath of a passenger train emergency not specified in proposed § 239.3 concerning applicability. Accordingly, FRA does not intend to restrict a State from adopting a law, rule, regulation, order, or standard affecting emergency responders.

5. Application: Section 239.3

As a general matter, FRA proposes that this rule apply to all railroads that operate passenger train service on the general railroad system of transportation, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor would be regulated by FRA as a railroad under the provisions of the proposed rule. Although the public authority would ultimately be responsible for the development and implementation of an emergency preparedness plan (along with all related recordkeeping requirements), the railroad or other independent contractor that operates the authority's passenger train service would be expected to fulfill all of the responsibilities under this part with respect to emergency preparedness planning, including implementation.

The proposed rule is structured to apply to intercity and commuter service, not tourist operations. At a later time, FRA may propose application of the rule, or some portion thereof, to tourist, scenic, historic, and excursion railroads. FRA's regulatory authority permits it to tailor the applicability sections of its various regulations so as to expand or contract the populations of railroads covered by a particular set of regulations. FRA has had jurisdiction over all railroads since the Federal Railroad Safety Act of 1970 was enacted.

In considering the issue of requiring emergency preparedness planning by tourist and historic railroad operators in the context of this rulemaking, FRA has not yet had the opportunity to fully consult with those railroads and their associations to determine appropriate applicability in light of financial, operational, or other factors that may be unique to such railroad operations. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

The Federal Railroad Safety Authorization Act of 1994 instructed FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, stated that:

> In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Public Law No. 103–440, § 217, 108 Stat. 4619, 4624 (November 2, 1994). In addition, section 215 of that Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations that must be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). In its report to Congress entitled ''Regulatory Actions Affecting Tourist Railroads,'' FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress. FRA will address the emergency preparedness concerns for these unique types of operations at a later date in a separate rulemaking proceeding. To facilitate resolution of this issue, and a significant number of related issues, the Railroad Safety Advisory Committee (RSAC) has established a Tourist and Historic Railroads Working Group. As a matter of cost efficiency, the Working Group may elect to cover emergency preparedness planning for tourist railroads as part of a package of tourist-specific safety proposals during a multi-day consultation on several rulemaking dockets. FRA would then issue a Notice of Proposed Rulemaking addressing issues in several dockets that pertain to these smaller passenger operations.

In § 239.3(b)(2), FRA proposes that the requirements of this part would not apply to the operation of private passenger train cars, including business or office cars and circus trains. While FRA believes that a private passenger car operation should be held to the same basic level of emergency preparedness planning as other passenger train operations, FRA intends to take into account the financial burden imposed by requiring private passenger car owners and operators to conform to the requirements of this part. Private passenger cars are often hauled by host railroads such as Amtrak and commuter railroads, and these hosts often impose their own safety requirements on the operation of the private passenger cars. Pursuant to this part, the host railroads would already be required to have emergency preparedness plans in place to protect the safety of their own passengers; the private car passengers would presumably benefit from these plans even without the rule directly covering private car owners or operators. In the case of non-revenue passengers, including employees and guests of railroads that are transported in business and office cars, as well as passengers traveling on circus trains, the railroads would provide for their safety in accordance with existing safety operating procedures and protocols relating to normal freight train operations.

6. Preemptive Effect: Section 239.5

Section 239.5 informs the public as to FRA's views regarding the preemptive effect of the proposed rule. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which governs the preemptive effect of these rules. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed today.

Of course, the subject matter of these regulations covers only the preparation,

adoption, and implementation of emergency preparedness plans for passenger train operations. Accordingly, States are in no way preempted from regulating any of the training requirements or other activities of the non-railroad emergency responders who arrive at the scene of an emergency after a railroad's emergency preparedness plan has been activated.

7. Definitions: Section 239.7

This section contains an extensive set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule. The proposed definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. Several of the definitions introduce new concepts which require further discussion.

Although the definition of ''crewmember'' is primarily intended to cover persons who either perform on-board functions connected with the movement of a train (e.g., a locomotive engineer, conductor) or provide on-board service (e.g., an Amtrak food service employee or sleeping car attendant), a deadheading employee is covered by the definition as well. Accordingly, such an employee could count as a ''qualified'' employee under § 239.101(a)(2)(iv) for purposes of meeting a railroad's minimum on-board staffing requirements for its emergency preparedness plan. However, during a passenger train emergency situation, off-duty employees would also be expected to assume their appropriate roles under the railroad's emergency preparedness plan and assist the passengers. METROLINK indicated that on some trains it has conductors who perform the function of fare enforcement, and recommended that FRA exclude these individuals from the definition of ''crewmember.'' METROLINK also requested that FRA exclude contract food workers from the definition of ''crewmember.''

The term ''control center'' envisions not only the traditional railroad concept of a train dispatcher's office, but also railroad offices that are identified as ''control centers'' but only monitor railroad operations, and modern system operations centers such as those of CSX Transportation, Inc., in Jacksonville, Florida and the Burlington Northern Santa Fe Corporation in Ft. Worth, Texas. The term does not include a location on a railroad with responsibility for the security of railroad property, personnel, or passengers.

It is very likely that control center personnel are located at facilities which are remote from the right-of-way. These facilities should consist of the necessary command, control, and communications equipment to maintain normal train operations, to control electric traction, and to maintain communications throughout the passenger train system. In addition to these functions, the control center should help coordinate responses to emergencies by using equipment such as radio communications systems, direct ''hotline'' telephones, wayside power removal controls, and ventilation controls under the direction of emergency responders, according to the protocols and procedures of the emergency preparedness plan.

Typical emergency scenarios encompassed by the term ''emergency'' or ''emergency situation'' involving a significant threat to the safety or health of one or more persons requiring immediate action may include one or more of the following: illness or injury; a stalled train in a tunnel or on a bridge; collision with a person, including suicides; collision or derailment; fire; collision or derailment with a fire; collision or derailment with water immersion; severe weather conditions; natural disasters; and security situations (e.g., bombings, bomb threats, hijacking, civil disorders, and other acts of terrorism).

The term ''qualified,'' as used in the rule, means employees who are trained under an applicable emergency preparedness plan's components and implies no provision or requirement for Federal certification of persons who perform those functions.

The definition of ''railroad'' is based upon 49 U.S.C. 20102 (1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The terms explained here are not exhaustive of the definitions that are proposed for inclusion in § 239.7. This introduction merely provides a sampling of the most important concepts of the proposed rule. Many other terms are defined and explained in the section-by-section analysis when analyzing the actual proposed rule text to which they apply.

8. Responsibility for Compliance: Section 239.9

Section 239.9 clarifies FRA's position that the requirements contained in the proposed rules are applicable to any ''person,'' including a contractor, that performs any function required by the proposed rules. Although all sections of the proposed rule address the duties of a railroad, FRA intends that any person who performs any action required by this part on behalf of a railroad is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, if an independent contractor is hired by a railroad to maintain its records of inspection, maintenance, and repair of emergency window and door exits, pursuant to proposed § 239.17, the contractor would be required to perform those duties in the same manner as required by a railroad.

9. Penalties: Section 239.11

Section 239.11 identifies the penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311, formerly contained in § 209 of the Federal Railroad Safety Act of 1970 (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Public Law 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in

ensuring that compliance is achieved not only in terms of developing and implementing emergency preparedness plans, but also to better determine if railroads are planning ahead to minimize the consequences of emergencies that could occur.

The final rule will include a schedule of civil penalties in an Appendix A to 49 CFR Part 239, to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

10. Emergency Preparedness Plan: Section 239.101

In drafting the proposed rule, FRA recognized that the operations of each individual passenger train system must be considered in the development and implementation of effective emergency preparedness programs. Factors which should be considered include system sizes and route locations, types of passenger cars and motive power units, types of right-of-way structures and wayside facilities, and numbers of passengers carried, as well as internal railroad organizations and outside emergency response resources. Under the proposed rule, each railroad subject to the regulation is required to establish an emergency preparedness plan designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board railroad personnel. The plan must reflect the railroad's policies, plans, and readiness procedures for addressing emergencies. The railroad is expected to employ its best efforts, under the circumstances of the emergency situation, to execute the provisions of its plan.

In their development of emergency preparedness plans, FRA encourages railroads to integrate, as practicable, the recommended guidelines contained in the Volpe Report. The report provides a comprehensive degree of specificity. While the proposed rule does not require the special level of detail reflected in the Volpe Report, FRA advocates that railroads voluntarily incorporate such elements and items as appropriate into the development of their own emergency preparedness plans, and exclude recommendations only after judicious consideration.

While FRA stresses that each railroad should retain latitude in developing an emergency preparedness plan appropriate for its operations, the plan must provide a comprehensive overview, make clear and positive statements to railroad employees, and contain implementation details concerning the roles, responsibilities, and expectations for employee participation. The plan does not have to be one single document with every section applying to every railroad employee and location; instead, the plan may consist of multiple documents, with a separate section of the plan detailing the specific responsibilities for each job category or function. In instances where a freight railroad hosts the operations of a passenger railroad, both railroads would have to address issues of emergency preparedness. However, the rule would require the hosting freight railroad to develop only the applicable portions of an emergency preparedness plan uniquely dealing with the passenger operations not otherwise addressed.

The majority of passenger train operational difficulties are handled effectively and do not become emergencies. Since in many instances a train crew can immediately take action to resolve a problem and potential emergency without evacuating the train, existing emergency preparedness policies de-emphasize immediate evacuation from trains located between stations unless passengers and crews are in immediate danger. Accordingly, in most situations, after notifying the control center that a problem exists and receiving permission, the train crew will move the train to the nearest station or safe location (e.g., outside a tunnel) before taking further action. If the train crew is unable to resolve the situation, railroad personnel or outside emergency responders may be sent to the emergency scene to provide mechanical aid, alternate transportation, or medical assistance.

The effectiveness of a railroad's overall response under its emergency preparedness plan will be greatly influenced by the type of emergency with which the train crew is presented (e.g., injury or illness, stalled train, suicide or accidental collision with a person, derailment or collision, smoke or fire, severe weather conditions or natural disasters, and vandalism or sabotage). The response will also be affected by the characteristics and type of train involved and the functional status of electrical and mechanical systems, including lighting, ventilation, and public address systems. In addition, the operational environment (e.g., a train is located in a tunnel, on an elevated structure, or in electrified territory), and the type of right-of-way structure or wayside facility must be addressed, as appropriate, in each railroad's emergency preparedness plan.

The emergency preparedness plan should establish a chain of command which assigns functions and responsibilities to appropriate passenger railroad operating personnel, while recognizing the authority and responsibilities of emergency responders. Coordination is important to the ability of all parties to respond appropriately to an emergency, regardless of its size and location. Documentation, including applicable portions of the emergency preparedness plan, protocols, and procedures within rulebooks, manuals, and guidelines for control center employees and on-board personnel, provides the basic framework for coordination between all internal parties responding to an emergency. This internal documentation should address at least the following issues:

- Delineation of functions and responsibilities during emergencies for passenger railroad operating personnel, including control center personnel;
- Telephone numbers of railroad personnel and emergency responders who need to be notified;
- Criteria for determining whether an emergency exists and requires assistance from emergency responders;
- Procedures for determining the specific type, location, and severity of the emergency, and thus which response is appropriate;
- Procedures for notifying emergency responders; and
- Procedures and decision-making criteria for transferring incident responsibility from the passenger railroad operator to emergency responders.

Section 239.101 sets forth the general requirement that railroads shall develop and comply with their own emergency preparedness plans and written procedures to implement their own plans for addressing issues of emergency preparedness, that meet Federal minimum standards. Paragraph 239.101(a) requires all railroads affected by this proposed part to develop and implement written procedures to fulfill each applicable element of this section. Depending on the nature of a railroad's operations, as well as on whether its operations involve a host freight railroad, different elements of this proposed section may be fulfilled by more than one entity. While FRA requires all elements of this section to

be addressed for each passenger train operation, the rule does not mandate that every element be addressed in each affected entity's emergency preparedness plan. Accordingly, if a passenger train service operator relies on its freight railroad host to notify outside emergency responders after an emergency occurs, FRA would permit the freight railroad's emergency preparedness plan to address this element. Provided that both entities properly coordinate their emergency preparedness plans (and include cross-reference citations to each other's plan), the passenger train service operator's plan could omit this item and still be in compliance with the proposed rule.

The proposed rule would not require that the public authority and the operating railroad or independent contractor each file a separate emergency preparedness plan with FRA if the operating railroad or independent contractor is the only party performing a function under the regulation. However, each party's responsibility for compliance with this part must be clearly spelled out in the emergency preparedness plan or plans that are filed with FRA for approval covering the entire passenger train service operation. After approval of the plan or plans, FRA may hold the public authority or the other entity or both responsible for compliance with this part.

FRA proposes to establish the parameters for such a plan and defer to the expertise of each individual railroad to adopt a suitable emergency preparedness plan for its railroad, in accordance with these parameters. As noted previously in the preamble to this proposed rule, the emergency preparedness plan may consist of multiple documents, with a separate document detailing the responsibilities of each category of employee under the railroad's plan. Each railroad is also encouraged to review the suggestions provided in the Volpe Report before developing an emergency preparedness plan in accordance with the requirements set forth in this section. In developing the plan, railroads are reminded that the goal of the proposed rule is to maximize the safety of passengers, railroad personnel, emergency response personnel, property, and the general public which come in contact with the railroad by providing for immediate notification of outside law enforcement officials and emergency responders. Railroads should not instruct their on-board employees to substitute as professional emergency responders and delay notification of appropriate railroad and outside officials.

Paragraph 239.101(a)(1) sets forth the requirement that the passenger train crewmembers must communicate immediately and effectively with each other, as well as with the control center and the passengers. Typically, in an emergency situation the proposed rule requires an on-board train crewmember to immediately contact the control center via a dependable on-board radio or an alternate means of communication (e.g., wayside railroad telephone, public telephone, private residence telephone, or cellular telephone) to advise appropriate railroad officials of the nature of the emergency and the type of assistance required. After this initial notification to the control center occurs, the passengers must be informed of the emergency and provided directions. As appropriate, all passengers should be accounted for (particularly in sleeping compartments) so as to expedite evacuation, if necessary, and to avoid needless effort to search for ''missing'' persons.

METROLINK stated that the train crewmember should notify the passengers after consultation with the control center and the control center officer, unless the train must be evacuated immediately. Also, the LIRR recommended that FRA revise paragraph 239.101(a)(1) in the final rule to require an on-board crewmember to remove all occupants of the train from imminent danger as a first step after he or she quickly and accurately assesses the passenger train emergency situation. FRA recognizes that each emergency situation is unique, and may require rapid decisionmaking by on-board crewmembers on how best to ensure the safety of the passengers. Moreover, it is FRA's expectation that railroads will properly train their employees to perform the requisite life-saving functions after an emergency (e.g., relocation of passengers from a smoke-filled car to a safer section of the train or evacuation of the passengers from a derailed car), in conjunction with their responsibilities to assess the nature of the emergency and notify the control center as soon as practicable thereafter. Accordingly, while FRA may conclude in the course of investigating a specific train incident or accident that a particular employee's egregious mishandling of an emergency situation warrants individual enforcement action and/or enforcement action against the railroad, we are reluctant to strictly impose the precise order or manner in which on-board crewmembers must execute their individual responsibilities under the railroad's emergency preparedness plan. However, in the course of drafting the final rule text, FRA may elect to incorporate recommended practices as specific directives to railroads concerning how they must respond to the various types of emergency situations most likely to occur during passenger operations, such as on-board fires, downed electrical power sources, or passenger injuries from a derailment.

Although the proposed rule does not require a railroad to use a specific means of communication, FRA expects the railroad to select a method that is effective and capable of reaching pertinent railroad control centers and on-board locations in order to comply with the notification requirement of this subsection. FRA further expects that railroads will voluntarily build redundancy into their emergency preparedness plans by outfitting their crewmembers with an immediately available backup means of communication, in the event that primary communications systems are either damaged during the emergency or otherwise rendered inoperative. For example, a cellular telephone could be made available for use by on-board crewmembers to contact the control center in the event the locomotive radio is inoperative. Also, on-board crewmembers could still maintain proper communication with the passengers, in the event that regular or emergency power was unavailable to operate the train's public address system, by using portable megaphones. Commenters are asked to discuss whether the final rule should expand the subsection's language requiring notification to mandate a specific primary means of communication, and/or whether the final rule should also require each affected railroad to equip its passenger trains with a secondary means of communication in the event that the primary means is unavailable. This issue may be resolved in this proceeding or in the context of the forthcoming revision of the Radio Standards and Procedures in 49 CFR Part 220. That rulemaking was tasked to the RSAC on April 1, 1996.

It is FRA's understanding that many railroads publish an emergency toll-free telephone number in the employee timetable which connects with the control center office. Amtrak also has a nationwide toll-free telephone number which connects the caller to the national Amtrak police desk in Washington, DC, which is manned around the clock. The rule does not require that notification to either the control center or the train passengers occur within a precisely measured number of minutes, rather it uses the

words ''as soon as practicable'' in order to give railroads maximum flexibility. FRA expects that in the totality of the circumstances of the emergency situation, the train crewmembers will exercise their best judgment using the railroad's own emergency preparedness plan procedures.

Under current practice, Amtrak's notification of the emergency responders will vary slightly depending on whether or not the passenger train emergency occurs in Amtrak-dispatched territory. In territory where trains are dispatched by Amtrak, either the control center will directly notify the emergency responder or the control center will notify Amtrak police, who will then, as appropriate, notify pertinent emergency responders, state and federal agencies, and Amtrak supervisors. In territory where trains are not dispatched by Amtrak, the host railroad control center will directly notify the appropriate emergency responders, government agencies, and host railroad supervisors. Which emergency responders and agencies are notified depends on the nature of the emergency. Most control centers have emergency telephone numbers already in their computer systems, usually listed alphabetically by city, with hard copy backups.

FRA is aware that each railroad's operations are somewhat unique, and that the appropriate persons and organizations who must be notified will vary based upon the railroad's individual operating characteristics and the actual type of emergency that occurs. Accordingly, paragraph 239.101(a)(1)(ii) does not specify emergency responder organizations (e.g., fire departments, helicopter rescue groups) or job titles or duties of appropriate railroad officials whom the control center must contact. The subsection also does not specify which control center employees may be designated by the railroad to maintain the list of emergency telephone numbers; METROLINK recommended that FRA require that the railroad designate an employee function or position to be responsible for maintaining current emergency telephone numbers, rather than a particular employee. In addition, the term ''adjacent'' is not defined (e.g., a distance measurement from the passenger train experiencing the emergency to adjacent rail modes) for purposes of determining which other rail modes must be notified. Instead, consistent with the Working Group's recommendation that the proposed rule should provide each affected railroad with flexibility to implement the rule's provisions, this subsection requires that the emergency preparedness plan state how the railroad will achieve the appropriate notifications.

Paragraph 239.101(a)(2) requires that the emergency preparedness plan provide for initial and periodic training at least once every two years of all railroad employees who have responsibilities under the plan, and that the training address the role of each affected employee. Adequate training is integral to any safety program. This subsection recognizes that the successful implementation of an emergency preparedness plan depends upon the knowledge of the on-board and control center personnel about the system route characteristics, passenger cars and motive power units, and emergency plans, protocols, procedures, and on-board emergency equipment. An employee who has not been trained to react properly during an emergency situation may present a significant risk to railroad personnel and passengers. Employees must receive ''hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment, stressing the following:

- Opening emergency window, roof, and door exits, with an emphasis on operating them during adverse conditions such as when a rail car is overturned;
- Use of emergency tools and fire extinguishers;
- Use of portable lighting when the main power source is unavailable on a passenger train; and
- Use of megaphones and public address systems (if they are provided by the railroad for communication purposes).

The proposed rule affords the passenger railroad operator a time period of up to two years to provide each session of ''periodic'' training after the operator provides initial training in the emergency preparedness plan's provisions to its employees. The periodic training requirement is intended to inform railroad personnel of changes in procedures and equipment and ensure that their skills remain at a level that enables them to effectively execute their responsibilities under the emergency preparedness plan. In addition, the recurrent training will reinforce segments of the emergency preparedness plan for individuals who have not performed properly.

FRA concludes that the unique operating characteristics of all the different railroads subject to the proposed rule, as well as the financial costs involved with providing training, would make it impractical to include a calendar year or other more restrictive or specific requirement for periodic training in the proposed rule. Moreover, assuming that FRA elects to specify in the final rule that the upper limit of the term ''periodic'' will remain at two years, anytime the provisions of an emergency preparedness plan are invoked during an actual emergency, we would count that event toward the training requirement for those affected employees.

FRA is interested in receiving comments from railroads on the costs of implementing the on-board personnel training requirements of the proposed rule. Specifically, FRA wants to determine the extent of the current training that railroads already provide to their on-board employees (including emergency preparedness training) as part of regular operating rules training programs. Comments are requested concerning the estimated dollar amount of the incremental additional costs connected with modifying existing training programs to comply with this proposal. FRA is interested in ascertaining whether the proposed training requirements will add merely *de minimis* costs to each railroad's existing training program or if compliance would entail moderate or significant additional costs.

As discussed in the analysis of proposed § 239.103, FRA expects railroads operating passenger train service to conduct emergency simulations to evaluate their overall emergency response capabilities and ensure that emergency preparedness plans, procedures, and equipment address the particular needs of various types of passengers. Emergency simulations can help railroads achieve theses goals through careful selection of the time and location of the simulation and participation by personnel from the railroads, outside emergency responder organizations, and ''volunteer passengers''. In addition to classroom training, simulations provide employees with a practical and realistic understanding of rules, procedures, trains, and right-of-way structures/wayside facilities as they relate to emergency response. FRA expects that the employee training provided in accordance with paragraph 239.101(a)(2) will include instruction on the importance of emergency simulations in achieving successful implementation of the emergency preparedness plan.

The proposed rule does not require on-board personnel to receive training in first aid or in CPR. Although FRA initially considered including these items as training requirements in the

proposed rule, or at least mandating that railroads offer employees the opportunity to receive this training, the consensus of the Working Group was that both first aid and CPR training should be excluded from the rule. The Working Group stressed that the goal of the proposed rule is to ensure that emergency responders arrive promptly at the scene of an emergency, not to train on-board personnel to act as emergency responders. The Working Group also stated that even if FRA requires a railroad to offer first aid and CPR training, no railroad can literally force an on-board crewmember to assist an ailing passenger. Further, trains with heavier passenger loadings are likely to have on board one or more medical professionals whose skills will be more extensive, and better practiced, than those of a crewmember whose primary and recurring duties do not include medical emergencies.

During the Working Group meeting on February 7, 1996, Amtrak stated that it is spending between $2.5 to $3 million by fiscal year 1998 to train the chiefs of on-board service and to provide for at least one employee on every train being trained to administer first aid and perform CPR. Under the Amtrak plan, employees will not be required to use this training, merely to receive it. Despite the extent of Amtrak's commitment to voluntarily providing extensive first aid and CPR training, Amtrak did not want these items required in the final rule. Another member of the Working Group, Metrolink, stated that it has served approximately eight million passengers in three years of operation, and has never had a passenger require CPR. Metrolink also noted that commuter railroads generally operate in populated areas, with professional emergency responders in most cases only minutes away. The LIRR stated that it offers CPR training to newly hired employees and shows a refresher film to employees every five years, but acknowledged that it cannot force employees to administer CPR. The railroad also noted that it would never want the engineer to leave the controls of the locomotive during an emergency. NJTR indicated that its train crews already have many duties to perform during an emergency and that first aid and CPR should be performed by emergency medical services personnel.

FRA invites commenters to submit their views on whether the final rule should include the issues of first aid and CPR training. If FRA does decide to address these issues, one option would be to mandate that railroads offer their employees first aid and CPR training, without requiring employees to actually use this training during an emergency. Under this scenario, a railroad employee who offered no assistance during an emergency, because he or she feared coming into contact with an injured or ill passenger's bodily fluids, would not violate these regulations. (The experience of the American Red Cross is that volunteers who receive first aid and CPR training, and appropriate equipment, are motivated to provide needed assistance when the time comes.) The second option would be not only to require railroads to train their employees in first aid and CPR, but also to mandate that employees use this training during an emergency.

The proposed rule also does not require railroads to record the number of passengers riding on their trains at any given time or to record how many people get on and off at each train stop. Although lack of an exact passenger manifest may delay emergency responders in determining when every passenger has been removed from a derailed or disabled train, the frequency with which many passenger trains pick up and discharge passengers would create logistical difficulties for a train operator. A train crew can usually provide a good estimate to emergency responders, so that they can respond with the necessary personnel and equipment. Moreover, it is doubtful that emergency responders would simply trust an exact passenger count provided by a train crew and cease looking for additional survivors of an emergency. Commenters are invited to offer proposals for training on-board crewmembers to track the exact number of passengers present on a train at any given moment, and to include suggestions on cost-efficient technology for achieving this goal.

The proposed rule also requires appropriate training of control center personnel who affect the implementation of a railroad's emergency response plan. FRA expects the railroad to provide training only for the requisite control center employees designated under the plan to convey the nature and extent of a passenger train's emergency to the emergency responder organizations. Accordingly, FRA does not wish to require training of other control center employees who perform merely incidental functions, e.g., a clerical or other office employee who receives a telephone call from a stalled train.

The term ''accurately measure'' is used in proposed paragraph 239.101(a)(2)(iii) relative to employee qualification in a broad sense to mean that the employee being tested will show to the railroad sufficient understanding of the emergency preparedness plan subject area for which he or she is responsible, and that the employee can perform the duties required under the plan in a safe and effective manner. Proficiency must be demonstrated by successful completion of a written examination, but in addition may be illustrated by an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section.

This section permits railroads discretion to design the tests that will be employed (which for most railroads will entail some modification of their existing ''book of rules'' examination to include new subject areas), provided that the design addresses all relevant elements of the emergency preparedness plan. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does, however, contain the requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. In deciding to require a written test, FRA was aware that the test taking skills of some individuals may be deficient and that some persons may have literacy problems. However, FRA believes that minimum reading and comprehension skills are needed to assure proper execution of an emergency preparedness plan.

Paragraph 239.101(a)(2)(iv) requires that at least one on-board crewmember be qualified under the applicable provisions of the railroad's emergency preparedness plan. For example, a commuter railroad operates with a three-person crew fully trained under the applicable provisions of the railroad's emergency preparedness plan, but includes an engineer trainee in the locomotive cab who is not qualified under the plan's provisions. Since the train already has a fully trained and qualified crew operating the train, the commuter railroad is in full compliance with the proposed rule even though one on-board crewmember is not qualified under the emergency preparedness plan. This paragraph may also apply if, for example, a fully-trained passenger train crew turns over the operation of its train to a freight railroad train crew that is not qualified under the passenger railroad's emergency preparedness plan. Provided that the passenger train is operated by the freight crew with at least one on-board crewmember of the passenger train present who is qualified under the

passenger railroad's emergency preparedness plan, there would be no violation of the proposed rule. Although the proposed rule requires only one qualified crewmember, FRA anticipates that railroads will voluntarily elect to train most, if not all, on-board crewmembers in emergency response procedures.

Paragraph 239.101(a)(3) contains the requirement that freight railroads must prepare emergency preparedness plans addressing instances when they host the operations of rail passenger service over their lines. Even though freight railroads may neither provide nor operate rail passenger service themselves, and therefore not be subject to most requirements of the proposed rule, these railroads still have certain significant emergency preparedness responsibilities. The emergency preparedness plans for freight railroads must, at a minimum, include procedures for making emergency responder notifications, and discuss their general capabilities for rendering assistance to the involved passenger railroads during emergency situations. The hosting freight railroads must address any physical and operating characteristics of their rail lines that may affect the safety of these rail passenger operations, e.g., evacuating passengers from a train stalled in a tunnel or on an elevated structure.

FRA expects a railroad that operates rail passenger service over the line of a freight railroad to review all of the requirements imposed by the proposed rule with the host railroad, and coordinate their respective roles in implementing a coherent response to an emergency situation. While FRA presumes that the freight railroad will bear primary responsibility for ensuring the emergency preparedness of any railroad permitted to operate intercity passenger or commuter trains over its line, the proposed rule does not restrict the host railroad and the operating railroad from assigning responsibility for compliance with this part via a private contractual arrangement. FRA included the coordination requirement to ensure that all railroads involved in a particular rail passenger service operation understand each other's crucial role in planning for emergency preparedness.

Paragraph 239.101(a)(4)(i) addresses FRA's expectations for compliance with this part from railroads with operations that include tunnels of considerable length, where immediate passenger egress is not feasible. In order to limit the number of structures covered by this proposed paragraph to the longer ones that could be expected to present more impediments to the safe and orderly withdrawal of passengers from a disabled train, tunnels of less than 1,000 feet are excluded. This limitation is reasonable, considering that intercity passenger trains seldom consist of less than four cars and often have many more cars than this, implying a minimum total train length of 400 or more feet. Most likely, a train of this or greater length will have either the head or rear end close to or outside of a tunnel portal should an unplanned stop occur in a tunnel less than 1,000 feet long.

Over the years, passenger train emergencies have occurred in tunnels where existing emergency procedures and tunnel characteristics, such as lighting and communication capabilities, were determined to be inadequate. In order to better evaluate tunnel safety issues related to emergency preparedness, FRA requested additional information from the railroad industry. The results were summarized in a report entitled ''Tunnel Safety Analysis'' (Tunnel Report), which was published by FRA in February 1990. A copy of the report was also made available to the rail passenger railroads for their information and guidance, and has been placed in the docket for this rulemaking. FRA encourages all railroads required to address tunnel safety in their emergency preparedness plans to consult the Tunnel Report for guidance. FRA is also aware that many State and local jurisdictions already impose site-specific regulations to address tunnel safety, and that most railroads with operations involving tunnels have long-standing internal emergency tunnel procedures.

Paragraph 239.101(a)(4)(ii) proposes that railroads operating on elevated structures, over drawbridges, and in electrified territory, incorporate emergency preparedness procedures into their plans to address these unique physical characteristics. For example, in an emergency in electrified territory, the control center should be responsible for issuing instructions to deenergize the electrical power. Also, the train crew and emergency responders should know how, when, and when not to remove on-board power from the train, including traction power, train-lined (head-end) power to individual cars, and battery source power.

Paragraph 239.101(a)(4)(iii) recognizes that the emergency preparedness plans of certain freight and passenger railroads will need to address the unique safety concerns posed by adjacent rail modes of transportation. For example, employees of a freight railroad to which this part applies, who have knowledge of or observe an emergency in a common corridor, e.g., fire, derailment, or intrusion by rapid transit rail equipment or vehicles, must be required by the plan to immediately notify the control center with details. The control center must attempt to determine the exact location of the incident, any condition that would affect safe passage by affected trains or road vehicles, and whether hazardous materials are involved, and then initiate appropriate responsive action.

Many emergencies require response from outside emergency responder organizations in addition to the railroad. Proper coordination of roles between all of the organizations that may respond to an emergency is essential to ensure timely and effective response, since the number of passengers carried and the railroad operating environment may be quite different according to the type of service and routes. Paragraph 229.101(a)(5) recognizes that the successful implementation of any emergency preparedness plan depends upon the affected railroads maintaining current working relationships with the emergency responder organizations, so that each party can learn of the full preparedness capabilities that the other can offer during an emergency. In this regard, each railroad's emergency preparedness plan must provide for distribution to emergency responders of railroad equipment diagrams and manuals, right-of-way maps, information on physical characteristics such as tunnels, bridges, and electrified territory, and other related materials. In order to continually reinforce the familiarization of the emergency responder organizations with the railroads' protocols, procedures, operations, and equipment, the proposed rule requires railroads to periodically distribute applicable portions of the plan to emergency responders at least once every three years, even if no changes have been implemented. Further, since the knowledge and ability to carry out procedures and use emergency equipment are essential to the success of emergency response actions, the proposal requires the railroads to promptly notify emergency responders whenever material alterations to the plan occur (e.g., revisions to emergency exit information, pertinent changes in system route characteristics or railroad equipment operated on the system, or updates to names and telephone numbers of relevant contact officials on the railroad).

FRA wants to ensure that the emergency responders will receive the maximum amount of available

information about a railroad's operations in advance of an emergency, and hopes that emergency responders will voluntarily study the material distributed and participate in emergency simulations. However, the proposed rule would only require that affected railroads make the operations information available to emergency responders, and that the responders merely be invited to participate in emergency simulations. FRA has no authority to penalize an emergency responder organization if it chooses to ignore the distributed information or refuses to attend simulations with the railroad. Likewise, the proposed rule would not hold a railroad accountable for an emergency responder organization's unwillingness to enter into a liaison relationship, provided that the railroad made the liaison opportunities known and available to the responders.

In its comments on the revised regulatory text, METROLINK questioned the meaning in paragraph 239.101(a)(5)(ii) of the phrase ''maintaining an awareness of each emergency responders' capability.'' METROLINK noted that its operations include 33 different fire districts, over 50 ambulance companies, and 45 police agencies, and contended that maintaining this type of awareness is not a railroad function. METROLINK also stressed that the proposed rule does not require emergency responders to notify each affected railroad when their capabilities change, and stated that it is the responsibility of the emergency responders to establish mutual aid with other local agencies when emergency situations exceed their capabilities. In addition, METROLINK indicated that it lacks the technical capacity to know or understand when a significant change may occur in an emergency responder's response capability.

FRA is aware of the great number of jurisdictions that intercity trains operate through, and that it is neither simple nor inexpensive for passenger train operators to provide material and familiarization to every outside emergency response organization within all individual communities along each route. Some commuter train operators have developed booklets and videotapes to illustrate equipment and describe entry and evacuation procedures for its trains and certain right-of-way facilities. However, Amtrak stated at the Working Group meetings that because it operates through thousands of jurisdictions with thousands of potential emergency responder organizations located throughout the United States, it would have difficulty complying with this paragraph.

While FRA considers the establishment of liaison relationships between railroads involved with rail passenger operations and emergency responders crucial to achieving the goals of the proposed rule, the agency is also fully aware of the unique circumstances of Amtrak's operations. Commenters are invited to suggest either how Amtrak can best comply with the emergency responder liaison requirement as set forth in the proposed rule, or whether the final rule should establish a different standard for railroads that operate in territories with large numbers of potential emergency responders to contact. Any commenter proposing two or more sets of standards should also suggest what numerical or mileage criteria should be used to distinguish the railroads, and state how these differing standards would still ensure adequate levels of safety and emergency preparedness.

Paragraph 239.101(a)(6) states that each railroad's emergency preparedness plan shall indicate the types of on-board emergency equipment and the location on each passenger car. Although the proposed rule requires a minimum of only one fire extinguisher and one pry bar per passenger car, and one flashlight per on-board crewmember, FRA would strongly encourage each railroad to voluntarily supplement this list of on-board emergency equipment. Further, FRA recognizes that there may be special local interests that might need to be accommodated, particularly in cases of public authorities operating passenger train service within only one territory. While national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not wish to decrease the level of emergency preparedness already in place on a passenger railroad.

FRA must determine whether the final rule should specifically address special circumstances that may exist in local jurisdictions throughout the country on a categorical basis, which are currently subject to more stringent requirements than the minimum quantities of on-board emergency equipment set forth in the proposed rule. Accordingly, FRA invites comments on what types and quantities of on-board emergency equipment railroads are currently required to carry pursuant to laws in the local jurisdictions in which they operate. FRA also invites comments on the reasons for these more stringent requirements. Depending on the comments received, FRA may adopt the minimums set forth in the text of the proposed rule or decide to broaden the coverage and requirements of § 239.101(a)(6) by specifying additional types and/or quantities of on-board emergency equipment that some or all railroads must carry on each passenger car.

This paragraph does not require railroads to instruct their passengers about either the location or use of the on-board emergency equipment. As stated, FRA is committed to crafting a final rule that avoids micromanagement of the provisions of a railroad's emergency preparedness plan. FRA recognizes that passengers might benefit from receiving routine instructions about the location and operation of on-board emergency equipment during each train trip, in the event that the crewmembers are injured or otherwise unable to access the equipment before the outside emergency responders arrive. However, FRA is also aware from its consultations with the Working Group that pilferage of on-board emergency equipment is a serious problem on many passenger railroads, and that specifically focusing the attention of passengers on where the equipment is located would only exacerbate the problem. Clearly, the equipment can only help both crewmembers and passengers during an emergency if it is available for proper use. Also, members of the Working Group stressed that regular riders on intercity or commuter operations are probably already familiar with the on-board emergency equipment by virtue of their frequent presence on the train, and would not benefit from any additional required information.

Since the rulemaking on rail passenger equipment safety standards is still ongoing, FRA is unable to state whether railroads will be required to install permanent or auxiliary emergency lighting on their rail cars. However, whatever requirements eventually appear in a new set of regulations at 49 CFR Part 238, paragraph 239.101(a)(6)(ii) states that auxiliary portable lighting must be available for assistance in an emergency and should be routinely maintained and replaced as necessary. The proposed rule does not require that every rail passenger car have such lighting, but the train itself must carry enough portable lighting capable of fostering passenger evacuation. In its comments on paragraph 239.101(a)(6)(ii) of the revised regulatory text, METROLINK stated that FRA needs to define the phrase ''auxiliary portable lighting must be accessible,'' and questioned whether a flashlight is an acceptable form of

such lighting. FRA intends for a handheld flashlight, such as a flashlight with a ''D'' cell, to be one of the means of satisfying the auxiliary portable lighting requirement.

Finally, paragraph 239.101(a)(7) requires railroads to make passengers aware of emergency procedures to follow before an emergency situation develops, thus enabling them to respond properly during the emergency. All passenger awareness efforts must emphasize that passengers must follow the directions of the train crew during an emergency. If passengers are on a disabled train, but are not injured or facing imminent danger, they could safely await the arrival of trained emergency responders with appropriate evacuation equipment. However, in a serious emergency involving smoke or fire, passengers may have to evacuate the train before emergency responders arrive. Thus, operators of rail passenger service should take steps to increase passenger awareness about basic evacuation procedures. Since passengers could inadvertently jeopardize their own safety, it is appropriate for them to take the initiative only if the crewmembers are incapacitated.

Passenger railroads must educate passengers about their role in cooperating in emergencies by conspicuously and legibly posting emergency instructions inside each passenger car, and by utilizing at least one of the additional methods designated in this paragraph to provide safety awareness information. These methods include distributing pamphlets, posting information in stations on signs or on video monitors, and the review of procedures by crewmembers via public address announcements. All brochures and signage must emphasize that passengers must follow the directions of the train crew during an emergency.

Although paragraph 239.101(a)(7)(ii)(A) permits a railroad to fulfill the secondary passenger education requirement of the proposed rule by making on-board announcements, the proposed language does not specify the frequency with which these announcements must be made during a train run. While FRA believes that, with regard to intercity service, announcements are appropriate after at least each major passenger pick-up point, commenters are invited to suggest ways of providing safety information to all new riders without becoming repetitious to the remaining passengers. In addition, while the proposed rule requires railroads to utilize only one additional method to disseminate safety awareness information to passengers, FRA encourages railroads to employ as many of the options as possible based on operating and budgetary considerations.

The information in the various sources of passenger safety awareness information must be consistent in content and sufficient for first-time users of the railroad, but not so overwhelming as to arouse undue concern. All information must be printed or spoken in English, but railroads serving large non-English speaking communities should consider providing information in other languages as well. Materials for persons who are visually impaired should be printed in large type format and in braille. Finally, for persons with other types of disabilities, appropriate passenger awareness materials should provide information about evacuation policies and procedures and other emergency actions, to the extent practicable.

Passenger awareness education should include information that may permit passengers to accomplish the following:

- Recognize and immediately report potential emergencies to crewmembers;
- Recognize hazards;
- Recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- Recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons.

Paragraph 239.101(a)(7)(iii) requires railroads to perform surveys of their passengers in order to learn how successful the passenger awareness program activities have been in apprising passengers of the procedures that must be followed during an emergency. In addition to verifying that passengers can locate and operate the emergency window and door exits in the event of an evacuation, the surveys must determine that passengers know where the safety information is posted in the car and that during an emergency they must follow the directions of the train crew.

Although the railroad is required to maintain records of the information obtained from its passenger surveys, the proposal does not mandate that railroads ask passengers to complete written questionnaires. Instead of handing out questionnaire surveys at station stops and hoping that passengers will voluntarily elect to either provide responses in narrative form or fill in answers to multiple choice questions, the railroad could direct its employees to wait at either station stops or onboard trains and orally read the questions to selected members of the traveling public who voluntarily agree to participate. The oral responses would then be recorded by the railroad in writing on records that would be maintained at the system headquarters for the railroad and at the division headquarters for each division where the surveys were conducted (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering locations of the safety information on the cars and knowledge of the safety procedures to follow in an emergency. Additionally, railroads must make these survey records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

The proposal specifies that a railroad must survey a representative sample of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness activities. FRA is not proposing a methodology for conducting this sampling, nor is it requiring that the surveys be distributed at every station stop or along particular major lines. FRA is confident that each railroad will use due dilgence in surveying a statistically significant cross section of its customer population in order to periodically update and improve its passenger safety awareness information and amend its emergency preparedness plan, as appropriate. Although FRA is proposing that railroads conduct the surveys at least annually, we expect that after the initial education effort takes place in the first year that the rule is in effect the ridership awareness level will reach a percentage in the range of between 60 to 75 percent. If this increased awareness level occurs, as reflected in a high rate of correct survey responses, FRA believes that the requirement could be modified to permit railroads to conduct the surveys at least once every three years. FRA seeks public comment on both whether the final rule should permit railroads to conduct surveys less frequently than annually, and if so, on what would be an appropriate minimum percentage of public awareness that must be reached before less frequent surveying would be justified.

Since the issue of passenger surveys was not fully developed with the Working Group during the drafting of this proposal, FRA looks forward to working with the members of the

Working Group during the final rule phase to develop the most effective means of verifying that the passenger awareness program activities will achieve their objectives. In this regard, FRA seeks comments on whether the survey process anticipated by this proposal can be a reliable measure of the effectiveness of the passenger information programs or whether there are more efficient or less expensive means than surveys to determine the success of these programs, such as focus groups or unstructured meetings and discussions with members of the traveling public. Commenters from railroads are urged to discuss what sampling techniques they currently use when they conduct customer satisfaction surveys in order to assist them in improving passenger comfort, determining if railroad employees are providing proper customer service, and planning timetable schedules.

Since proposed paragraph 239.101(a)(7)(ii) requires railroads to utilize an additional method of providing safety information without specifying how frequently the information must be provided, commenters are encouraged to address this issue by indicating whether each railroad should be allowed to study the results of the passenger surveys in order to determine the effectiveness and proper timing of passenger safety awareness program activities appropriate for its operation. Accordingly, instead of specifying a fixed maximum time interval between utilization of the additional forms of program activity, FRA could elect to require that railroads determine the optimal frequency that best serves their passengers. In addition, it is expected that as the traveling public grows more accustomed to reading and understanding the emergency instructions posted inside all passenger cars on bulkhead signs, seatback decals, or seat cards the need for redundant reminders (e.g., on-board announcements, ticket envelope safety information, or public service announcements), especially at frequent time intervals, will greatly diminish. Moreover, depending on the additional method selected, different time intervals may be appropriate. For example, while it may be suitable for a railroad to distribute safety awareness information on a seat drop every three months, the railroad may conclude that it should arrange for public service announcements on a weekly basis. Commenters recommending inclusion of fixed timeframes for providing passengers with additional methods of safety awareness information are urged, if possible, to provide scientific or sociological data and/or cost estimates to support their suggested time intervals.

11. Passenger Train Emergency Simulations: Section 239.103

Section 239.103 recognizes that one of the most effective training techniques is a simulation of specific emergency scenarios. Simulations may vary from a small-scale drill or tabletop exercise for just one train crew or control center operator, to a full-scale emergency exercise involving several levels of railroad management that includes the voluntary participation of fire departments, ambulance and emergency medical service units, local police, sheriff and state police organizations, local emergency auxiliary groups, and state and federal regulatory agencies. While simulations are primarily designed to demonstrate that railroad employees can quickly and efficiently manage an emergency situation to ensure that emergency responders arrive quickly, simulations are also intended to determine whether train crews are properly trained to get passengers out of an imperiled train.

The tabletop exercise is the simplest to stage, as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate. For an imaginary emergency, the actions to be taken by the appropriate personnel are described; the time, equipment, and personnel necessary are estimated; and potential problems are predicted. Conflicts of functional areas, lack of equipment, procedural weaknesses or omissions, communication difficulties, and confusing terminology are among the problems which can be identified.

Passenger train operators can drill their train crews, other on-board personnel, supervisors, and control center operators on emergency operating procedures by posing a hypothetical emergency for employees to resolve without dispatching emergency responders to the scene. A drill could also involve the voluntary participation of personnel of a particular response organization, e.g., a fire department. The same type of problems as indicated for the tabletop exercise can be identified, and the actual response capabilities of personnel in terms of their knowledge of procedures and equipment can be evaluated.

Full-scale emergency exercises require weeks of carefully organized plans involving all participating organizations and will involve the expenditure of funds for both the training and actual full-scale exercise. Recording or videotaping the scenes and conversations in key areas of the exercise itself will serve as valuable classroom training for later years. A full-scale exercise is the total application of the resources of the passenger railroad operator and the voluntarily participating emergency response organizations. Such an exercise can reveal the degree of familiarity of both the passenger train system and emergency response organization personnel with train operations, the physical layout of trains, right-of-way structures and wayside facilities, emergency exits, and emergency equipment. Thus, shortcomings in the emergency preparedness plan and specific response protocols and procedures, as well as equipment, can be identified and corrected.

FRA is seriously evaluating whether tabletop exercises should be afforded the same weight in the final rule as full-scale simulations for purposes of demonstrating the readiness of a railroad to successfully react to a passenger train emergency, and we are considering requiring that each railroad conduct a minimum number of its simulations as full-scale exercises. In this regard, FRA is skeptical as to whether a tabletop exercise can equal the comprehensiveness of a full-scale exercise and be a highly effective means of determining whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines, as well as an important training tool for the train crews, control center employees, and members of the emergency responder community who elect to participate. In considering whether to strengthen the emergency simulation requirement, FRA is aware that realistic full-scale simulations that enable all participants to practice using the on-board emergency equipment and emergency exits, and encourage the emergency responders to become personally familiar with passenger equipment and applicable railroad operations, could prove invaluable in helping railroads and the emergency responder community to manage real emergencies in ways that tabletop exercises cannot. However, FRA is also aware that the financial and logistical costs of conducting full-scale simulations are undoubtedly higher, including the need to close railroad tracks during the hours of the simulation, opportunity costs for the railroads due to lost use of the passenger equipment that is employed

in the simulations, unavailability of firefighting and rescue equipment for other emergencies while the simulations are being conducted, and salary costs for many or all of the simulation participants.

In order to best determine whether the final rule should require full-scale emergency simulations in conjunction with tabletop exercises, or perhaps in place of such exercises, FRA must carefully weigh the expected costs and potential benefits of all available options. FRA therefore seeks public comment on the perceived effectiveness of both full-scale emergency simulations and tabletop exercises, including a discussion of whether tabletop exercises can achieve the equivalent level of emergency preparedness as full-scale simulations. FRA is particularly interested in receiving comments from the emergency responder community, especially from those members who have participated in either emergency simulations or actual emergency situations with railroads.

To achieve a maximum level of effectiveness, drills and exercises should reinforce classroom training in emergency response and passenger evacuation for the passenger train operator personnel and the emergency response units who voluntarily participate. Procedures should also be included to teach personnel to identify the emergency and distinguish its unique demands, and to follow through with the appropriate responses. In addition, the drills and exercises should be planned to minimize hazards which could create an actual emergency or cause injuries and to provide a mechanism for simultaneous testing and reinforcement of emergency operating procedures for specific types of emergencies and evacuation procedures. Moreover, the drills and exercises should test the communication capabilities and coordination of the passenger operator with the emergency responders, as well as the operability and effectiveness of emergency equipment.

Paragraph (b) requires each railroad that provides commuter or other short-haul passenger train service to conduct an emergency simulation at least once during every two calendar year on all major lines, and include at least 50 percent of the major lines in the total number of simulations held during any given calendar year. Since FRA has determined that a train crew on a commuter or other short-haul operation will usually operate a train along the same line for an extended period of time, and that emergency responder organization personnel tend to be line-specific in terms of their familiarity with a railroad's operations, it is crucial that each affected railroad provide adequate opportunities along all of its major lines for its employees and the responder community to obtain emergency simulation training. While FRA anticipates that each commuter or short-haul railroad will conduct emergency simulations as frequently as possible on its entire system, the proposal applies only to operations over major lines so that the railroad can best reach the most heavily traveled portions of its system while conserving limited resources. In this regard, FRA recognizes that emergency responder organizations tend to be densely located along the major lines of commuter and short-haul railroad operations.

FRA seeks public comment on whether the final rule should require a different timetable for accomplishing emergency simulations along each major route and/or require a greater total number of emergency simulations during any given calendar year. In this regard, since emergency simulations are such an important means for a railroad to measure its degree of emergency preparedness, FRA is considering strengthening the final rule to require that each railroad conduct a sufficient number of emergency simulations so that each major line will be included at least once during every calendar year, instead of only once during every two calendar years.

Although the proposal sets forth a requirement for each commuter and short-haul railroad to perform emergency simulations on all of its major lines, FRA does not expect the railroad to require all employees along those lines who are trained under the emergency preparedness plan to attend the simulations, nor do we expect the railroad to invite all potential emergency responders along those lines to participate. While FRA hopes that over the long term all railroad employees involved in the operation of passenger train service, as well as the applicable members of the emergency responder community, will have the opportunity to participate in this valuable training exercise and enhance their individual emergency preparedness skills, the simulations are also intended to identify shortcomings in each railroad's emergency preparedness plan and specific response protocols and procedures. The railroad must discuss the identified weaknesses and overall effectiveness of the emergency preparedness plan with the simulation participants at the debriefing and critique session held under proposed § 239.105, and then initiate any appropriate improvements and/or amendments to the plan. As part of this review process, FRA expects the railroad to revise its training program and liaison relationships with the emergency responder community, in accordance with proposed § 239.101. Accordingly, while the proposed rule does not mandate that affected railroads conduct numerous simulations all along the major lines so as to include every possible participant, FRA concludes that the lessons learned from the required debriefing and critique sessions will have far reaching benefits.

In order to ensure that each affected railroad evaluates its overall emergency response capabilities through careful selection of the appropriate scenarios and locations on each of its main lines for the emergency simulations, the proposal requires each railroad to organize simulations that will adequately test the performance of the railroad's program under the variety of emergency situations that could reasonably be expected to occur on the operation. For example, a railroad operating in territory that includes underground tunnels will need to conduct simulations to test the railroad's ability to ensure employee and passenger safety during an emergency situation occurring in this unique environment. Adequate lighting and sources of air in tunnels and underwater tubes are critical for successful passenger evacuation during emergencies. Further, emergency responders depend on sufficient lighting for visibility during fire suppression and rescue operations. If the railroad intends to evacuate passengers by using cross passages and/or fire doors leading to the opposite track area, or a separate center passageway between the adjacent track areas, the simulation should include practice in the requisite evacuation protocols and procedures.

In the case of a railroad providing intercity passenger service involving a number of lines operated over long distances, such as the coast-to-coast service provided by Amtrak, the need for the railroad to carefully plan its simulations and concurrently examine the effectiveness of its emergency preparedness plan under a variety of scenarios becomes crucial. Many of Amtrak's lines run for hundreds of miles through remote locations that could include risks from tunnel mishaps, natural disasters (e.g., fires, floods, and earthquakes), hazardous material leaks, and/or acts of terrorism. Further, because of the length of time required to travel these lines, the same train will be operated by more than one crew and may involve operation over

the line of a freight railroad. Since Amtrak's lines traverse numerous populated communities throughout the United States, an emergency situation could require the assistance of any number of potentially thousands of emergency responders from these locations.

While FRA is not proposing at this time to require operators of intercity service to conduct additional emergency simulations along its lines in order to reach a greater proportion of employees and members of the emergency response community (equivalent to the number required on the major lines of railroads that provide commuter or other short-haul service), we do expect such railroads to plan simulations that sufficiently test the elements of their emergency preparedness plan under the variety of circumstances that could occur in intercity service. Although FRA recognizes that the length and diversity of Amtrak's operations limit the potential benefits from resources spent on conducting emergency simulations, the proposed rule requires Amtrak to conduct at least two full-scale or tabletop exercises per year on each of its business units. However, FRA is considering imposing more rigorous requirements in the final rule on operators of intercity service such as Amtrak in order to ensure the requisite level of emergency preparedness. By considering each of the emergency scenarios that could possibly occur on the different segments of the railroad (e.g., simulations of a derailment at a remote location where emergency responder assistance is not immediately available, an on-board fire inside a tunnel or on a bridge, a derailment involving a freight train carrying a hazardous materials spill, etc.), Amtrak can carefully design a program to fulfill its overall emergency response needs. While we recognize that the term ''business unit'' represents the current organizational structure of Amtrak in 1997, and have therefore incorporated that concept into the proposed rule, FRA expects to craft a term for inclusion in the final rule that has broader applicability.

While the proposal requires railroads that provide intercity passenger train service to conduct two emergency simulations on each business unit or other major organizational element during each calendar year, FRA seeks public comment on whether this number should be increased in the final rule. Commenters, especially those representing members of the emergency response community, are encouraged to discuss how their recommended minimum number of required emergency simulations can best achieve the rule's emergency preparedness objectives in a cost beneficial manner that does not compromise rail safety. In recommending an optimal minimum number of emergency simulations, commenters are specifically urged to opine on how a passenger railroad as diverse as Amtrak, which operates coast-to-coast service under a wide variety of operating conditions through the jurisdictions of numerous emergency responders, can best achieve the emergency preparedness goals of this section throughout its entire system without expending a disproportionate amount of its limited resources.

12. Debriefing and Critique: Section 239.105

Section 239.105 recognizes the value of conducting a formal evaluation process after the occurrence of either an actual emergency situation or an emergency simulation such as a full-scale or tabletop exercise to determine what lessons can be learned. To increase the effectiveness of the evaluation of an emergency simulation, railroad personnel should be designated as evaluators to provide a perspective on how well the emergency preparedness plan and procedures were carried out. Although not required by the proposed rule, railroads are also encouraged to invite outside emergency response organizations and other outside observers to participate as evaluators. Evaluators should be given copies of the railroad's emergency preparedness plan before the simulation is conducted, and a preliminary meeting should be held to familiarize the evaluators with the drill or exercise and assign functional areas of concern for evaluation (*e.g.*, communications, evacuation times). Depending on the elaborateness of the simulation, evaluators may also choose to use video cameras to record the sequence of events, actions of personnel, and use of emergency equipment.

The purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. Persons responsible for conducting the sessions should be instructed by the railroad to ask questions that will test emergency preparedness procedures, assess training, and evaluate equipment. After a simulation, these persons should debrief all participants (including simulated victims, if any) who can offer valuable insights and thus help the railroad to revise its procedures. The debriefing session should help to determine what emergency preparedness or response procedures could not be used because of the special circumstances of either the train or the passengers, and whether coordination between the railroad and the emergency responders requires improvement.

The above method of conducting post-simulation debriefing and critique sessions should also be used by railroads to evaluate reactions to actual emergencies. Weaknesses in emergency preparedness procedures and equipment and areas for improving training should be identified, and the railroad shall amend its emergency preparedness plan in accordance with proposed § 239.201. All persons involved should be debriefed.

Although the term ''emergency or emergency situation'' is defined in proposed § 239.7 to include a collision with a person, including suicides, FRA does expect a railroad to conduct a debriefing and critique session after every grade crossing accident. While the railroad would still be expected to invoke its emergency preparedness plan in the event of a grade crossing accident, the goal of this proposed rule is to ensure that railroads effectively and efficiently manage passenger train emergencies. Accordingly, FRA does not intend for the debriefing and critique requirements of this section to apply when an emergency situation involves only a motorist or pedestrian who has been injured or killed, and does affect the passengers onboard the train. In addition, a railroad cannot count its activation of the emergency preparedness plan under these circumstances for purposes of satisfying the emergency simulation requirements of § 239.103. While a significant derailment with one or more injured passengers or a fire on a passenger train would undoubtedly involve significant threats to passenger safety, and therefore require a debriefing and critique session, the proposed rule leaves open the question of what other types of emergency situations would trigger the requirements of this section. Since the threshold issue of what constitutes a ''significant threat'' to the safety or health of one or more persons requiring immediate action has not been fully determined by either FRA or the Working Group, FRA is seeking public comment on what sorts of situations to include in the final rule under the definition of ''emergency'' or ''emergency situation'' set forth in proposed § 239.7.

The proposed rule does not require railroads to use a prescribed FRA form or other specific document at the debriefing and critique sessions, nor does the proposed rule set forth specific questions that railroads must ask after a simulation or actual emergency.

However, as a result of whatever means the railroad selects to ascertain the effectiveness of its emergency preparedness plan, paragraph (b) requires the railroad to determine the functional capabilities of the on-board communications equipment, the timeliness of the required emergency notifications, and the overall efficiency of the emergency responders and the emergency egress of the passengers.

In order to achieve the goals of this proposed section, and to comply with the debriefing and critique recordkeeping requirement of paragraph (c), evaluators should be provided with critique sheets, to be collected and used in the debriefing and critique sessions conducted by the railroads. At a minimum, whatever documentation the railroad selects to comply with paragraph (c) should contain the date(s) and location(s) of the simulation and the debriefing and critique session, and should include the names of all participants. Under the proposed rule, the critique sheets, or equivalent records, would then be maintained by the railroad at its system and applicable division headquarters, and be made available for FRA inspection and copying during normal business hours.

FRA invites comments on whether the final rule should specify additional types of issues that must be addressed by railroads at debriefing and critique sessions (in addition to the five issues required to be addressed in proposed paragraph (b)), or whether each railroad should retain some flexibility to develop it own approach to conducting these sessions. In this regard, FRA encourages comments on the relative value of the final rule requiring discussion and documentation of any or all of the following questions:

- Did on-board personnel try to initiate a radio call immediately?
- How long did it take for on-board personnel to reach and inform the control center of the emergency situation?
- What was the method of notification to the control center? Was the method an on-board radio or a wayside radio (if equipped)?
- Was there adequate radio communication equipment? Was it used properly? Did it work properly?
- Did on-board personnel know the proper emergency telephone number to call from the wayside telephone?
- Did on-board personnel identify him/herself to the control center by name and location?
- Did on-board personnel report the number (approximate or actual, as appropriate) and status of the passengers?
- Did on-board personnel make audible, appropriate announcements to passengers? How many minutes elapsed after the simulation or emergency began before the first announcement was made?
- Did on-board personnel properly operate the fire extinguishers?
- Did on-board personnel request deenergization of the third rail or catenary power?
- Did on-board personnel request the halting of train movements?
- How long did it take for the first emergency response unit to arrive at the emergency scene?
- How long did it take to completely evacuate the train or right-of-way structure or wayside facility and/or extinguish a fire (real or simulated)?

In its comments on the revised regulatory text, METROLINK stated that if a commuter railroad performs a tabletop exercise or simulation it cannot follow the criteria for a debriefing and critique session set forth in this section. Specifically, METROLINK contends that during field drill and tabletop exercise simulations the railroads usually do not involve real passengers and do not notify the emergency responders via the normal means of communication. Moreover, the emergency responders do not respond with lights and sirens as they would under real emergency conditions.

13. Emergency Exits: Section 239.107

In the course of normal passenger train operations, persons enter and exit passenger cars at a station platform through doors on the side of the train. However, when a disabled train cannot be moved to the nearest station, alternative evacuation methods must be employed. Emergency access to and egress from a passenger car may be achieved through outside doors, end doors, and windows. In some emergencies, such as when a fire is confined to a single passenger car, persons may be moved through the end door(s) to an adjacent car. In other emergencies, transfer of all the passengers from the disabled train may be required.

Not all passenger cars have vestibule side doors on both ends, and in some equipment, operation of these doors has required considerable effort, including hand tools. If a power loss occurs, crewmembers may be unable to open either or both of the car vestibule side doors from the normal key control station in the car. If side-door emergency controls permit opening of only one sliding door, it could prove difficult to move certain individuals through it. Also, if the vestibule side doors cannot be opened immediately from either the inside or the outside, persons may panic and could be injured as others attempt to leave the car.

Commuter railroads have agreed to FRA's request that arrangements requiring hand tools (coins and pencils) be retrofitted. Two railroads with significant numbers of affected cars are already completing this work, and this issue will be separately addressed in the forthcoming NPRM on Passenger Equipment Safety Standards. The Passenger Equipment Safety Standards Working Group will be evaluating other improvements in door design and operation. Paragraph 239.107(a) requires that all doors intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 239.107(a)(1) requires that the emergency egress exits be conspicuously and legibly marked on the inside of the car with luminescent material or be properly lighted. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency door exits, the proposed rule requires luminescent material on all emergency egress door exits (or secondary auxiliary lighting near these exits) to assist and speed passenger egress from the train during an emergency. The marking of the emergency door exits must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify an exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

Paragraph 239.107(a)(2) requires that the emergency door exits intended for emergency access by emergency

responders for extrication of passengers be marked with retroreflective material, so that the emergency responders can easily distinguish them from the nonaccessible doors simply by shining their flashlights or other portable lighting on the marking or symbol selected by the railroad. Again, while this proposed section does not prescribe that a railroad use a particular brand, type, or color of retroreflective material to identify an access location, FRA expects each railroad to select a material durable enough to withstand the daily effects of weather and passenger contact, and capable of resisting, to the extent possible, the effects of heat and fire. If all doors are equally operable from the exterior, no designation would be useful, nor would any be required. In a separate rulemaking, FRA's Passenger Equipment Safety Standards Working Group (FRA Docket No. PCSS–1) will address appropriate requirements for periodic maintenance and replacement of the emergency door exit markings.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency door exits. This section does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency door exits, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency door exits as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with proposed § 239.101 (a)(5) and (a)(7).

Paragraph (b) requires each railroad operating passenger train service to properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair of all windows and door exits intended for either emergency egress or rescue access by emergency responders. In the case of emergency window exits, the inspection, maintenance, and repair activities should be performed consistent with the requirements of part 223 of this chapter. While the proposed rule does not require railroads to perform these tasks in accordance with a specific timetable or methodology, except with respect to the periodic sampling requirement for emergency window exits discussed below, FRA expects each railroad to develop and implement procedures for achieving the goals of this paragraph. Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

Carrying forward requirements currently contained in FRA's Emergency Order No. 20, the proposed rule also requires each railroad to periodically test a representative sample of emergency window exits on its passenger cars to verify their proper operation. The sampling of these emergency window exits must be conducted in conformity with either of two commonly recognized alternate methods, which will provide a degree of uniformity industry wide. Both methods require sampling meeting a 95-percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Rather than require railroads to test all window exits on a specific type or series of car if one car has a defective window exit, the proposed rule permits the railroads to use commonly accepted sampling techniques to determine how many additional windows to test. In general, these principles require that the greater the percentage of windows exits that a railroad finds defective, the greater the percentage of windows that the railroad will have to test. Specifically, sampling must be conducted to meet a 95-percent confidence level that no defective units remain in the universe and be in accord with either Military Standard MIL–STD–105(D) Sampling for Attributes or American National Standards Institute ANSI–ASQC Z1.4–1993 Sampling Procedures for Inspections by Attributes. Defective units must be repaired before the passenger car is returned to service.

The proposal specifies that a railroad must test a representative sample of emergency window exits on its cars at least once during every 180 days to verify their proper operation. However commenters are encouraged to address this issue by indicating whether the sampling should occur on an annual basis, or on a less frequent basis. Commenters are also urged, if possible, to provide scientific data and/or cost estimates to support their suggested sampling interval.

The inspection, maintenance, and repair records concerning emergency window and door exits must be retained at the system headquarters for the railroad and at the division headquarters for each division where the inspections, maintenance, or repairs are performed (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering inspection, maintenance, and repair or separate sections covering different types of passenger equipment. Additionally, railroads must make these inspection, maintenance, and repair records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

METROLINK commented that in order to avoid the unnecessary burden of maintaining duplicate records, the rule should require railroads to store all of the maintenance records for the emergency window and door exits at the site of the inspections. In METROLINK's case, that site would be the applicable division headquarters, which is no more than 15 miles from its system headquarters. METROLINK also noted that paragraph 239.107(c) does not indicate for how long the inspection records must be retained, and recommended that since the current rule calls for major service inspections to be retained for 180 days (or until the next inspection is performed) the final rule should establish a similar timeframe.

14. Emergency Preparedness Plan; Filing and Approval: Section 239.201

Section 239.201 specifies the process for review and approval of each railroad's emergency preparedness plan by FRA. The intent of the review and approval is to be constructive, rather than restrictive. It is anticipated that the railroads will develop and implement varied plans based upon the special circumstances involving their individual operations. Under the proposal, FRA would also require that the railroad summarize its internal discussions and deliberative processes

to explain how the railroad's unique and individual operating characteristics determined how each issue was finally addressed in the emergency preparedness plan. Specifically, FRA expects the railroad to include a review of the analysis that led to each element of the emergency preparedness plan it submits to FRA for approval, including a consideration of the expected monetary costs and anticipated safety benefits associated with each section of the plan.

In its comments, METROLINK stated that the term ''analysis'' in the phrase ''shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan'' is vague and lacking in direction. METROLINK then asked whether FRA expects to receive a cost benefit analysis, systems approach, or safety value analysis. In addition, METROLINK questioned whether the term ''condition on the railroad's property'' concerns elements of the plan such as earthquakes, wind, and power outages.

FRA will conduct a review of each plan so that there can be an open discussion of the plan's provisions from which all concerned parties can benefit. However, in order to ensure compliance with minimum plan requirements FRA will review each plan in detail prior to approval and implementation. FRA expects to involve members of the Passenger Train Emergency Preparedness Working Group in developing benchmark criteria for plan approvals to simplify plan development and approval. It is anticipated that this criteria will address program elements that include the following:

- Specific course content for training programs of on-board personnel, control center personnel, and other key employees;
- Minimum requirements for emergency exercises, including frequency and content of drills with emergency responders and simulations to determine rapidity of emergency evacuations under varying scenarios;
- Specific means for providing emergency safety information to passengers, similar to on-board briefings provided in commercial aviation;
- Detailed requirements for tunnel safety, including lighting and equipment; and
- Additional attention to emergency equipment, by prescribing types and numbers of various kinds of equipment that may be useful under varying operating scenarios.

FRA will also review all plan amendments prior to their going into effect. FRA requests comment on whether there are any categories of plan amendments that should be permitted to go into effect immediately, prior to review and approval, because they constitute improvements for which implementation delay should be avoided.

All persons, such as contractors, who perform any action on behalf of a railroad will be required to conform to the emergency preparedness plans in effect on the railroads upon which they are working. Persons whose employees are working under a railroad's approved emergency preparedness plan need not submit a separate plan to FRA for review and approval. For example, if a railroad hires an outside independent contractor to conduct an emergency simulation pursuant to 49 CFR 239.103, the contractor must perform this task in accordance with the railroad's plan. However, if a freight railroad train crew operates a passenger train for a commuter rail authority, the freight railroad must coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the commuter rail authority's, unless an assignment of responsibility for compliance is made under 49 CFR 239.101(a)(3).

The proposed rule does not specifically call for the involvement of railroad employees or their representatives in the process of designing or reviewing the emergency preparedness plan, because the responsibility for having a plan that conforms with this rule lies with the employer. However, it should be noted that the success of an emergency preparedness plan will require the willing cooperation of all persons whose duties or personal safety are affected by the plan.

15. Retention of Emergency Preparedness Plan: Section 239.203

The emergency preparedness plan and all subsequent amendments must be retained at the system headquarters for the railroad and at the division headquarters for each division where the plan is in effect (i.e., the records availability must be division specific). The emergency preparedness plan may consist of multiple documents or booklets and may contain separate sections covering the varying job functions and plan responsibilities of on-board and control center personnel. Additionally, railroads must make their emergency preparedness plan records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

16. Operational (efficiency) tests: Section 239.301

Section 239.301 contains the requirement that railroads monitor the routine performance of employees who have individual responsibilities under the emergency preparedness plan to verify that the employee can perform the duties required under the plan in a safe and effective manner. It permits the railroad to test proficiency by requiring the employee to complete a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section. This testing can also involve check rides and control center visits, along with unannounced, covert observation of the employees.

This section requires a railroad to keep a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with its emergency preparedness plan. Each record must identify the railroad officer administering the test of each employee. Accordingly, by identifying the specific data points that each record must provide, this section will promote the examination of relevant information from captured data sources, enabling FRA to better determine the effectiveness of a railroad's emergency preparedness plan. Written or electronic records must be kept of these operational (efficiency) tests for one calendar year after the end of the year in which the test was conducted, available for inspection and copying by FRA during normal business hours.

17. Electronic recordkeeping: Section 239.303

Section 239.303 authorizes railroads to retain their operational (efficiency) test records by electronic recordkeeping, subject to the conditions set forth in that provision. This provision provides an alternative for railroads retaining certain information, as required in proposed § 239.301. FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce

records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA inspection during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to electronically retain its records must ensure the integrity of the information and prevent possible tampering of data, enabling FRA to fully execute its enforcement responsibilities.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. Due to the intense public interest in the subject matter of the proposed rule, the proposed rule is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. It may be inspected and photocopied at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the benefit-cost analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The Net Present Value (NPV) of the total 20-year costs which the industry is expected to incur is $4.285 million. Following is a breakdown of the costs by requirement.

Section	Requirement	Cost
239.101, 201, 203 ..	Emergency Preparedness Plan (EPP)	$105,754
	Control Center Notification	957
	On-board Personnel Training	0
	Control Center Personnel Training	55,520
	Joint Operations	16,562
	Parallel Operations	1,297
	Emergency Responder Liaison	
	—Provide EPP to Responders	12,741
	—Awareness of Responder Capabilities	56,928
	On-board Emergency Equipment	
	—One Fire Extinguisher/Car	147,801
	—One Pry Bar/Car	92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent On-board Procedures	65,611
	—Periodic Reinforcement	0
	—Annual Customer Surveys	26,616
239.103, 105	Passenger Train Emergency Simulations	969,140
239.107	Emergency Exits	
	—Marking—Interior	450,525
	—Marking—Exterior	1,347,505
	—Inspection and Recordkeeping	327,948
239.301	Operational Efficiency Tests	590,441
Total		4,510,280

Each year there are passenger train accidents which result in one or more fatalities. In the last ten years there have been about seven passenger train accidents which resulted in a significant loss of life. FRA does not know how many commuter or intercity train accidents will occur in the future. Although the passenger rail industry has a very high level of safety, the potential for injuries and loss of life in certain emergency situations is very high. FRA believes that the proposed rule represents a cost-effective approach to providing a reasonable level of protection against known threats to human life, and that if only two fatalities were to be avoided over a twenty-year period then the rule would be cost beneficial. Accordingly, while FRA cannot predict with confidence the likelihood of particular accident circumstances in which particular rule elements will be useful, FRA believes that it is reasonable to expect that the measures called for in this proposal would prevent or mitigate the severity of injuries greater in value than the costs of developing and implementing emergency preparedness plans.

Monetary benefit levels associated with several of the proposed requirements are not estimated due to lack of data. FRA would greatly appreciate receiving information and comments regarding the benefits that would result from complying with the distinct requirements proposed. It should be noted that FRA expects total benefits to exceed total costs for the proposed rule, and that the rule's provisions are necessary components of FRA's overall initiatives for passenger train emergency preparedness.

Included within the $4,510,280 total cost figure are proposed requirements for equipping each passenger car with a pry bar, marking and inspecting emergency exits, and providing passengers with emergency situation procedures that will ensure that each

passenger is able to escape from a life threatening situation on his or her own initiative. The NPV of the twenty-year cost associated with the requirements aimed at ensuring that in a life threatening situation passengers trapped in a car would be afforded enough opportunity to escape safely is $1.2 million.

Section	Requirement	Cost
239.101	Pry Bars	
	—One Pry Bar per Car	$ 92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent Car Procedures	65,611
	—Periodic Reinforcement	0
	Annual Customer Surveys	26,616
239.107	Marking Emergency Exits—Interior	450,525
	Inspection of Emergency Exits	327,948
Total		1,193,820

These costs would be justified if the next passenger train emergency situation is handled in such a way that loss of life is contained.

As previously noted, FRA is allowing 60 days for comments and invites public comment on the issue of regulatory impact. FRA seeks comment and/or data to help identify or quantify other factors that may affect the benefits or costs of the proposal, including alternatives that were not explored by the Working Group and any costs or benefits associated with such alternatives.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. This proposed rule affects intercity and commuter passenger railroads. Commuter railroads are part of larger transit organizations that receive Federal funds. The American Public Transit Association (APTA) represents the interests of commuter railroads in regulatory matters. Further, the proposed standards were developed by FRA in consultation with a Working Group that included Amtrak, individual commuter railroads, and APTA.

Entities impacted by the proposed rule are governmental jurisdictions or transit authorities, none of which are small for purposes of the United States Small Business Administration (i.e., no entity operates in a locality with a population of under 50,000 people). Smaller commuter railroads will not be affected disproportionately. The level of costs incurred by each organization should vary in proportion to the organization's size. For instance, railroads with fewer employees and fewer passenger cars will have lower costs associated with both employee efficiency testing and emergency exit inspections.

Smaller passenger rail operations such as tourist, scenic, excursion, and historic railroads are excepted from the proposed rule. The proposed rule does not affect small entities.

A joint FRA/industry working group formed by the RSAC is currently developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be proposed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223..9d/ 239.107:					
A. Emergency egress	17 RRs	1,300 new decals	4 minutes	621	$18,630
		4,575 replace decals	7 minutes		
		1,300 new decals			
B. Emergency exits	17 RRs	6,320 new decals	4 minutes	824	24,720
			7 minutes		
239.107(b)	17 RRs	1,800 tests	20 minutes (18 minutes to perform test and 2 minutes for recordkeeping).	600	18,000
239.101/239.201	17 RRs	17 plans	158 hours	2,685	90,168
	17 RRs	17 amendments	1.6 hours	27	756
239.101 (1)(i)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	5 RRs	5 updates of records	1 hour	5	140
239.101 (a)(3)	33 RRs	33 negotiations	16 hours	528	19,800
239.101 (a)(7)(ii)	5 RRs	1,300 passenger cars	5 minutes per bulkhead card	108	2,808

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
		5 safety messages	1 hour per RR to develop safety message.	5	190
239.105	17 RRs	66 records	30 minutes per record	33	924
239.301/ 239.303	17 RRs	11,600 tests	8 minutes per test	1,547	58,786
239.101 (a)(5)	16 RRs	16 reponses to distribute info to emergency responders.	2 hours	32	896
	1 RR (Amtrak).	1 response to distribute info to emergency responders.	100 hours	100	2,800
	16 RRs	16 updates of emergency responder records.	30 minutes per updated	8	224
	1RR (Amtrak).	1 update of emergency responder records.	5 hours	5	140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, please contact Ms. Gloria Swanson at 202–632–3318.

Organizations and individuals desiring to submit comments on the collection of information requirements should submit their views in writing to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office and Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503, and should also send a copy of their comments to Ms. Gloria D. Swanson, Federal Railroad Administration, RRS–21.1, 400 Seventh Street, S.W., Washington D.C. 20590. Copies of any such comments should also be submitted to the docket of this rulemaking at the mailing address for the Docket Clerk provided above.

OMB is required to make a decision concerning the collection of information requirements contained in this NPRM between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced in the Federal Register.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. FRA has made every effort to provide reasonable flexibility to State-level decision making and has included commuter authorities as full partners in development of this proposed rule.

List of Subjects

49 CFR Part 223

Railroad safety, Glazing standards.

49 CFR Part 239

Railroad safety, Passenger train emergency preparedness.

Request for Public Comments

FRA proposes to amend part 223 and adopt a new part 239 of Title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule whether through written submissions, or participation in the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II of Title 49, Code of Federal Regulations as follows:

PART 223—[AMENDED]

1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 20701, 21301–21302, and 21304; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49(c), (g), (m).

2. By revising § 223.5 to read as follows:

§ 223.5 Definitions.

As used in this part—

Caboose means a car in a freight train intended to provide transportation for crewmembers.

Certified glazing means a glazing material that has been certified by the manufacturer as having met the testing requirements set forth in Appendix A of this part and that has been installed in such a manner that it will perform its intended function.

Designated service means exclusive operation of a locomotive under the following conditions:

(1) The locomotive is not used as an independent unit or the controlling unit is a consist of locomotives except when moving for the purpose of servicing or repair within a single yard area;

(2) The locomotive is not occupied by operating or deadhead crews outside a single yard area; and

(3) The locomotive is stenciled ''Designated Service—DO NOT OCCUPY''.

Emergency opening window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

End facing glazing location means any location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose or passenger car. Any location which, due to curvature of the glazing material, can meet the criteria for either a front facing location or a side facing location shall be considered a front facing location.

Locomotive means a self-propelled unit of equipment designed primarily for moving other equipment. It does not include self-propelled passenger cars.

Locomotive cab means that portion of the superstructure designed to be occupied by the crew while operating the locomotive.

Passenger car means a unit of rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express and passengers.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Rebuilt locomotive, caboose or passenger car means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Surface Transportation Board accounting standards.

Side facing glazing location means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car.

Windshield means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

Yard is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; or repair of equipment.

Yard caboose means a caboose that is used exclusively in a single yard area.

Yard locomotive means a locomotive that is operated only to perform switching functions within a single yard area.

3. In § 223.9, paragraph (d) is added to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

* * * * *

(d) *Marking.* Each railroad providing passenger train service shall ensure that:

(1) All emergency windows are conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Each railroad shall post clear and legible operating instructions at or near such exits.

(2) All windows intended for emergency access by emergency responders for extrication of passengers are marked with a retroreflective, unique, and easily recognizable symbol or other clear marking. Each railroad shall post clear and understandable window access instructions either at each window or at the car ends.

4. Part 239 is added to read as follows:

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

Subpart A—General

Subpart B—Specific Requirements

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

Appendix A to Part 239—Schedule of Civil Penalties (Reserved)

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49 (c), (g), (m).

Subpart A—General

§ 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the plan's provisions. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 239.3 Application.

(a) Except as provided in paragraph (b), this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area [as described by 49 U.S.C. 20102(1)], including public authorities operating passenger train service; and

(3) Freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation;

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

§ 239.5 Preemptive effect.

Under 49 U.S.C. 20106 [formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)], issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

§ 239.7 Definitions.

As used in this part—

Adjacent rail modes of transportation includes other railroads, trolleys, light rail, and heavy transit.

Crewmember means a person, other than a passenger, who performs either:

(1) On-board functions connected with the movement of the train or

(2) On-board service.

Control center means a central location on a railroad with responsibility for directing the safe movement of trains.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency or emergency situation means an unexpected event related to the operation of passenger train service involving a significant threat to the safety or health of one or more persons requiring immediate action.

Emergency preparedness plan means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

Joint operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of:

(1) Contractual arrangements between the railroads;

(2) Order of a governmental agency or a court of law; or

(3) Any other legally binding directive.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service, commuter, or other short-haul passenger service.

Private car means a rail passenger car used to transport non-revenue passengers on an occasional contractual basis, and includes business/office cars and circus trains.

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad officer means any supervisory employee of a railroad.

System headquarters means the location designated by the railroad as the general office for the railroad system.

§ 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor for a railroad, performs any function required by this part, that person (whether or not a railroad) is required to perform that function in accordance with this part.

§ 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this part. Appendix A contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with written emergency preparedness plan procedures for implementing each plan element, including those listed below.

(1) *Communication.* (i) *Initial and on-board notification.* An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. The train crewmember shall then inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notifications by control center.* The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred. Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification.* (i) *On-board personnel.* The railroad's emergency preparedness plan shall address individual employee

responsibilities, and provide for initial and periodic training at least once every two years on the applicable plan provisions, including, as a minimum:

(A) Rail equipment familiarization;
(B) Situational awareness;
(C) Passenger evacuation;
(D) Coordination of functions; and
(E) ''Hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center personnel.* The railroad's emergency preparedness plan shall require initial and periodic training at least once every two years of responsible control center personnel on appropriate courses of action for each potential emergency situation.

(iii) *Testing of on-board and control center personnel.* A railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan. The testing methods selected by the railroad shall be:

(A) Designed to accurately measure an individual employee's knowledge of his or her responsibilities under the plan;

(B) Objective in nature;

(C) Administered in written form; and

(D) Conducted without reference to open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(iv) *On-board staffing.* Each passenger train shall have a minimum of one on-board crewmember who is qualified under the applicable emergency preparedness plan's provisions.

(3) *Joint operations.* (i) Each freight railroad hosting passenger train service shall have an emergency preparedness plan addressing its specific responsibilities consistent with this part.

(ii) Each railroad that operates passenger train service over the line of a freight railroad shall coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the freight railroad's emergency preparedness plan, to ensure that an optimum level of preparedness is achieved. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances.* (i) *Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detraining, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall provide for coordination of emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or freight railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

(i) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the names and telephone numbers of relevant railroad officers to contact;

(ii) Maintaining an awareness of each emergency responders' capabilities; and

(iii) Inviting emergency responders to participate in emergency simulations, including tabletop exercises.

(6) *On-board emergency equipment.* (i) *General.* Each railroad's emergency preparedness plan shall designate the types of on-board emergency equipment and indicate their location(s) on each passenger car. This equipment shall include, at a minimum:

(A) One fire extinguisher per passenger car;

(B) One pry bar per passenger car; and

(C) One flashlight per on-board crewmember.

(ii) *On-board emergency lighting.* Consistent with the requirements of 49 CFR Part 238, auxiliary portable lighting must be accessible.

(iii) *Maintenance.* Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of on-board emergency equipment and lighting.

(7) *Passenger safety information.* (i) *General.* Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities.* Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more of the following additional methods to provide safety awareness information:

(A) On-board announcements;
(B) Laminated wallet cards;
(C) Ticket envelopes;
(D) Timetables;
(E) Station signs or video monitors;
(F) Public service announcements; or
(G) Seat drops.

(iii) *Passenger surveys.* Each railroad shall survey representative samples of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness program activities, and shall improve its program, as appropriate, in accordance with the information developed.

(A) The survey shall be designed to examine passenger awareness of the location(s) on the passenger car of the available safety information and verify passenger knowledge of the safety procedures to be followed in the event of an emergency.

(B) The railroad shall inform each surveyed passenger that completion of the survey is strictly voluntary.

(C) Each railroad shall maintain records of its passenger surveys at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

(b) [Reserved]

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct emergency simulations, either full-scale or tabletop exercises, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Each railroad that provides commuter or other short-haul passenger train service shall conduct a sufficient number of emergency simulations so that each major line will be included at least once during every two calendar years and the number of simulations performed during any given calendar year will include at least 50 percent of the total number of major lines. Each railroad that provides intercity passenger train service shall conduct at least two emergency simulations during each calendar year for each business unit or other major organizational element.

(c) *Definition.* As used in this section, in the case of a railroad that provides commuter or other short-haul passenger train service, *major line* includes each principal route and its branches.

(d) *Actual emergency situations.* Provided that a railroad conducts a debriefing and critique session meeting the requirements of § 239.105 of this subpart, a railroad may count the activation of its emergency preparedness plan during an actual emergency situation toward the minimum number of simulations required under this section. However, a railroad may substitute the activation of its emergency preparedness plan to satisfy no more than 50 percent of the total number of simulations required under this section.

§ 239.105 Debriefing and critique.

(a) *General.* Each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or simulation to determine the effectiveness of its emergency preparedness plan, and shall improve and/or amend its plan, as appropriate, in accordance with the information developed.

(b) *Purpose of debriefing and critique information.* The debriefing and critique session shall be designed to determine, at a minimum:

(1) Whether the on-board communications equipment functioned properly;

(2) The elapsed time between the occurrence of the emergency situation or simulation and notification to the emergency responders involved;

(3) Whether the control center promptly initiated the required notifications;

(4) How quickly and effectively the emergency responders responded after notification; and

(5) The efficiency of passenger egress from the car through the emergency exits.

(c) *Records.* Each railroad shall maintain records of its debriefing and critique sessions at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.107 Emergency exits.

(a) *Marking.* Each railroad operating passenger train service shall ensure that each of the following occur.

(1) All door exits intended for emergency egress are either lighted or conspicuously and legibly marked with luminescent material on the inside of the car. Each railroad shall post clear and understandable instructions at or near such exits.

(2) All door exits intended for emergency access by emergency responders for extrication of passengers are marked with retroreflective material. Each railroad shall post clear and understandable instructions at each such door.

(b) *Inspection, maintenance, and repair.* Consistent with the requirements of part 223 of this chapter, each railroad operating passenger train service shall provide for scheduled inspection, maintenance, and repair of emergency window and door exits. Each railroad shall test a representative sample of emergency window exits on its cars at least once every 180 days to verify their proper operation, and shall repair a defective unit before returning the car to service.

(c) *Records.* Each railroad operating passenger service shall maintain records of its inspection, maintenance, and repair of emergency window and door exits at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing.* Each railroad to which this part applies shall file one copy of its emergency preparedness plan with the Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not more than 180 days after (the effective date of the final rule), or not less than 90 days prior to commencing passenger operations, whichever is later. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the plan, and shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA not less than 60 days prior to the proposed effective date.

(b) *Approval.* (1) Within 180 days of receipt of each initial plan, and within 60 days in the case of a railroad commencing or hosting passenger operations after the initial deadline for plan submissions, FRA will conduct a formal review of the emergency preparedness plan. FRA will then notify the primary railroad contact person of the results of the review, whether the emergency preparedness plan has been approved by FRA, and if not approved, the specific points in which the plan is deficient. If an emergency preparedness plan is not approved by FRA, the railroad shall amend its plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not approved.

(2) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary railroad contact person of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) Following initial approval of a plan or amendment, FRA may reopen consideration of the plan or amendment for cause stated.

§ 239.203 Retention of emergency preparedness plan.

Each railroad to which this part applies shall retain one copy of its emergency preparedness plan and one copy of each subsequent amendment to its emergency preparedness plan at its system and division headquarters, and shall make such records available to representatives of FRA for inspection and copying during normal business hours.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

§ 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-

board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall specify the name of the railroad officer who administered the test and the name of each employee tested. The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

(a) Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

(b) [Reserved]

Appendix A to Part 239—Schedule of Civil Penalties [Reserved]

Issued in Washington, D.C., on February 19, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–4489 Filed 2–21–97; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

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